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Del. Caremark Opinion Shows Shift In Deference To Boards Of Directors

Michael Furey authored an article, "Del. Caremark Opinion Shows Shift In Deference To Boards," published by *Law360.* Furey discusses the recent Delaware Supreme Court's decision in *Marchand v. Barnhill*, after a third Delaware Chancery Court judge refused to dismiss a derivative action asserting a *Caremark* oversight claim against corporate directors. Previously, motions to dismiss *Caremark* claims were granted on a routine basis, but in three recent decisions the Delaware Chancery court did not dismiss the claims. This has generated interest over whether *Marchand* represents a change in the law, a change in judicial attitude or another example of bad facts making bad law. Furey believes these recent decisions have not fundamentally changed the law but represent a new willingness on the part of courts to review claims that boards of directors have failed to monitor management in a less deferential manner to directors than in the past. These decisions are part of a trend towards the use of compliance programs, including Board committees, as a way to prevent corporate wrongdoing.

You can read the full article here (subscription).

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