

Distressed Governance Tracker

*Distressed Governance Tracker:
Proper Governance = Deal Certainty + Max Value*

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In re: McDonald's Corporation Stockholder Derivative Litigation, C.A. No 2021-0324-JTL (Del. Ch. Jan. 26, 2023)

RULING

In a case of first impression, the Delaware Court of Chancery found that the duty of care extends to directors AND officers based upon its review of Delaware and non-Delaware precedent, as well as theories of agency and accountability. However, unlike directors who have a duty regarding the entirety of the business, officer duties of care may be limited to her/his particularized area of responsibility within the business.

RESTRUCTURING LESSON

It remains to be seen how the Delaware Supreme Court will rule on the issue. Nevertheless, it is a reminder for all fiduciaries (directors, officers and otherwise) to be mindful of the duty of care in all aspects, including public safety (Boeing), disclosure of customer information (Bingle), or a culture of sexual harassment (McDonald's).

ANALYSIS

Plaintiff alleged that while the company had a system to report and address instances of sexual harassment, it nonetheless maintained a culture of sexual harassment and the company's management failed to address myriad "red flags." Defendants argued that officers did not have a duty of care and, importantly, that no court in Delaware has found that to be the case. Concluding that officers, in fact, have a duty of care, Vice-Chancellor Laster relied upon (i) Delaware Supreme Court precedent supporting the proposition that officers are responsible for the same duties as directors (*Gantler v. Stephens*, 965 A.2d 695, 709 (Del. 2003)), (ii) non-binding precedent recognizing the duty of care for officers, and (iii) concepts of agency and accountability as between management and a board that support the extension of the duty of care. Interestingly, the Court also noted that the amendment of DGCL 102(b)(7) to include exculpation for officers supported its conclusion.



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