

'26

AUMUNS STUDY GUIDE

**UNDER
SECRETARY
GENERAL:
METEHAN
YILDIRIM**

**ACADEMIC
ASSISTANT:
DERIN
AKYUREK**

US CIVIL COURT

TABLE OF CONTENTS

COVER	1
TABLE OF CONTENTS	2
LETTER FROM THE SECRETARY-GENERAL	4
LETTER FROM THE UNDER SECRETARY-GENERAL	4
A. INTRODUCTION TO THE COURT	5
a. Introduction to the United States Court Systems.....	5
b. Civil Cases and United States Civil Court.....	6
B. FACTUAL AND PROCEDURAL BACKGROUND	10
a. Chronology of Events.....	10
1. The Development of the 737 MAX.....	10
1.1. Market Pressure and the Airbus A320neo Competition.....	10
1.2. The Maneuvering Characteristics Augmentation System (MCAS).....	12
2. The Tragic Crashes.....	15
2.1. Lion Air Flight 610 (October 2018).....	15
2.2. Ethiopian Airlines Flight 302 (March 2019).....	16
3. The Board's Oversight Failure (The Caremark Claim Basis).....	18
3.1. Absence of a Board-Level Safety Committee.....	18
3.2. Disconnect Between Management and the Board.....	19
3.3. The "Passive" Response Post-Lion Air.....	20
4. Regulatory Action and Grounding.....	22
4.1. FAA and Global Grounding of the 737 MAX Fleet.....	22
4.2. Congressional Investigations and Internal Communications Leak.....	23
5. The Litigation Phase.....	25
5.1. Consolidation of Shareholder Derivative Suits in Delaware.....	25
5.2. Defendants' Motion to Dismiss (Demand Futility Arguments).....	26
5.3. The Chancery Court Ruling Sustaining Fiduciary Breach Claims.....	27
6. The Settlement Agreement.....	28
6.1. The \$237.5 Million Financial Resolution.....	28
6.2. Mandated Corporate Governance and Safety Reforms.....	30
7. Current Status of Corporate Oversight and the Board.....	31
C. APPLICABLE LAW	32
Delaware General Corporation Law (DGCL).....	32
Title 8. Corporations.....	32
Chapter 1. General Corporation Law.....	32
Subchapter I. Formation.....	32
Section 102(b)(7). Exculpation of Directors from Personal Liability.....	32
Subchapter IV. Directors and Officers.....	34
Section 141(a). Board of directors; powers; number, qualifications et al..	34
Section 141(e). Reliance upon books, reports and records.....	34
Delaware Common Law (Judicial Precedent).....	34

Fiduciary Duties of Corporate Directors.....	34
The Duty of Loyalty.....	34
The Duty of Care.....	36
The Caremark Doctrine (Failure of Oversight).....	37
In re Caremark Int'l Inc. Deriv. Litig., 698 A.2d 959 (Del. Ch. 1996).....	37
Stone v. Ritter, 911 A.2d 362 (Del. 2006).....	37
Marchand v. Barnhill, 212 A.3d 805 (Del. 2019).....	38
In re Clovis Oncology, Inc. Deriv. Litig., 2019 WL 4850188 (Del. Ch. 2019).....	40
Derivative Actions and Demand Futility.....	42
Court of Chancery Rule 23.1.....	42
United Food & Commercial Workers Union v. Zuckerberg, 262 A.3d 1034 (Del. 2021).....	47
United States Code (Federal Context).....	47
Title 15. Commerce and Trade (Securities Exchange Act of 1934).....	47
Section 78n. Proxies.....	47
Section (a).....	47
Code of Federal Regulations (CFR).....	48
Title 14. Aeronautics and Space.....	48
Chapter I. Federal Aviation Administration.....	48
Part 21. Certification Procedures for Products and Articles.....	48
Subpart D. Changes to Type Certificates.....	48
D. MERITS OF THE CASE.....	51
E. BIBLIOGRAPHY.....	51

LETTER FROM THE SECRETARY-GENERAL

LETTER FROM THE UNDER SECRETARY-GENERAL

Dear Members of the Court,

Welcome to AUMUN'26. As the Under Secretary-General of the United States of America Civil Court, it is a pleasure to have you with us, and I sincerely hope you will find the conference both intellectually demanding and genuinely enjoyable.

Before anything else, I would like to extend my sincere gratitude to the entire Secretariat and Organization Team for the dedication, professionalism, and countless unseen hours that made this conference possible. I am also grateful to AUMUN'26 for supporting courts that require a distinctive level of academic preparation and procedural discipline. In that regard, I would like to offer special thanks to our Secretary-General, Bedirhan Cura, for actively

championing the role of courts within MUN conferences and helping create space for rigorous, law-focused debate.

It is my honour and absolute pleasure to welcome you to the United States of America Civil Court at the AUMUN'26 Conference. I would also like to express my heartfelt thanks to my Academic Assistant, Derin Akyürek, whose support, particularly in the drafting and refinement of the case materials, has been invaluable.

Throughout this study guide, you will be learning lots of new things. You will notice that the Study Guide is intentionally comprehensive. Please do not let its length intimidate you. It is designed to function as a self-contained foundation so that you will not need to conduct extensive additional research in order to participate effectively. As the academy of this committee, we wished to design and make a committee that would never hinder the goals and ambitions of delegates by its structure; hence, before stepping into the committee, all we ask is that you read the study guides thoroughly and then bring your creative ideas, along with enthusiasm, to the committee.

Regardless of your previous MUN experiences, English level, or current procedural knowledge, you will be able to succeed, learn, and most importantly, have fun while doing so. Therefore, do not be afraid to try new things, to interact with others, or to contact us. If you have questions whether about the legal framework, factual background, terminology, or how to prepare your position please do not hesitate to reach out. I would much rather answer your questions early than see you struggle unnecessarily.

Contact: metehan.yildirim1@std.bogazici.edu.tr (Preferred), +90 533 055 33 66

I look forward to meeting you all and to witnessing a conference defined by competitive debate, respectful diplomacy, and memorable collaboration. We will try our best to make this committee a unique experience, so when it begins, feel at ease and have fun! I wish you the very best of luck, and an outstanding AUMUN'26 experience.

Sincerely,

Metehan Yıldırım

Under-Secretary-General, United States of America Civil Court, AUMUN'26

A. INTRODUCTION TO THE COURT

a. Introduction to the United States Court Systems

The US Constitution houses its own unique structure. In this unique structure, there are two main court systems: The Federal Court System and the State Court System. Each of these systems has both similarities and differences. To fully understand the US judicial structure, we should first dig into the US Court System and its procedure.

To begin with, the United States Federal Court System has three main levels: the district courts, the circuit courts and the Supreme Court. There are 94 district courts being the first level of justice. It continues with 13 circuit courts, which are above the district courts. As the final level of justice, there is one Supreme Court throughout the country. Federal courts are courts of limited jurisdiction, meaning they can only hear cases authorized by the United States Constitution or federal statutes. The federal district court is the starting point for any case arising under the Constitution. In some situations, cases that are entirely based on state law may be brought in federal court under the court's "diversity jurisdiction". Federal judges are selected by the President and confirmed "with the advice and consent" of the Senate and "shall hold their Offices during good Behavior".

In order to detail more, the district courts are the general trial courts of the federal court system. District courts handle trials within the federal court system, both civil and criminal. Some tasks of the district court are given to federal magistrate judges. Federal trial courts have also been established for a few subject-specific areas.

Once the federal district court has decided a case, the case can be appealed to a United States court of appeals. Thirteen federal circuits divide the country into different regions. Any case may be appealed to the circuit court once the district court has finalized a decision. Appeals to circuit courts are first heard by a panel, consisting of three circuit court judges.

The Supreme Court of the United States is the highest in the American judicial system and has the power to decide appeals on all cases brought in federal court or those brought in state court but dealing with federal law. Parties may file a "writ of certiorari" to the court, asking it to hear the case. Certiorari is not often granted; less than 1% of appeals to the high court are

actually heard by it. There are nine justices on the court, eight associate justices and one chief justice.

State courts are courts of "general jurisdiction," which means they can hear nearly any kind of case, including the great majority of everyday civil and criminal cases, in contrast to federal courts with limited jurisdiction. State judges are chosen by a variety of processes, including public elections or gubernatorial appointment and frequently hold office for set terms rather than "during good behavior." In contrast, federal judges are appointed for life. Starting with trial courts (commonly referred to as superior or circuit courts) and progressing to intermediate appellate courts, where panels of judges review rulings, the organization is similar to the federal system. Lastly, there is the State Supreme Court, which has the authority to select which cases it considers and acts as the final level in the state legislation and the state constitution.

b. Civil Cases and United States Civil Court

There are two primary types of cases: civil cases and criminal cases. Civil law refers to the branch of law that deals with non-criminal matters, including disputes between private individuals or organizations. A civil case begins when a person, business, or government agency claims that another person, business, or government agency failed to meet a legal duty. Its primary concern is the rights and duties of individuals among themselves.

Civil and criminal cases both consider violations of people's rights and who is at fault. However, they differ in structure, burdens of proof and penalties. Civil cases usually involve disputes between people or organizations, while criminal cases allege a violation of a criminal law. Criminal law considers a crime an act against society rather than an individual. Therefore, the government brings legal action against a person for committing a crime. In contrast, a civil case involves a dispute between two people, or parties, on a certain issue. One party sues the other and the jury determines liability and the amount of damages.

The burden of proof is much lighter in a civil case. In civil matters, a preponderance of evidence showing a more than 50 percent chance that one of the parties is at fault is all that's necessary. Instead of the defendant having to prove his or her innocence, the prosecution must prove the defendant's guilt beyond a reasonable doubt. Because the stakes are so much

higher for a defendant in a criminal case than between two parties in a civil case, the justice system also includes safeguards to protect a defendant's rights.

Types of Civil Cases

Civil litigation refers to legal proceedings undertaken to resolve a dispute regarding an alleged civil wrong and seek redress or payment of damages. Within common law systems, civil law encompasses areas such as contracts, torts and property.

Torts and Personal Injury: This happens if someone gets injured because of the other person's negligence. Suppose you have been injured or physically harmed because of someone else's actions; in that case, you can legally hold them responsible for what has happened with the help of personal injury litigation. Car and motorbike accidents and medical malpractice are usually the common causes of these cases. But remember, things will only go in your favor if the other person is directly or indirectly liable for the injury you suffered.

Contract Disputes: When two or more parties agree upon a set of rules and exchange money, assets, or promises, it is called an agreement. A contract is a written version of the agreement. Civil litigation also applies if one of the parties does not follow the terms of the contract. Now, if either party in the contract refuses to obey it, the other party can file a lawsuit against them.

Property and Real Estate: Civil litigation involves real estate disputes such as fraud in sales or issues with the value of land or property. Some of the cases are conflicts with ownership rights, problems with title claims and property line disputes. Private problems also include personal cases; for example, if your neighbor's dog keeps ruining your property, you can contact your civil attorney.

Family Law: Many family problems fall under civil litigation. These cases include domestic violence, child custody, divorce, probate and separation. Unlike other civil cases, which are purely adversarial, family law often prioritizes the "best interests of the child."

Defamation: If a person spreads false rumors or makes a false statement that can harm the other party's image, then it is called defamation. Defamation can cause a lot of nominal and real damage to the person or organization.

