Delaware Court Dismisses Boeing Caremark Claims, Demonstrating the Value of Engaged Board Oversight

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Earlier this month, the Delaware Court of Chancery dismissed a derivative suit brought against Boeing's directors and officers following a January 2024 incident in which a Boeing jet's door plug separated from the hull at 15,000 feet. The court held that the plaintiffs failed to plead that a majority of Boeing's board faced a substantial likelihood of liability on their *Caremark* oversight claims.[1]

Caremark is the Delaware doctrine under which directors and officers may face liability for a bad faith breach of the duty of loyalty if they either fail to establish a reasonable information and reporting system or, having established one, consciously fail to monitor it or respond to red flags. The recent Boeing decision is a valuable authority in demarcating *Caremark*'s boundaries.

BACKGROUND

The case arose approximately five years after the 737 MAX crashes of 2018 and 2019, which led to a wave of litigation and enforcement matters, including *Caremark* claims against Boeing's board. Those *Caremark* claims survived dismissal because the court found that the board had no committee responsible for airplane safety and no regular safety reporting, and they were ultimately settled. As described in the settlement, subsequent to the crashes, Boeing created an independent Aerospace Safety Committee, committed that at least three directors have aviation, engineering or product-safety expertise, tasked the Audit Committee with monitoring legal and regulatory compliance, separated the CEO and Chair roles and made safety a standing item at every board meeting. The record in Boeing II showed that these structures were in regular use.

On January 5, 2024, a mid-cabin door plug separated from a 737 MAX 9 during flight, in an incident involving a manufacturing and mechanical issue rather than the software design and engineering issues involved in the 2018 and 2019 737 MAX crashes. Among

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1 In re The Boeing Co. Derivative Litigation, Consol. C.A. No. 2024-1210-MTZ (Del. Ch. Aug. 13, 2026). The 2021 decision is In re The Boeing Co. Derivative Litigation, 2021 WL 4059934 (Del. Ch. Sept. 7, 2021).

other proceedings related to the incident, stockholders made books and records requests under Section 220 and sued Boeing's directors and officers for failure to adequately oversee mission-critical risks.

THE DECISION AND ITS CONTEXT

The core question before the court in Boeing II was the same as in Boeing I: whether the directors adequately discharged their oversight duties related to airplane safety risks. The plaintiffs did not contend that Boeing lacked a reporting system because of the significant oversight structures established under the 2021 settlement. Rather, the plaintiffs advanced a red-flags theory, namely that the extensive reporting the board received on manufacturing and compliance risks constituted a set of warnings the board consciously ignored. They also alleged that the board consciously "shirk[ed] regulatory compliance in favor of higher profits" by pursuing production targets that could not be met safely and lawfully.

The court rejected both theories. In rejecting the first argument, the court explained that a report is a red flag only if it actually reaches the directors, signals illegality or impending corporate trauma clearly enough that the need to act is evident, is consciously ignored and is closely connected to the harm that follows. The court found that, despite 95 pages of allegations of purported "red flags," the plaintiffs failed to provide grounds to infer a bad faith dereliction of duty. According to the court, the breadth of the plaintiffs' theory "risks recasting the volume and depth of Boeing's reporting from a best practice into evidence of disloyalty."

The court also rejected the plaintiffs' second argument, stating that the plaintiffs had not alleged that Boeing's production targets violated the law or that the board's decision to maintain them despite knowing that the company faced general safety risks is sufficient to overcome Delaware's good faith presumption.

The decision should give comfort to companies that set ambitious targets tied to informed assessments of risk and feasibility and monitor them rigorously, because neither good faith though challenging targets nor candid related reporting standing alone creates risk of oversight liability.

Putting the decision in context, in the two years following the 2019 Marchand decision, several motions to dismiss Caremark claims were denied. Since 2023, the Court of Chancery has dismissed *Caremark* claims against the directors of several companies, while allowing complaints to proceed where the plaintiffs set out particularized factual allegations that boards allegedly failed to respond to red flags that the corporation was "violating the law or otherwise headed for a corporate trauma." Boeing II clarifies that recurrence of safety-related concerns, even where the underlying risks differ, such as software design and engineering issues versus a manufacturing and mechanical issue, does not lower the bad faith standard or turn robust reporting into evidence of disloyalty.[2]

PRACTICAL IMPLICATIONS

The opinion is among the most detailed descriptions a Delaware court has given of adequate oversight of a mission-critical risk. For directors, rather than prescribing a fixed analytical framework, the decision points more generally to clear responsibility for each mission-critical risk, appropriate escalation, tracking remediation and regular review of the assumptions underlying significant business targets. For in-house counsel, a high-quality, contemporaneous record of board deliberations remains important. The 2025 amendments to Section 220 make formal board materials especially important. In Boeing, recording not only the risk reported but also the diagnosis, owner and response helped demonstrate that the oversight system was functioning properly.

Boeing II is reassuring to engaged boards. Delaware law does not ask boards to prevent every failure but rather requires directors to identify risks that could truly hurt the company, develop an appropriate oversight structure, engage with the resulting reporting stream and maintain a record of having done so. Boards that follow these principles, even if their companies suffer a bad outcome, can expect strong protection from oversight claims.

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Please do not hesitate to contact us with any questions.

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[2] Marchand v. Barnhill, 212 A.3d 805 (Del. 2019).

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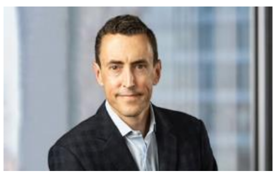

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