Articles
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In its June 2019 *Marchand v. Barnhill* opinion, the Delaware Supreme Court provided guidance for directors (and their advisors) in two key areas—compliance and independence.

In *Marchand*, the Delaware Supreme Court reversed the Chancery Court's dismissal of a stockholder derivative complaint. The complaint had alleged a breach of the duty of loyalty under *Caremark* by two key executives and the directors of Blue Bell Creameries USA Inc., an ice cream producer.

The Chancery Court had previously dismissed the complaint for failure to plead demand futility, that is, for failure to make a pre-litigation demand on the board of directors. As author of the opinion, Chief Justine Strine expressed the Delaware Supreme Court's view that to avoid liability under *Caremark*, boards must demonstrate that they have instituted and supervised a board-level process to oversee and monitor a system of compliance that addresses the company's mission-critical risks. The *Marchand* decision also states the Delaware Supreme Court's view that the standard for independence of a director who is considering a stockholder demand to initiate litigation against company insiders may be higher than the degree of independence required for less significant board decisions.

[Click here to read the full article in the *Corporate Governance Advisor*.]

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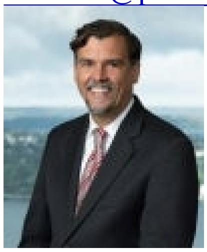

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