The Process of a Civil Case

To begin a civil lawsuit in federal court, the plaintiff files a complaint with the court and “serves” a copy of the complaint on the defendant (The plaintiff and the defendant are also called "parties" or "litigants"). The complaint describes the plaintiff's damages or injury, explains how the defendant caused the harm, shows that the court has jurisdiction and asks the court to order relief. The complaint, which is the plaintiff's pleading, consists of the defendant's crime and the outcome they expect. After they place the complaint, the defendant must create an answer to it. It is the response to the accusation and they can also ask for a more precise explanation.

Discovery: Gathering Evidence

There may be “discovery,” where the litigants must provide information to each other about the case, such as the identity of witnesses and copies of any documents related to the case. Discovery allows you to get information and evidence from the other party or other persons that you can use in your lawsuit. The purpose of discovery is to prepare for trial by requiring the litigants to assemble their evidence and prepare to call witnesses. If you are the plaintiff in a case, you have the burden to prove your case by stronger evidence than the other side. Discovery is how you gather the evidence you will need to prove your case as a plaintiff or defeat the plaintiff's case as a defendant.

Tools Used in Discovery:

Interrogatories: To ask the other side to answer a set of questions, you can use Interrogatories. An “Interrogatory” is a legal word meaning “question”. This is useful not only to get general information about the other side, like home and employer address, but also information that supports what the other side claims in their Complaint or Answer.

Depositions: Discovery may include a deposition, requiring a witness to answer questions about the case before the trial. The witness answers questions from the lawyer under oath, in the presence of a court reporter, who produces a word-for-word account called a transcript. Taking a deposition is complicated and expensive; it requires knowledge of the law and rules of evidence.

Requests for Production: A Request for Production (also known as a Demand for Inspection) asks the other side to produce and allow copying or inspection and measuring of a document or thing. The other side also provides a written response stating that all evidence was produced, or explaining what hasn't been produced and why.

Requests for Admission: A Request for Admission asks the other side in your lawsuit to admit that a list of statements are true or that documents are authentic. If the other side admits that something is authentic, you will not need to prove that at trial. This can make your trial faster and less expensive.

Settlement and Trial

To avoid the expense and delay of having a trial, judges encourage the litigants to try to reach an agreement resolving their dispute. As a result, litigants often agree to a “settlement”. In this step, a civil attorney for both parties gets together to negotiate. If they come to an agreeable settlement, the case ends there or goes to trial. Absent a settlement, the court will schedule a trial.

It is the last step, where the judge and jury hear the parties and decide on a verdict. By applying rules of evidence, the judge determines which information may be presented in the courtroom. So that witnesses speak from their own knowledge and do not change their story based on what they hear another witness say, they are kept out of the courtroom until they testify. A plaintiff may seek money to compensate for the damages, or may ask the court to order the defendant to stop the conduct that is causing the harm. The court may also order other types of relief, such as a declaration of the legal rights of the plaintiff in a particular situation.

B. FACTUAL AND PROCEDURAL BACKGROUND

a. Chronology of Events

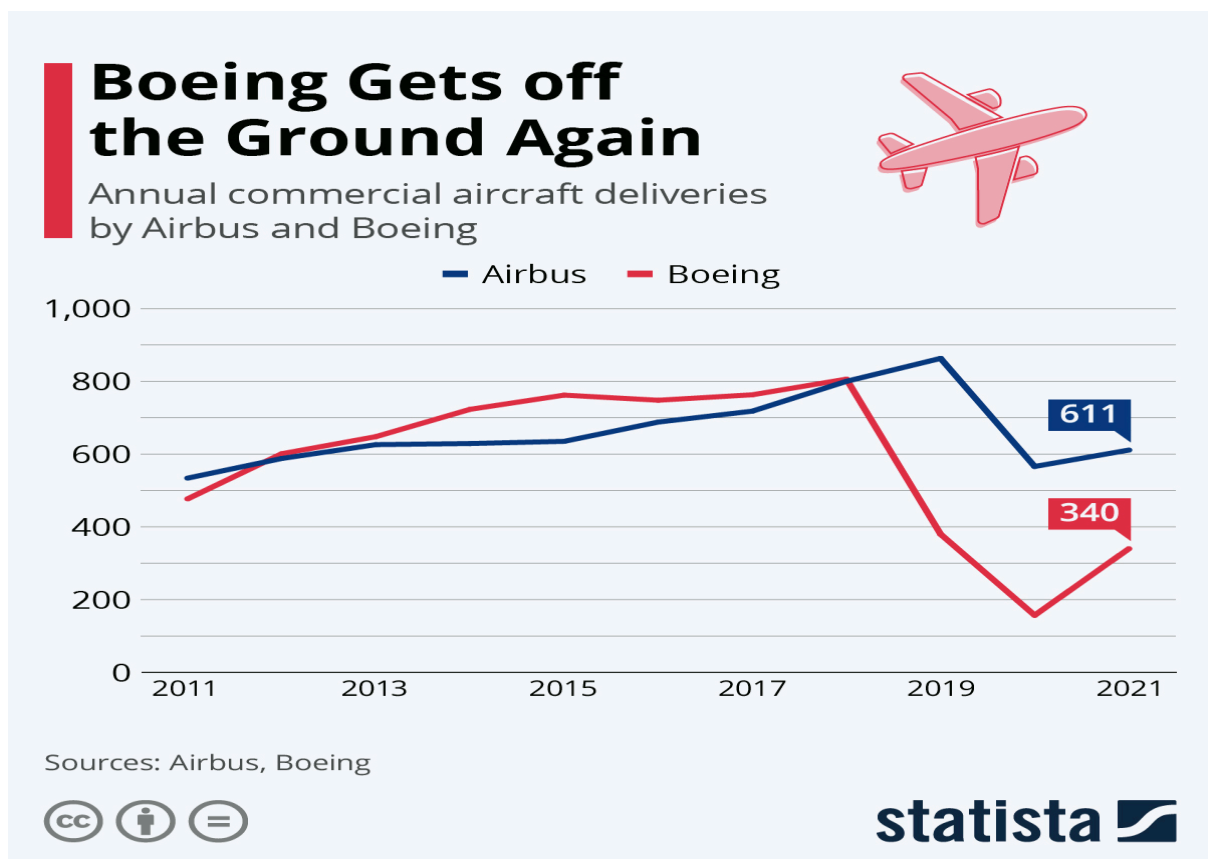
1. The Development of the 737 MAX

1.1. Market Pressure and the Airbus A320neo Competition

In December 2010, Airbus announced it was upgrading its A320 with a more efficient engine, offering airlines a 15 percent improvement in fuel efficiency. The launch of the A320neo caught Boeing by surprise. In the spring of 2011, American Airlines, an exclusive Boeing customer for more than a decade, informed Boeing it was considering placing an order for hundreds of Airbus A320neos. Faced with the prospect of losing American Airlines, Boeing abandoned its plans to develop a completely new, “clean sheet” airplane. Instead, in July 2011, Boeing announced it would re-engine the existing 737 with a new, more fuel-efficient engine. The 737 MAX was the latest derivative of the 737, an aircraft whose original design dates back to the 1960s. Boeing's decision to develop the 737 MAX was primarily driven by

competitive pressure from Airbus. If Boeing had decided to build a new airplane, it would have taken years longer and cost billions of dollars more than a derivative aircraft. The urgency to complete the 737 MAX program was exacerbated by the fact that the A320neo was scheduled to enter into service before a new Boeing aircraft could be completed.

Consequently, the competitive pressure to keep pace with the A320neo drove the 737 MAX program from its inception. To compete with the Airbus A320neo, Boeing rushed to develop the 737 MAX. During the development of the 737 MAX, Boeing management was acutely aware of the competitive threat posed by the Airbus A320neo. A primary goal of the 737 MAX program was to maintain commonality with the 737 NG to minimize airlines' training costs. A key selling point of the 737 MAX was that pilots could transition from the prior generation 737 NG to the 737 MAX with only computer-based training. Boeing management promised airlines that the 737 MAX would not require additional simulator training for pilots already certified on the 737 NG.



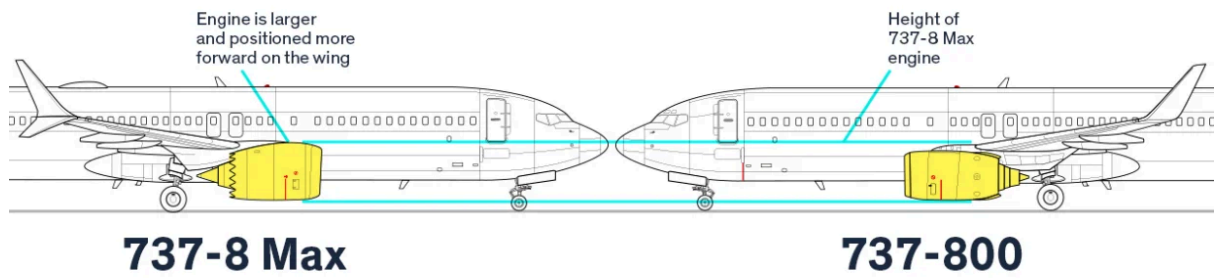
Avoiding simulator training was critical to the financial success of the MAX program and the competitive strategy against Airbus. To guarantee this to its airline customers, Boeing agreed to pay Southwest Airlines a rebate of \$1 million per airplane if the Federal Aviation

Administration (FAA) required simulator training. Thus, Boeing was financially encouraged to avoid any design changes that would trigger a requirement for simulator training. If the FAA required simulator training, Boeing would owe airlines significant financial penalties. Specifically, the mandate to ensure Level A (computer-based) training differences for pilots transitioning from the 737 NG to the 737 MAX constrained the engineering design. Boeing engineers felt intense pressure to keep the costs down and to avoid any changes that would trigger a requirement for simulator training.

As a result, financial pressures and schedule pressures were significant throughout the development of the aircraft. Consequently, Boeing management set an aggressive schedule to bring the 737 MAX to market. The MAX program was a fast-paced program, and there was a constant push to meet deadlines. The development of the 737 MAX was marked by a series of decisions that prioritized production speed and cost-cutting over safety. Production pressure was a consistent theme within the company. Employees reported that schedule and production goals were prioritized above all else, often at the expense of safety. Boeing engineers were pushed to the limit, working long hours to meet the aggressive production schedule. Ultimately, the intense market pressure to compete with Airbus created a corporate culture where raising safety concerns or suggesting delays was actively discouraged by management.

1.2. The Maneuvering Characteristics Augmentation System (MCAS)

The placement of these new, larger engines further forward and higher on the wings changed the airplane's aerodynamic characteristics. During certain flight conditions, this caused the airplane's nose to pitch up. To counteract this aerodynamic tendency and ensure the 737 MAX handled similarly to the 737 NG, Boeing developed the Maneuvering Characteristics Augmentation System (MCAS). MCAS is a flight control software program designed to automatically push the airplane's nose down without pilot input when the aircraft is at a high angle of attack.



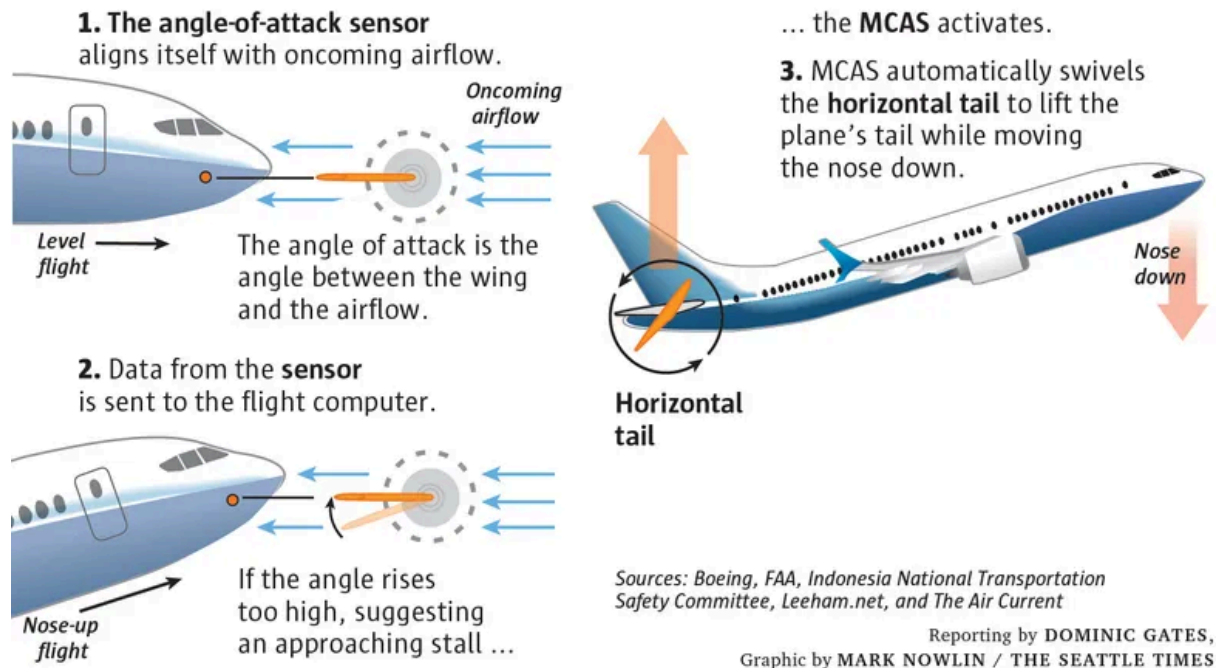
Initially, MCAS was designed to activate only at high speeds and had a maximum nose-down command limit of 0.6 degrees. However, during flight testing, Boeing later expanded MCAS to activate at lower Mach numbers and increased its maximum authority to 2.5 degrees of stabilizer trim. Crucially, Boeing designed MCAS to rely on data from only a single Angle of Attack (AOA) sensor. The 737 MAX has two AOA sensors, but MCAS was programmed to take input from only one sensor during any given flight. This single point of failure design meant that if the active AOA sensor provided erroneous data, MCAS would repeatedly push the airplane's nose down, even if the aircraft was flying level and safely.

Test Process	Left AOA vane Position	SMYD Indication
The AOA sensor vane in line with the alignment pin ($0^\circ \pm 5^\circ$)		
The AOA sensor vane at maximum upper stop ($100^\circ \pm 5^\circ$)		
The AOA sensor vane at maximum lower stop ($-100^\circ \pm 5^\circ$)		

Furthermore, Boeing's assumptions about pilot reaction times to the MCAS flight deck alerts were fundamentally flawed. Engineers assumed that pilots would recognize an unwarranted MCAS activation as a “runaway stabilizer” event and respond within seconds by executing

the standard memory items for that emergency. Yet, Boeing did not submit documentation to the FAA detailing this expansion of MCAS authority. In fact, the Chief Technical Pilots received the FAA Aircraft Evaluation Group (FAA-AEG) about the operational scope of MCAS.

How the MCAS (Maneuvering Characteristics Augmentation System) works on the 737 MAX



Because of this deception, the FAA-AEG deleted all information about MCAS from the final 737 MAX Flight Crew Operations Manual (FCOM). Consequently, airline pilots were not required to receive any training on MCAS. Boeing deliberately concealed the existence of MCAS from both pilots and regulators. Because Boeing was financially motivated to avoid simulator training, the company downplayed the significance of MCAS. Boeing argued to the FAA that MCAS was not a new system, but merely an extension of the existing Speed Trim System.

MCAS was not mentioned in the pilot flight manuals or training materials for the 737 MAX. Pilots flying the new aircraft were completely unaware that this powerful, automated system existed, nor did they know how to disable it in the event of a malfunction. Moreover, Boeing also decided not to make the AOA Disagree alert a standard feature on the 737 MAX. The AOA Disagree alert, which would have warned pilots if the two AOA sensors were providing

conflicting data, was tied to an optional, extra-cost feature. Without this alert, and without knowledge of MCAS, pilots were deprived of the critical information needed to diagnose an MCAS malfunction. This lack of transparency proved catastrophic when erroneous AOA sensor data repeatedly triggered MCAS during the subsequent flights.

2. The Tragic Crashes

2.1. Lion Air Flight 610 (October 2018)

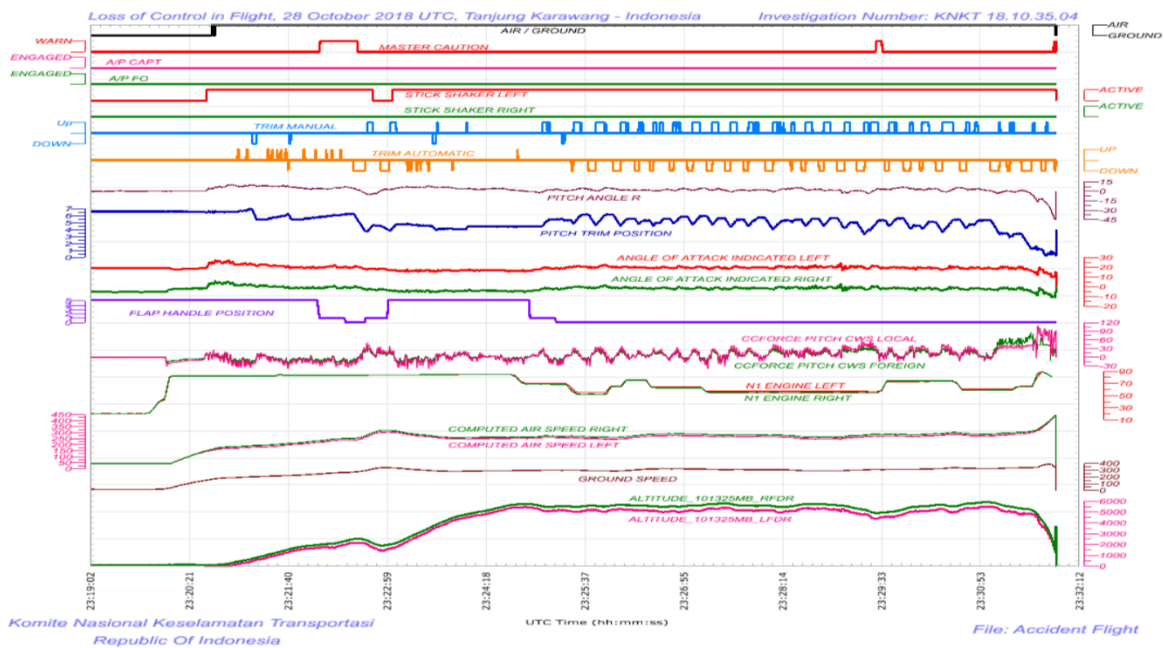
On October 29, 2018, a Boeing 737-8 (MAX) aircraft operated by Lion Air as flight 610 departed from Soekarno-Hatta International Airport in Jakarta, Indonesia. Shortly after takeoff, the left Angle of Attack (AOA) sensor began transmitting erroneous data. The erroneous AOA sensor data indicated that the aircraft's nose was pitched dangerously high, approaching a stall. Because MCAS relied on a single AOA sensor, it activated based solely on this false input without cross-checking the data from the right AOA sensor.

This erroneous AOA data caused the Maneuvering Characteristics Augmentation System (MCAS) to activate automatically. The flight crew experienced multiple distracting alerts and warnings, including a continuous stick shaker activation on the captain's side. The stick shaker is a mechanical device that loudly vibrates the control column to warn the pilot of an impending aerodynamic stall. MCAS repeatedly commanded airplane nose-down horizontal stabilizer trim without pilot input.

The flight crew struggled to maintain control of the aircraft as it repeatedly pitched downward. The pilots attempted to counteract the nose-down movements by pulling back on the control column and using the electric trim switches on their control yokes. However, five seconds after the pilots released the electric trim switches, MCAS activated again. The system continuously pushed the airplane's nose down over 20 times during the brief flight.

Crucially, the pilots were completely unaware that this powerful, automated system existed. Boeing had not included any information about MCAS in the 737 MAX Flight Crew Operations Manual (FCOM) or in the pilots' training materials. Consequently, the flight crew did not understand what was repeatedly pushing the airplane's nose down. The pilots did not know how to diagnose the malfunction or execute the proper runaway stabilizer checklist to disable the automated system.

PK-LQP Boeing 737-8 (MAX)



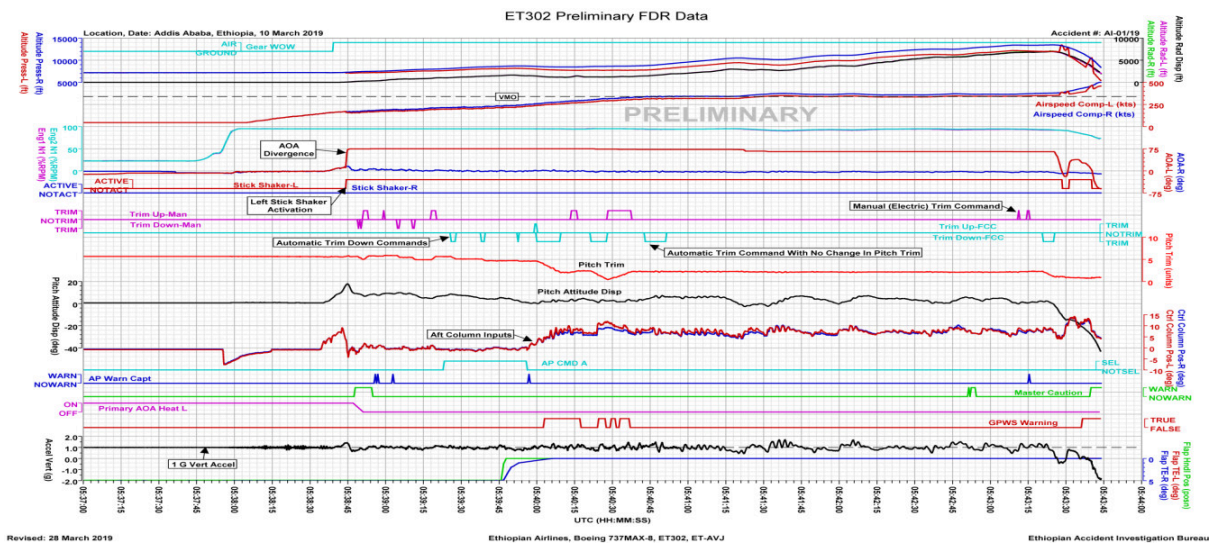
Despite their desperate efforts, the pilots could not overcome the repeated nose-down commands generated by the hidden software. The pilots fought the flight control system for several minutes. Ultimately, the continuous nose-down trim commands overpowered the flight crew's ability to pull back on the control column. The aircraft plunged into the Java Sea at a high rate of speed. Tragically, the crash resulted in the deaths of all 189 passengers and crew members on board. It was the first fatal accident involving the new Boeing 737 MAX aircraft.

2.2. Ethiopian Airlines Flight 302 (March 2019)

Less than five months after the fatal crash of Lion Air Flight 610, the Boeing 737 MAX experienced its second fatal accident. On March 10, 2019, Ethiopian Airlines Flight 302, a Boeing 737-8 (MAX) aircraft registered as ET-AVJ, departed from Addis Ababa Bole International Airport. Tragically, the crash resulted in the deaths of all 157 passengers and crew members on board. This was the second crash of a 737 MAX in less than five months.

Similar to the Lion Air tragedy, shortly after takeoff, the left Angle of Attack (AOA) sensor began transmitting erroneous data. The erroneous AOA sensor data indicated that the aircraft's nose was pitched dangerously high. The flight crew experienced multiple distracting alerts and warnings, including a continuous stick shaker activation on the captain's side. The erroneous AOA data caused the Maneuvering Characteristics Augmentation System (MCAS)

to activate automatically. MCAS repeatedly commanded airplane nose-down horizontal stabilizer trim without pilot input.



In the aftermath of the Lion Air crash, Boeing had issued an Operations Manual Bulletin (OMB) and the FAA had issued an Emergency Airworthiness Directive. These directives instructed pilots to execute the runaway stabilizer checklist to disable the automated system in the event of uncommanded nose-down trim. Unlike the Lion Air crew, the Ethiopian Airlines flight crew was aware of MCAS and initially followed the Boeing bulletin. The pilots recognized the uncommanded trim and used the stabilizer trim cutout switches to disable electric trim to the horizontal stabilizer.

However, the flight crew had left the engine thrust at the high takeoff setting, causing the airplane to travel at an excessive rate of speed. This high speed created severe aerodynamic forces on the horizontal stabilizer. Because of these intense aerodynamic forces, the pilots were physically unable to move the manual trim wheels to bring the airplane's nose up. The pilots struggled to maintain control of the aircraft but could not manually trim the aircraft.

In a desperate attempt to use the electric thumb switches to raise the nose and regain control, the pilots reactivated the stabilizer trim switches. Reactivating the electric trim switches also reactivated MCAS. Five seconds after the pilots released the electric trim switches, MCAS activated again. MCAS commanded a final, unrecoverable nose-down trim.

The continuous nose-down trim commands overpowered the flight crew's ability to pull back on the control column. The aircraft plunged into a field near Bishoftu, Ethiopia, at a high rate of speed. Following this second crash, aviation authorities worldwide ordered the emergency global grounding of the 737 MAX fleet. Ultimately, the crashes were not the result of a singular failure, but rather were the horrific culmination of a series of faulty technical assumptions by Boeing's engineers.

3. The Board's Oversight Failure (The Caremark Claim Basis)

3.1. Absence of a Board-Level Safety Committee

Airplane safety was a mission-critical risk for Boeing. Despite the immense, mission-critical risk associated with designing and certifying a new commercial aircraft, the Board had no committee dedicated to safety. The Board had no committee charged with direct responsibility to monitor airplane safety. Instead, the Board's Audit Committee possessed general oversight of the Company's risk management. The Audit Committee's mandate was explicitly centered on the company's financial statements, legal and regulatory compliance, and the independent auditor's qualifications and independence.

While the Audit Committee charter tasked it with risk assessment and risk management, it did not mention safety. The Audit Committee focused primarily on financial and operational risks rather than aviation safety. Nominal or general regulatory compliance is insufficient under the Caremark standard. The Board failed to implement any board-level reporting system or protocol specifically dedicated to monitoring airplane safety.

Prior to the Lion Air crash, the Board did not request or receive any specialized reporting regarding the safety of the 737 MAX or the MCAS system. There were no regular reports or discussions regarding the safety of Boeing's airplanes at the Board level. Furthermore, the Board did not establish any protocols requiring management to bring safety issues to the directors' attention. As a result, the Board remained in the dark regarding critical engineering changes and the development of the Maneuvering Characteristics Augmentation System (MCAS).

The Board abdicated its oversight responsibilities, placing profitability and production speed ahead of safety. Boeing management did not proactively raise safety concerns with the Board. Consequently, the absence of a Board-level safety committee left the directors completely

blind to the central risks of the business. In a company where safety is a mission-critical compliance risk, the Board's failure to implement a board-level reporting system specifically dedicated to monitoring that risk constitutes a failure of oversight. Ultimately, plaintiffs allege the directors breached their fiduciary duty of loyalty by failing to monitor the safety of Boeing's 737 MAX airplanes.

3.2. Disconnect Between Management and the Board

Following the fatal crash of Lion Air Flight 610 in October 2018, the Board's response was entirely passive. The Board did not request or receive any specialized reporting regarding the safety of the 737 MAX or the MCAS system. Instead of treating the crash as a systemic safety crisis or a mission-critical failure, the directors treated the crash as a public relations problem. Management's reports to the Board focused primarily on production, schedule milestones, restoration of profitability, and the public narrative, rather than aviation safety or engineering challenges. The Board ignored glaring red flags and consciously disregarded their duty to investigate the root cause of the tragedy.

The Board relied solely on management's assurances that the airplane was fundamentally safe. CEO Dennis Muilenburg consistently downplayed the significance of the engineering concerns to the Board, projecting an image of total control. Management framed the Lion Air accident as an anomaly caused by pilot error and poor airline maintenance, rather than acknowledging mission-critical safety defects in the aircraft's design. In the immediate aftermath of the crash, the Board convened for a regularly scheduled meeting, but the directors did not demand an independent investigation into MCAS or the single Angle of Attack (AOA) sensor design. Furthermore, the Board received no contemporaneous information about the FAA's internal concerns or the ongoing regulatory investigations.

The directors did not require management to deliver a comprehensive briefing on the mechanics of MCAS, nor did they inquire into why the system was omitted from the 737 MAX Flight Crew Operations Manual (FCOM). The Board's passive reliance on management's curated presentations is fundamentally inconsistent with the duty of oversight under Delaware law. The directors allowed themselves to be kept in the dark while Boeing management launched an aggressive public relations campaign defending the aircraft. Boeing issued public statements emphasizing that the 737 MAX was as safe as any airplane that has

ever flown the skies, despite internal engineering knowledge of the MCAS single-point-of-failure.

The Board did not push back on this media strategy or demand independent verification of these safety claims. Because the Board had no committee dedicated to safety, it possessed no independent means to verify the safety of the 737 MAX or the accuracy of management's assurances. Even as investigative news articles began to expose the existence of MCAS and the fact that Boeing had deliberately concealed the system from airline pilots, the Board took no formal action to intervene.

The directors did not pause 737 MAX production, nor did they suggest a voluntary grounding of the fleet to allow for a thorough, internal safety review. They continued to prioritize production speed and cost-cutting over passenger safety. This unconsidered inaction and conscious disregard of their duties continued for months. The Board's failure to act decisively in the face of a fatal crash involving a newly certified, flagship product illustrates a sustained and systematic failure to exercise oversight. Ultimately, this passive response left the fundamental flaws in the 737 MAX unaddressed, setting the stage for the second tragedy just months later.

3.3. The "Passive" Response Post-Lion Air

The Board's response was, at best, passive. Following the Lion Air crash, the Board did not request any information about the crash from management. The directors treated the crash as an “anomaly” and a public relations problem. Instead of taking immediate action, the Board received passive, high-level, and management-curated updates. Management told the Board that the airplane was safe, and the Board simply accepted that.



The Board did not ask questions about MCAS. The Board never requested an independent investigation into the crash or the airplane's design. The Board did not push back on management's narrative that pilot error and poor maintenance were to blame for the tragedy. Management withheld critical information from the Board, the FAA, and the airlines. During this period, Boeing's leadership was more concerned with the company's stock price and public image than the safety of the flying public.

Boeing and Muilenburg put profits over people by misleading investors about the safety of the 737 MAX. Following the Lion Air crash, Boeing issued press releases stating the 737 MAX was as safe as any airplane that has ever flown. The Board did not demand an independent review of these public statements. The directors failed to ensure that a system of controls and reporting existed.

Even after news articles revealed that Boeing had concealed MCAS from pilots, the Board took no formal action to intervene. The Board did not pause 737 MAX production. The Board did not suggest a voluntary grounding of the fleet. The directors continued to prioritize production speed and cost-cutting. This unconsidered inaction and conscious disregard of their duties continued for months.

Ultimately, the Board's failure to act decisively in the face of a fatal crash illustrates a sustained and systematic failure to exercise oversight. The Board simply allowed management to control the flow of information and the public narrative until the second crash occurred.

4. Regulatory Action and Grounding

4.1. FAA and Global Grounding of the 737 MAX Fleet

On March 10, 2019, Ethiopian Airlines Flight 302 crashed, resulting in the deaths of all 157 passengers and crew members on board. In the immediate aftermath of the second crash, aviation authorities worldwide began to ground the 737 MAX. Civil aviation authorities in China and Indonesia immediately grounded the 737 MAX fleet operating in their respective countries. The European Union Aviation Safety Agency (EASA) and Transport Canada Civil Aviation subsequently issued orders suspending 737 MAX flight operations.

Initially, the Federal Aviation Administration (FAA) declined to ground the aircraft. Instead, the FAA issued a Continued Airworthiness Notification to the International Community (CANIC). The FAA stated that it had not been provided data to draw any conclusions or take any actions. Furthermore, Boeing management and CEO Dennis Muilenburg personally contacted the President of the United States and government officials to argue against grounding the airplane. Consequently, the FAA was the last major civil aviation authority in the world to ground the 737 MAX.

However, on March 13, 2019, the FAA formally issued the Emergency Order of Grounding. The Emergency Order prohibited the operation of all Boeing Company Model 737-8 and 737-9 MAX airplanes by U.S. certificated operators. The FAA based this decision on new information from the wreckage concerning the airplane's configuration just after takeoff. Furthermore, newly refined satellite-based tracking of the flight path indicated similarities between the Ethiopian Airlines Flight 302 and Lion Air Flight 610 accidents.

The physical evidence and satellite data warranted further investigation of the possibility of a shared cause for the two incidents. Consequently, the FAA determined that an emergency existed related to safety in air commerce. The Emergency Order stated that the aircraft could not be operated until Boeing developed and the FAA approved a software update for the

Maneuvering Characteristics Augmentation System (MCAS) and revised pilot training protocols.



FAA
Aviation Safety

EMERGENCY
AIRWORTHINESS DIRECTIVE
www.faa.gov/aircraft/safety/alerts/

AD #: 2025-23-51

Emergency Airworthiness Directive (AD) 2025-23-51 is sent to owners and operators of The Boeing Company Model MD-11 and MD-11F airplanes.

Background

This emergency AD was prompted by an accident where the left-hand engine and pylon detached from the airplane during takeoff. The cause of the detachment is currently under investigation. This condition could result in loss of continued safe flight and landing.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition is likely to exist or develop in other products of the same type design.

AD Requirements

This AD prohibits further flight until the airplane is inspected and all applicable corrective actions are performed using a method approved by the Manager, AIR-520, Continued Operational Safety Branch, FAA.

This regulatory action resulted in the emergency global grounding of the entire 737 MAX fleet. The global grounding of the 737 MAX fleet lasted for 20 months. The unprecedented grounding caused massive financial and reputational damage to The Boeing Company. Airlines around the world were forced to cancel thousands of flights, leading to significant financial penalties. Ultimately, the FAA grounding order shattered the public's confidence in Boeing and triggered multiple federal investigations into the aircraft's certification process.

4.2. Congressional Investigations and Internal Communications Leak

Following the two tragic crashes and the global grounding of the 737 MAX aircraft, the House Committee on Transportation and Infrastructure launched a comprehensive investigation. The Committee's investigation focused on the design, development, and certification of the aircraft. Multiple federal investigations were initiated, including inquiries by the Department of Transportation Office of Inspector General (DOT OIG), the Department

of Justice (DOJ), and the Securities and Exchange Commission (SEC). The congressional investigations revealed a disturbing pattern of technical miscalculations and troubling management misjudgments. The Committee found that Boeing's corporate culture prioritized production schedule and cost over safety.

The investigation revealed that financial pressures and schedule pressures were significant throughout the development of the aircraft. Employees reported that schedule and production goals were prioritized above all else. Furthermore, the FAA's delegation of authority, known as the Organization Designation Authorization (ODA) program, allowed Boeing employees to self-certify the aircraft. The Committee determined that this system inherently created conflicts of interest. The investigations exposed how Boeing utilized the ODA program to self-certify the aircraft, effectively keeping the Federal Aviation Administration (FAA) in the dark regarding critical engineering changes.

During the course of the congressional investigations, Boeing produced thousands of pages of internal emails and instant messages. The leaked Boeing internal communications released by the House Transportation Committee exposed a culture of concealment and disrespect for regulators. In these communications, Boeing employees openly mocked the FAA, airline customers, and the company's own management. The internal communications demonstrated that Boeing employees were acutely aware of the flaws in the MCAS software and the inadequacy of the pilot training materials long before the fatal crashes.

For example, in a widely publicized exchange, one Boeing pilot stated that the airplane was "designed by clowns, who in turn are supervised by monkeys." Another employee boasted about using "Jedi mind tricks" to deceive regulators into requiring less simulator training. Employees expressed a desire to cover up issues to avoid regulatory scrutiny. One Boeing employee wrote that they would not put their own family on a 737 MAX simulator-trained aircraft. These internal communications provided undeniable proof that the company was financially motivated to avoid any design changes that would trigger a requirement for simulator training.

Furthermore, the documents revealed that Boeing's Chief Technical Pilots deliberately withheld critical information from the FAA Aircraft Evaluation Group (FAA-AEG). They concealed the expanded operational scope of MCAS. Because of this deception, the

FAA-AEG deleted all information about MCAS from the final 737 MAX Flight Crew Operations Manual. The congressional investigations concluded that the crashes were not the result of a singular failure, technical mistake, or mismanaged event. Rather, they were the horrific culmination of a series of faulty technical assumptions by Boeing's engineers, a lack of transparency on the part of Boeing's management, and grossly insufficient oversight by the FAA. Ultimately, the internal communications leak shattered the public's confidence in Boeing and provided critical evidence for the ensuing derivative litigation.

5. The Litigation Phase

5.1. Consolidation of Shareholder Derivative Suits in Delaware

Following the fatal crashes and the global grounding of the 737 MAX fleet, stockholders of The Boeing Company brought this derivative action on behalf of the Company against its directors and officers. Between late 2019 and early 2020, numerous Boeing stockholders filed derivative lawsuits in the Delaware Court of Chancery. Recognizing the overlapping factual allegations and legal claims, the court consolidated the related derivative actions. The court appointed Co-Lead Plaintiffs to represent the consolidated action. Subsequently, the Plaintiffs filed a Verified Consolidated Amended Derivative Complaint.

The consolidated complaint alleges a single count for breach of fiduciary duties against the Director Defendants and the Officer Defendants. Under Delaware law, the directors of a Delaware corporation owe the fiduciary duties of care and loyalty to the corporation and its stockholders. The plaintiffs allege the directors breached their fiduciary duty of loyalty by failing to monitor the safety of Boeing's 737 MAX airplanes. Specifically, the consolidated complaint focuses on the Board's lack of oversight, commonly known as a Caremark claim.

Because the stockholders are bringing this suit on behalf of the corporation, they must satisfy strict pleading requirements under Court of Chancery Rule 23.1. The plaintiffs did not make a demand on the Board before filing suit. Instead, Plaintiffs pled that demand is excused as futile. Plaintiffs assert that a pre-suit demand upon the Board is futile because a majority of the Board faces a substantial likelihood of liability for their unconsidered inaction and conscious disregard of their duties.

The action seeks to recover damages on behalf of the Company resulting from the Board's failure of oversight. The Plaintiffs seek to hold the Board personally liable for the billions of

dollars in financial damages and the massive reputational harm suffered by the Company. In response, the defendants moved to dismiss the consolidated complaint. The defendants argued that the plaintiffs failed to adequately plead demand futility and that the directors were protected from personal liability by an exculpatory charter provision. Ultimately, the consolidation of these derivative suits in Delaware set the stage for a landmark legal battle regarding corporate governance and director oversight liability.

5.2. Defendants' Motion to Dismiss (Demand Futility Arguments)

In response to the Verified Consolidated Amended Derivative Complaint, the defendants moved to dismiss the consolidated complaint. Specifically, Defendants moved to dismiss the consolidated complaint pursuant to Court of Chancery Rule 23.1 for failure to plead demand futility. Because directors are empowered to manage the business and affairs of the corporation, the right of a stockholder to prosecute a derivative suit is limited. Stockholders must make a demand on the Board before filing suit, or plead with particularity that demand is excused as futile. Because the plaintiffs did not make a demand on the Board before filing suit, defendants assert that plaintiffs failed to adequately plead demand futility.

To support their motion to dismiss, Defendants rely on the exculpatory provision in Boeing's Certificate of Incorporation. Pursuant to Section 102(b)(7) of the Delaware General Corporation Law, the corporate charter contains a provision exculpating directors from personal liability for breaches of the duty of care. Therefore, to plead a substantial likelihood of liability sufficient to excuse demand, plaintiffs must plead a non-exculpated claim for breach of the duty of loyalty. Defendants argue that the plaintiffs failed to plead that the directors acted in bad faith. Accordingly, defendants argue that the directors do not face a substantial likelihood of personal liability.

Furthermore, the defendants directly challenged the plaintiffs' Caremark claims. Under the first prong of Caremark, defendants argue that the Board did not completely fail to implement a reporting system. Defendants assert that the Board's Audit Committee possessed general oversight of the Company's risk management. Defendants argue that the Audit Committee routinely reviewed risk management practices and that general audit committee reports satisfy the duty to monitor mission-critical risks. Defendants maintain that the FAA certification process and the Organization Designation Authorization (ODA) program demonstrate that aviation safety was heavily regulated and monitored by existing structures.

Under the second prong of Caremark, defendants further argue that the directors did not consciously disregard red flags. Defendants contend that the Board routinely received updates from management and relied on management's assurances that the airplane was safe. Defendants argue that following the Lion Air Flight 610 crash, management told the Board that the airplane was safe, and the Board reasonably relied on those representations. Defendants insist that the Board's actions were protected corporate risk-taking and a protected business judgment. Defendants maintain that the delegation of highly technical certification tasks to engineering experts is a protected business judgment. Ultimately, defendants assert that the complaint fails to plead that a majority of the Demand Board faces a substantial likelihood of liability.

5.3. The Chancery Court Ruling Sustaining Fiduciary Breach Claims

On September 7, 2021, the Delaware Court of Chancery issued a landmark Memorandum Opinion. Vice Chancellor Zurn ruled on the Defendants' Motion to Dismiss the Verified Consolidated Amended Derivative Complaint. The primary question before the court was whether the magnitude of the Board's failure to oversee safety creates a substantial likelihood of personal liability sufficient to excuse demand, or if the corporate charter's Section 102(b)(7) exculpation provision shielded the directors from suit. The court concluded that the plaintiffs had adequately pled a non-exculpated claim for breach of the fiduciary duty of loyalty. Consequently, the Court denied the defendants' motion to dismiss the Caremark claims. The court found that the stockholders had adequately alleged that the Board abdicated its oversight responsibilities.

Relying on the precedent established in *Marchand v. Barnhill*, the court emphasized that airplane safety was a mission-critical risk for Boeing. Despite the immense, mission-critical risk associated with designing and certifying a new commercial aircraft, the Board had no committee dedicated to safety. The court rejected the defendants' argument that general audit committee reports satisfy the duty to monitor mission-critical risks. The Chancery Court held that the Audit Committee focused primarily on financial and operational risks rather than aviation safety. Therefore, the court determined that the Board failed to establish a reporting system for airplane safety. The absence of a Board-level safety committee left the directors completely blind to the central risks of the business. By failing to implement a board-level

reporting system specifically dedicated to monitoring that risk, the directors allowed themselves to be kept in the dark.

Furthermore, the Chancery Court addressed the second prong of the Caremark standard regarding the Board's response following the Lion Air Flight 610 crash. The court found that the Board's response was entirely passive. The directors treated the crash as a public relations problem rather than a systemic safety crisis. The court determined that the directors consciously ignored red flags, despite management's explicit assurances that the aircraft and MCAS system were fundamentally safe. The Board relied solely on management's assurances that the airplane was fundamentally safe. The Board did not demand an independent investigation into MCAS.

The court emphasized that the Board's passive reliance on management's curated presentations is fundamentally inconsistent with the duty of oversight under Delaware law. The directors consciously disregarded their duty to investigate the root cause of the tragedy. Because the plaintiffs pled that the directors acted in bad faith, the directors are not shielded by the corporate charter's Section 102(b)(7) exculpation provision. The court held that the magnitude of the Board's failure to oversee safety creates a substantial likelihood of personal liability sufficient to excuse demand. The delegation of highly technical certification tasks to engineering experts does not excuse a total lack of board-level monitoring.

Ultimately, the court sustained the fiduciary breach claims. The court concluded that a pre-suit demand upon the Board is futile because a majority of the Board faces a substantial likelihood of liability for their unconsidered inaction and conscious disregard of their duties. The motion to dismiss is denied. This ruling set a significant legal precedent, demonstrating that a board's failure to directly monitor mission-critical risks can constitute an abdication of the duty of loyalty. The decision allowed the derivative litigation to proceed toward discovery and eventual settlement.

6. The Settlement Agreement

6.1. The \$237.5 Million Financial Resolution

Following the Delaware Court of Chancery's landmark Memorandum Opinion denying the motion to dismiss, the parties engaged in extensive, arm's-length settlement negotiations. The parties participated in multiple mediation sessions overseen by an experienced mediator. To

resolve the consolidated derivative action, the parties reached a comprehensive Stipulation and Agreement of Settlement, Compromise, and Release. The Settlement Agreement provides for a Monetary Payment of \$237,500,000. Because this is a derivative action brought on behalf of The Boeing Company, the Settlement Amount shall be paid directly to the Company, rather than to the individual stockholders.

The \$237.5 million Monetary Payment is to be paid by or on behalf of the Individual Defendants through their directors' and officers' (D&O) liability insurance policies. The Settlement Amount is intended to compensate the Company for the financial damages and reputational harm caused by the alleged breaches of fiduciary duty. The parties stipulate that the Settlement provides substantial and immediate benefits to the Company. The Settlement Amount, minus any Court-awarded attorneys' fees and expenses, represents a massive injection of capital back into the corporation to remediate the catastrophic losses associated with the 737 MAX global grounding.

Despite agreeing to the financial resolution, the Defendants expressly deny any and all allegations of wrongdoing, fault, liability, or damages whatsoever. The Stipulation of Settlement explicitly states that the Individual Defendants maintain that they at all times acted in good faith and in the best interests of the Company and its stockholders. Furthermore, the Defendants assert that they entered into the Settlement Agreement solely to eliminate the uncertainty, burden, distraction, and expense of further protracted litigation. The Settlement Agreement expressly dictates that the agreement shall not be construed or deemed to be evidence of or an admission or concession on the part of any Defendant of any fault or liability or wrongdoing.

In exchange for the Monetary Payment and the mandated corporate governance reforms, the Settlement Agreement includes a comprehensive release of claims. The Stipulation details that the Releasing Plaintiffs fully, finally, and forever release, to give up, and discharge the Released Defendant Persons from any and all Settled Claims. This comprehensive release effectively terminates the shareholder derivative litigation regarding the Board's oversight of the 737 MAX crashes.

However, the Settlement Agreement and the financial resolution were strictly subject to the final approval of the Delaware Court of Chancery. The court was required to hold a

settlement hearing to determine whether the proposed settlement was fair, reasonable, and adequate to the Company and its stockholders. Ultimately, the Court approved the Stipulation of Settlement, securing the \$237.5 million financial recovery for The Boeing Company. This historic financial resolution represents one of the largest monetary settlements ever achieved in a Delaware Caremark oversight action.

6.2. Mandated Corporate Governance and Safety Reforms

In addition to the monetary payment, the Settlement Agreement requires The Boeing Company to implement and maintain unprecedented corporate governance and safety reforms. To address the previous absence of a Board-level safety committee, the Settlement specifically mandates the creation and maintenance of an Aerospace Safety Committee. The Board shall maintain an Aerospace Safety Committee comprised entirely of independent directors. The Aerospace Safety Committee's primary mandate is explicitly centered on aviation safety and the regulatory certification process. The Board must amend its Corporate Governance Principles to require that the Aerospace Safety Committee oversee the safe design, development, manufacture, production, operation, maintenance, and delivery of aerospace products and services.

Furthermore, the Settlement Agreement dictates strict requirements for the future composition of the Board of Directors. The Board must elect at least one independent director with extensive aviation safety experience. This newly appointed director must possess an engineering background or significant professional experience in commercial or military aviation safety oversight. This mandate ensures the Board possesses the independent means and technical expertise to verify the safety of Boeing's airplanes and the accuracy of management's engineering assurances. Additionally, the Settlement Agreement mandates the formal separation of the Chief Executive Officer and Chairman of the Board positions. The Chairman of the Board must be an independent director, preventing the consolidation of power that previously allowed management to filter information provided to the directors.

To directly rectify the fatal disconnect between management and the Board, the Settlement Agreement requires the implementation of an Aviation Safety Ombudsperson Program. The Company shall establish the permanent position of an Aviation Safety Ombudsperson. Crucially, the Ombudsperson shall report directly to the Aerospace Safety Committee of the Board. The Ombudsperson serves as a neutral, independent, and confidential resource for

Boeing employees to raise safety concerns or engineering complaints without fear of retaliation. This program establishes a vital reporting system to bypass management and bring mission-critical safety issues, whistleblower complaints, or regulatory concerns directly to the directors' attention.

The Board shall implement these mandated corporate governance and safety reforms for a minimum period of five years. The parties stipulate that these specific corporate governance reforms confer substantial corporate benefits upon the Company and its stockholders. The mandated corporate governance and safety reforms are fundamentally intended to ensure that a total failure of oversight cannot occur again. The Settlement Agreement now requires regular, specialized reports and discussions regarding the safety of Boeing's airplanes at the Board level. Ultimately, these mandated corporate governance and safety reforms systematically restructure how the Board monitors mission-critical risks, strictly enforcing the duty of loyalty established under the Caremark doctrine.

7. Current Status of Corporate Oversight and the Board

The Board of Directors has fundamentally restructured its corporate oversight to address the catastrophic failures of the past. The Board established the Aerospace Safety Committee to oversee the safe design, development, manufacture, production, operation, maintenance, and delivery of aerospace products and services. The Aerospace Safety Committee is comprised entirely of independent directors. Furthermore, the Board amended its Corporate Governance Principles to mandate that the Chairman of the Board must be an independent director. The Board elected new independent directors with extensive aviation safety experience and engineering backgrounds. Consequently, airplane safety is now formally recognized as a mission-critical risk requiring direct, regular board-level monitoring.

To ensure a continuous flow of critical safety information, the Company established a comprehensive Enterprise Safety Management System (SMS) to integrate safety protocols across all manufacturing and engineering divisions. Furthermore, the Company created the position of Chief Aerospace Safety Officer. Crucially, the Chief Aerospace Safety Officer reports directly to the Aerospace Safety Committee of the Board. This direct reporting line ensures that the Board receives regular, specialized reporting regarding the safety of Boeing's airplanes and is not kept in the dark by executive management. The Company also completely reorganized its engineering structure. All engineers now report vertically through

the Chief Engineer rather than horizontally to the business unit managers. This structural change prevents management from prioritizing production schedule and cost over safety and engineering integrity.

The current status of corporate oversight is also continuously monitored by federal regulators. Pursuant to the Deferred Prosecution Agreement (DPA) with the Department of Justice, Boeing is required to strengthen its compliance and reporting programs. The Company must report periodically to the Fraud Section regarding the remediation and implementation of the compliance program. The Company is legally obligated to cooperate fully with ongoing investigations and regulatory oversight by the Department of Justice and the Federal Aviation Administration (FAA). Furthermore, pursuant to the SEC Cease-and-Desist Order, Boeing must ensure that its public statements regarding the safety of its aircraft are accurate and not misleading to investors.

The Board is legally bound by the Stipulation of Settlement to maintain these corporate governance and safety reforms for a minimum of five years. The Aviation Safety Ombudsperson Program is currently active, serving as a neutral, independent, and confidential resource for Boeing employees to raise safety concerns without fear of retaliation. The Board now possesses the independent means and technical expertise to verify the safety of the 737 MAX and the accuracy of management's assurances. The corporate culture is mandated to encourage transparency, regulatory compliance, and a strict adherence to safety above all else. Ultimately, the current status of corporate oversight reflects the stringent requirements established under the Caremark doctrine to ensure that a total failure of oversight cannot occur again.

C. APPLICABLE LAW

Delaware General Corporation Law (DGCL)

Title 8. Corporations

Chapter 1. General Corporation Law

Subchapter I. Formation

Section 102(b)(7). Exculpation of Directors from Personal Liability

A provision eliminating or limiting the personal liability of a director or officer to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, provided that such provision shall not eliminate or limit the liability of:

- (i) A director or officer for any breach of the director's or officer's duty of loyalty to the corporation or its stockholders;
- (ii) A director or officer for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (iii) A director under § 174 of this title;
- (iv) A director or officer for any transaction from which the director or officer derived an improper personal benefit; or
- (v) An officer in any action by or in the right of the corporation.

No such provision shall eliminate or limit the liability of a director or officer for any act or omission occurring prior to the date when such provision becomes effective.

An amendment, repeal or elimination of such a provision shall not affect its application with respect to an act or omission by a director or officer occurring before such amendment, repeal or elimination unless the provision provides otherwise at the time of such act or omission.

All references in this paragraph (b)(7) to a director shall also be deemed to refer to such other person or persons, if any, who, pursuant to a provision of the certificate of incorporation in accordance with § 141(a) of this title, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by this title.

All references in this paragraph (b)(7) to an officer shall mean only a person who at the time of an act or omission as to which liability is asserted is deemed to have consented to service by the delivery of process to the registered agent of the corporation pursuant to § 3114(b) of Title 10 (for purposes of this sentence only, treating residents of this State as if they were nonresidents to apply § 3114(b) of Title 10 to this sentence).

Subchapter IV. Directors and Officers

Section 141(a). Board of directors; powers; number, qualifications et al

Board of directors; powers; number, qualifications The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation. If any such provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the certificate of incorporation.

Section 141(e). Reliance upon books, reports and records

A member of the board of directors, or a member of any committee designated by the board of directors, shall, in the performance of such member's duties, be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation.

Delaware Common Law (Judicial Precedent)

Fiduciary Duties of Corporate Directors

The Duty of Loyalty

The duty of loyalty requires directors to act in good faith for the benefit of the corporation and its stockholders, not for their own personal interests. The duty of loyalty embodies not only an affirmative duty to protect the interests of the corporation, which is the purpose of the duty of care, but also an obligation to refrain from conduct that would harm the corporation and its stockholders.

A breach of the duty of loyalty is implicated if there is:

- A conflict of interest
- Bad faith

Breaches of the duty of loyalty are treated more seriously than breaches of the duty of care in terms of both the initial standard of review and the consequences of a breach.

Decisions or transactions involving a breach of the duty of loyalty, including a conflict of interest or bad faith, are not protected by either:

- The business judgment rule
- The statutory limitation of liability under Section 102(b)(7)

For a discussion on how the board's failure to oversee a corporation's operations may be a breach of the duty of loyalty, see Failure of Oversight.

Corporate Opportunity Doctrine

One way the duty of loyalty may be breached is if a director or officer usurps a corporate opportunity. Courts analyze several factors to determine whether a corporate opportunity rightfully belongs to the corporation. In Delaware, these factors include:

- If the opportunity is in the same line of business as the corporation's. Delaware courts have broadly interpreted the nature of a corporation's line of business and recognized that it should have a "flexible meaning, which is to be applied reasonably and sensibly"
- Whether the corporation has an interest or expectancy in the opportunity.
- Whether the corporation would be financially able to take the opportunity if presented. This factor is met if the usurper had a parallel contractual obligation to present corporate opportunities to the corporation.
- Whether taking the opportunity would create a conflict of interest or be a breach of fiduciary duties for the director or officer.

Section 122(17) of the DGCL allows corporations to renounce expectations to any specified business opportunities or specified classes or categories of business opportunities. The waivers must be specific and narrow because broad nonspecific waivers would impermissibly limit the duty of loyalty.

Insider Trading

Another way the duty of loyalty may be breached is if a director engages in insider trading under *Brophy v. Cities Services Co.* (70 A.2d 5 (Del. Ch. 1949)). A director breaches their duty of loyalty under a Brophy claim if the director both:

- Possessed material, nonpublic company information. For the nonpublic information to be material, the court must determine that it would be of significance to a rational investor, in light of the total mix of public information. This analysis is similar to, but distinct from, a director's obligation to disclose information to stockholders.
- Used that information improperly by making trades because the director was motivated, in whole or part, by that information.

The Duty of Care

A director must follow the duty of care when acting on behalf of the corporation. Many states have codified the duty of care, generally following the standards of the MBCA. Both California and New York have codified the duty of care and closely follow the MBCA with minor modifications:

- The California statute requires a director to act in good faith, in a manner the director believes to be in the best interests of the corporation and its stockholders, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.
- The New York statute requires a director to act in good faith and with the degree of care which an ordinarily prudent person in a like position would use under similar circumstances

While not codified in Delaware, the duty of care has been developed in case law along similar lines. Delaware courts generally describe the duty of care as the obligation to use the amount of care that an ordinarily careful and prudent person would use in similar circumstances. A director breaches the duty of care by failing to take action in a situation where a careful person would have taken action. This formulation implies that directors' decisions are always scrutinized for reasonableness. However, Delaware courts recognize that directors sometimes must take business risks to promote the best interests of the corporation and its stockholders, and that judges and stockholders are not in the best position to second-guess business decisions made by the board of directors. Judges have been particularly careful not to impose liability for a decision that seems wrong only in hindsight.

No Duty to Maximize Profits or Minimize Taxes

The duty of care does not require the board to take any particular actions. Of particular note, directors have no per se duty to maximize the profits of the corporation. Directors can take

actions that do not directly increase the corporation's profits (for example, cause the corporation to make charitable donations) if there is a connection to a rational business purpose. The board cannot be held liable for making a business decision simply because another decision would have been more profitable. For example, the Delaware judiciary has repeatedly ruled that a board has no fiduciary duty to minimize corporate taxes (see *Freedman v. Adams*, 58 A.3d 414, 417 (Del. 2013) ("The decision to sacrifice some tax savings in order to retain flexibility in compensation decisions is a classic exercise of business judgment"); *Seinfeld v. Slager*, 2012 WL 2501105, at *3 (Del. Ch. June 29, 2012) ("Delaware law is clear that there is no separate duty to minimize taxes, and a failure to do so is not automatically a waste of corporate assets").

The Caremark Doctrine (Failure of Oversight)

In re Caremark Int'l Inc. Deriv. Litig., 698 A.2d 959 (Del. Ch. 1996)

Parties to derivative suit seeking to impose personal liability on members of board of directors proposed settlement for court approval. The Court of Chancery, Allen, Chancellor, held that: (1) directors appeared to have followed procedures to inform themselves regarding contracts with health care providers before authorizing corporation to pursue contractual opportunities, so as to be protected under business judgment rule from claims of personal liability when impermissible contracts were entered into; (2) board appeared to have met responsibilities to monitor operation of corporation, even though some illegal contracts were entered into; and (3) settlement was fair, despite consideration for release of claims that was "very modest," in view of weaknesses of complainants' case.

Settlement approved.

Stone v. Ritter, 911 A.2d 362 (Del. 2006)

The plaintiffs contend that demand is excused under Rule 23.1 because AmSouth's directors breached their oversight duty and, as a result, face a "substantial likelihood of liability" as a result of their "utter failure" to act in good faith to put into place policies and procedures to ensure compliance with BSA and AML obligations. The Court of Chancery found that the plaintiffs did not plead the existence of "red flags" — "facts showing that the board ever was aware that AmSouth's internal controls were inadequate, that these inadequacies would result in illegal activity, and that the board chose to do nothing about problems it allegedly knew

existed." In dismissing the derivative complaint in this action, the Court of Chancery concluded:

This case is not about a board's failure to carefully consider a material corporate decision that was presented to the board. This is a case where information was not reaching the board because of ineffective internal controls.... With the benefit of hindsight, it is beyond question that AmSouth's internal controls with respect to the Bank Secrecy Act and anti-money laundering regulations compliance were inadequate. Neither party disputes that the lack of internal controls resulted in a huge fine — \$50 million, alleged to be the largest ever of its kind. The fact of those losses, however, is not alone enough for a court to conclude that a majority of the corporation's board of directors is disqualified from considering demand that AmSouth bring suit against those responsible.

This Court reviews de novo a Court of Chancery's decision to dismiss a derivative suit under Rule 23.1.

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

After requesting Blue Bell's books and records through a § 220 request, the plaintiff, a Blue Bell stockholder, sued Blue Bell's management and board derivatively, asserting two claims based on management's alleged failure to respond appropriately to the red and yellow flags about growing food safety issues and the board's violation of its duty of loyalty, under Caremark, by failing to implement any reporting system and therefore failing to inform itself about Blue Bell's food safety compliance. The Court of Chancery dismissed both claims, holding that the plaintiff failed to plead demand futility.

As to the first claim, the plaintiff alleges that Paul Kruse, Blue Bell's President and CEO, and Bridges, Blue Bell's Vice President of Operations, had breached their duties of loyalty and care by knowingly disregarding contamination risks and failing to oversee Blue Bell's operations and food safety compliance process. "Because directors are empowered to manage, or direct the management of, the business and affairs of the corporation," the plaintiff's complaint must allege facts suggesting that "demand is excused because the directors are incapable of making an impartial decision regarding such litigation." The plaintiff's complaint claims that "[a] demand upon the Board of the Company to pursue claims against Paul Kruse and Bridges ... would be futile" because "the Kruse family—of which both Paul Kruse and Bridges are members— ha[s] long dominated Blue Bell" and the

majority of directors are "long-time employees and/or otherwise beholden and loyal to the Kruse family."

But the Court of Chancery held that the plaintiff "failed to plead particularized facts to raise a reasonable doubt that a majority of the [Blue Bell board] members could have impartially considered a pre-suit demand." Without belaboring the details of the Court of Chancery's thorough analysis, which is somewhat complicated due to the unusual structure of Blue Bell's board, we note that the court essentially ruled that the plaintiff came up one vote short. To survive the Rule 23.1 motion to dismiss, the complaint needed to allege particularized facts raising a reasonable doubt that directors holding eight of the 15 votes could have impartially considered a demand, but the court held that the plaintiff had done so for directors holding only seven votes.

One of the directors who the trial court held could consider demand impartially was Rankin, Blue Bell's recently retired former CFO. Although Rankin worked at Blue Bell for 28 years, the court emphasized that he was no longer employed by Blue Bell, having retired in 2014. As to the allegations that donations from the Kruse family resulted in a building at Blinn College being named for Rankin, the court noted that "the Complaint provide[d] no more specifics regarding the donation (i.e., who gave how much), and ma[de] no attempt to characterize the materiality of the gesture." That failure, the Court of Chancery concluded, fell short of Rule 23.1's particularity requirement. Further, the court noted that Rankin voted against rescinding a board initiative to split the CEO 817*817 and Chairman positions held by Paul Kruse. In the court's view, that act was evidence that Rankin was not beholden to the Kruse family. Ultimately, the Court of Chancery concluded that the plaintiff's "allegation that Rankin lacks independence falls flat."

The Court of Chancery also rejected the plaintiff's second claim that Blue Bell's directors breached their duty of loyalty under Caremark by failing to "institute a system of controls and reporting" regarding food safety. In support of this claim, the plaintiff asserted, based on the facts alleged in the complaint and reasonable inferences from those facts, that: (1) the Blue Bell board had no committee overseeing food safety; (2) Blue Bell's board did not have any reporting system in place about food safety; (3) management knew about the growing listeria issues but did not report those issues to the board, further evidence that the board had no food

safety reporting system in place; and (4) the board did not discuss food safety at its regular board meetings.

Rejecting the plaintiff's Caremark claim, the Vice Chancellor started by observing that "[d]espite the far-reaching regulatory schemes that governed Blue Bell's operations at the time of the [L]isteria contamination, the Complaint contains no allegations that Blue Bell failed to implement the monitoring and reporting systems required by the FDCA [Federal Food, Drug, and Cosmetic Act], FDA regulations or state statutes (or that it was ever cited for such a failure)." In fact, the Court of Chancery concluded that "documents incorporated by reference in the Complaint reveal that Blue Bell distributed a sanitation manual with standard operating and reporting procedures, and promulgated written procedures for processing and reporting consumer complaints." And at the board level, the Vice Chancellor noted that "[b]oth Bridges and Paul Kruse ... provided regular reports regarding Blue Bell operations to the ... Board," including reports about audits of Blue Bell's facilities.

Based on Blue Bell's compliance with FDA regulations, ongoing third-party monitoring for contamination, and consistent reporting by senior management to Blue Bell's board on operations, the Court of Chancery concluded that there was a monitoring system in place. At bottom, the Court of Chancery opined that "[w]hat Plaintiff really attempts to challenge is not the existence of monitoring and reporting controls, but the effectiveness of monitoring and reporting controls in particular instances." That, the Court of Chancery held, does not state a Caremark claim. As a result, the court held that demand was not excused as to the Caremark claims and dismissed the complaint.

The plaintiff timely appealed from that dismissal.

In re Clovis Oncology, Inc. Deriv. Litig., 2019 WL 4850188 (Del. Ch. 2019)

In relevant part the terms upon which these claims asserted are proposed to be settled are as follows:

1. That Caremark, undertakes that it and its employees, and agents not pay any form of compensation to a third party in exchange for the referral of a patient to a Caremark facility or service or the prescription of drugs marketed or distributed by Caremark for which

reimbursement may be sought from Medicare, Medicaid, or a similar state reimbursement program;

2. That Caremark, undertakes for itself and its employees, and agents not to pay to or split fees with physicians, joint ventures, any business combination in which Caremark maintains a direct financial interest, or other health care providers with whom Caremark has a financial relationship or interest, in exchange for the referral of a patient to a Caremark facility or service or the prescription of drugs marketed or distributed by Caremark for which reimbursement may be sought from Medicare, Medicaid, or a similar state reimbursement program;

3. That the full Board shall discuss all relevant material changes in government health care regulations and their effect on relationships with health care providers on a semi-annual basis;

4. That Caremark's officers will remove all personnel from health care facilities or hospitals who have been placed in such facility for the purpose of providing remuneration in exchange for a patient referral for which reimbursement may be sought from Medicare, Medicaid, or a similar state reimbursement program;

5. That every patient will receive written disclosure of any financial relationship between Caremark and the health care professional or provider who made the referral;

6. That the Board will establish a Compliance and Ethics Committee of four directors, two of which will be non-management directors, to meet at least four times a year to effectuate these policies and monitor business segment compliance with the ARPL, and to report to the Board semi-annually concerning compliance by each business segment; and

7. That corporate officers responsible for business segments shall serve as compliance officers who must report semi-annually to the Compliance and Ethics Committee and, with the assistance of outside counsel, review existing contracts and get advanced approval of any new contract forms.

Derivative Actions and Demand Futility

Court of Chancery Rule 23.1

(a) Pleading Requirements

The complaint in a derivative action must:

- (1) state with particularity:
 - (A) any effort by the derivative plaintiff to obtain the desired action from the entity; and
 - (B) the reasons for not obtaining the action or not making the effort; and

- (2) allege facts supporting a reasonable inference that the derivative plaintiff has standing to sue derivatively under the law governing the entity.

(b) Affidavit from Derivative Plaintiff

- (1) A person seeking to serve as a derivative plaintiff must file an affidavit within 10 days after filing any of the following:
 - (A) a complaint;
 - (B) a motion to intervene; or
 - (C) a motion seeking appointment as a derivative plaintiff.

- (2) The affidavit must state that the person has not received, been promised, or been offered—and will not accept—any form of compensation, directly or indirectly, for serving as a derivative plaintiff, except for:
 - (A) the indirect benefit from any damages or other relief that the Court may award to the entity;
 - (B) a ratable share of any damages or other relief that the Court may award;
 - (C) any fees, costs, or other payments that the Court expressly approves to be paid to or on behalf of the person; or
 - (D) reimbursement from the person's attorneys of actual and reasonable out-of-pocket expenditures incurred in prosecuting the action.

(c) Derivative Plaintiffs and Derivative Counsel

- (1) Derivative Plaintiffs.
 - (A) A person may serve as a derivative plaintiff if:

(i) The person has standing to sue derivatively under the law governing the entity; and

(ii) The person can fairly and adequately represent the interests of the entity in pursuing the derivative action.

(B) If only one person has sued derivatively but cannot adequately represent the interests of the entity in pursuing the derivative action, then the Court must dismiss the derivative action without prejudice. But an alternative derivative plaintiff may move to intervene within 60 days and continue the action.

(2) Derivative Counsel. A derivative plaintiff must be represented by counsel. Derivative counsel must fairly and adequately represent the interests of the entity in pursuing the derivative action.

(3) Disputed Appointments.

(A) The Court may resolve disputes over the appointment of derivative counsel, including who can best represent the interests of the entity in pursuing the derivative action, and may make further orders in connection with the appointment.

(B) When selecting derivative counsel, the Court may consider:

(i) counsel's competence and experience;

(ii) counsel's access to the resources necessary to prosecute the litigation;

(iii) the quality of the pleading;

(iv) counsel's performance in the litigation to date;

(v) the proposed leadership structure;

(vi) the derivative plaintiff's relationship to and interest in the entity;

(vii) any conflicts between counsel or the derivative plaintiff and the entity; and

(viii) any other matter pertinent to ability of counsel or the derivative plaintiff to fairly and adequately represent the interests of the entity in the derivative action.

(C) The Court may:

- (i) order any applicant to provide information on any subject pertinent to the application and to propose terms for attorney's fees and expenses; and
- (ii) include in the appointing order provisions about the award of attorney's fees or expenses.

(4) Replacement of Derivative Plaintiff or Derivative Counsel. If a derivative plaintiff or derivative counsel fails to adequately represent the interests of the entity in pursuing the derivative action, then the Court may dismiss the derivative action without prejudice, replace the derivative plaintiff or derivative counsel, or make further orders as warranted.

(d) Dismissal or Settlement

(1) In General. Subject to Rule 15(a)(5), a derivative action may be dismissed or settled only if the Court approves the terms of the proposed dismissal or settlement.

(2) Required Submissions. The parties submitting the proposed dismissal or settlement must file:

- (A) a further affidavit from each derivative plaintiff that meets the requirements of Rule 23.1(b)(2);
- (B) if a dismissal, a proposed form of order stating the terms on which the action will be dismissed; or
- (C) if a settlement, the definitive agreement governing the settlement.

(3) Notice. Notice of the proposed dismissal or settlement must be given in the manner directed by the Court.

(A) Dismissal Without Notice: But the Court may order dismissal without notice if the dismissal is to be without prejudice or with prejudice to the derivative plaintiff only.

(B) Information About Notice: The parties must provide the Court with information sufficient to rule on whether to require notice and in what form.

(C) Means of Notice: Notice may be given by any appropriate means approved by the Court, including first-class U.S. mail, email, or publication.

(D) Contents of Notice: Unless the Court orders otherwise, the notice of a proposed dismissal or settlement must clearly and concisely state, in plain, easily understood language:

- (i) the location, date, and time of any hearing;
- (ii) the nature of the action;
- (iii) a summary of the claims, issues, defenses, and relief that the derivative action sought;
- (iv) a description of the terms of the proposed dismissal or settlement;
- (v) any award of attorney's fees or expenses, or any derivative-plaintiff award, that will be sought if the proposed dismissal or settlement is approved;
- (vi) instructions for objectors;
- (vii) that additional information can be obtained by contacting derivative counsel;
- (viii) how to contact derivative counsel; and
- (ix) not to contact the Court with questions about the terms of the proposed dismissal or settlement.

(4) Objections.

(A) In General: Any person situated similarly to the derivative plaintiff may object to the proposed dismissal or settlement. The objection must state with specificity the grounds for and purpose of the objection.

(B) Court Approval Required for Payment in Connection with an Objection: Unless approved by the Court after a hearing, no payment or other consideration may be provided in connection with: (i) forgoing or withdrawing an objection, or (ii) forgoing, dismissing, or abandoning an appeal from the judgment approving the proposed dismissal or settlement.

(C) Taking over Case After Providing Adequate Security: The Court may allow an objector to substitute as a derivative plaintiff if: (i) the objector satisfies the requirements for a derivative plaintiff in Rule 23.1; and (ii) if the proposed dismissal or settlement would provide relief to the entity, the objector provides adequate security.

(5) Approval of Proposed Settlement. The Court may approve a proposed settlement only after a hearing and only on finding:

- (A) the derivative plaintiff and derivative counsel adequately represented the entity;
- (B) adequate notice of the hearing was provided;
- (C) the proposed settlement was negotiated at arm's length; and
- (D) the relief falls within a range of reasonable results, taking into account:
 - (i) the strength of the claims;
 - (ii) the costs, risks, and delay of trial and appeal;
 - (iii) the scope of the release; and
 - (iv) any objections to the proposed settlement.

(e) Attorney's Fees, Expenses, and Derivative-Plaintiff Awards

- (1) In a derivative action, the Court may award reasonable attorney's fees and expenses to derivative counsel.
- (2) Any person from whom payment is sought may oppose the award, and any person with standing to object to a proposed dismissal or settlement may object to the award.
- (3) Any counsel who will share in the award of attorney's fees and expenses must submit an affidavit documenting their fees and expenses.
- (4) The Court may authorize derivative counsel to pay a reasonable award to a derivative plaintiff out of any award of attorney's fees.

(f) Definitions

For purposes of Rule 23.1:

- (1) "derivative action" means an action on behalf of an entity to enforce a claim that the entity could assert;
- (2) "derivative counsel" means a counsel representing a derivative plaintiff in pursuing a derivative action on behalf of an entity;
- (3) "derivative plaintiff" means a person pursuing a derivative action; and

(4) “entity” means an entity with a separate legal existence, including a corporation, limited liability company, limited partnership, general partnership with entity status, common law trust, or statutory trust.

United Food & Commercial Workers Union v. Zuckerberg, 262 A.3d 1034 (Del. 2021)

Stockholder brought a derivative action against corporation's founder, controlling stockholder, and CEO, and members of its board of directors, alleging breach of fiduciary duty arising from the board's approval of a stock reclassification that would have allowed the founder to sell most of his stock without losing control of the corporation. The Court of Chancery, Laster, Vice Chancellor, dismissed the complaint for failure to plead demand futility. Stockholder appealed. The Supreme Court of Delaware, Traynor, Justice, held that: (1) a universal three-part test replaces the historic Aronson and Rales tests for determining demand futility; (2) directors protected by an exculpatory charter provision do not face a substantial likelihood of liability for duty of care violations; and (3) the stockholder failed to plead with particularity that a majority of the board lacked independence or faced a substantial likelihood of liability, rendering demand not futile.

The judgment of the Court of Chancery is affirmed.

United States Code (Federal Context)

Title 15. Commerce and Trade (Securities Exchange Act of 1934)

Section 78n. Proxies

Section (a)

(1) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title.

(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).

Code of Federal Regulations (CFR)

Title 14. Aeronautics and Space

Chapter I. Federal Aviation Administration

Part 21. Certification Procedures for Products and Articles

Subpart D. Changes to Type Certificates

(a) In addition to changes in type design specified in paragraph (b) of this section, changes in type design are classified as minor and major. A “minor change” is one that has no appreciable effect on the weight, balance, structural strength, reliability, operational characteristics, or other characteristics affecting the airworthiness of the product. All other changes are “major changes” (except as provided in paragraph (b) of this section).

(b) For the purpose of complying with Part 36 of this chapter, and except as provided in paragraphs (b)(2), (b)(3), and (b)(4) of this section, any voluntary change in the type design of an aircraft that may increase the noise levels of that aircraft is an “acoustical change” (in addition to being a minor or major change as classified in paragraph (a) of this section) for the following aircraft:

(1) Transport category large airplanes.

(2) Jet (Turbojet powered) airplanes (regardless of category). For airplanes to which this paragraph applies, “acoustical changes” do not include changes in type design that are limited to one of the following—

(i) Gear down flight with one or more retractable landing gear down during the entire flight, or

(ii) Spare engine and nacelle carriage external to the skin of the airplane (and return of the pylon or other external mount), or

(iii) Time-limited engine and/or nacelle changes, where the change in type design specifies that the airplane may not be operated for a period of more

than 90 days unless compliance with the applicable acoustical change provisions of Part 36 of this chapter is shown for that change in type design.

(3) Propeller driven commuter category and small airplanes in the primary, normal, utility, acrobatic, transport, and restricted categories, except for airplanes that are:

(i) Designated for “agricultural aircraft operations” (as defined in § 137.3 of this chapter, effective January 1, 1966) to which § 36.1583 of this chapter does not apply, or

(ii) Designated for dispensing fire fighting materials to which § 36.1583 of this chapter does not apply, or

(iii) U.S. registered, and that had flight time prior to January 1, 1955 or

(iv) Land configured aircraft reconfigured with floats or skis. This reconfiguration does not permit further exception from the requirements of this section upon any acoustical change not enumerated in § 21.93(b).

(4) Helicopters except:

(i) Those helicopters that are designated exclusively:

(A) For “agricultural aircraft operations”, as defined in § 137.3 of this chapter, as effective on January 1, 1966;

(B) For dispensing fire fighting materials; or

(C) For carrying external loads, as defined in § 133.1(b) of this chapter, as effective on December 20, 1976.

(ii) Those helicopters modified by installation or removal of external equipment. For purposes of this paragraph, “external equipment” means any instrument, mechanism, part, apparatus, appurtenance, or accessory that is attached to, or extends from, the helicopter exterior but is not used nor is intended to be used in operating or

controlling a helicopter in flight and is not part of an airframe or engine. An “acoustical change” does not include:

(A) Addition or removal of external equipment;

(B) Changes in the airframe made to accommodate the addition or removal of external equipment, to provide for an external load attaching means, to facilitate the use of external equipment or external loads, or to facilitate the safe operation of the helicopter with external equipment mounted to, or external loads carried by, the helicopter;

(C) Reconfiguration of the helicopter by the addition or removal of floats and skis;

(D) Flight with one or more doors and/or windows removed or in an open position; or

(E) Any changes in the operational limitations placed on the helicopter as a consequence of the addition or removal of external equipment, floats, and skis, or flight operations with doors and/or windows removed or in an open position.

(5) Tiltrotors.

(c) For purposes of complying with part 34 of this chapter, any voluntary change in the type design of the airplane or engine which may increase fuel venting or exhaust emissions is an “emissions change.”

(d) For the purpose of maintaining compliance with part 38 of this chapter, any voluntary change in the type design of an airplane that may increase the fuel efficiency metric value or the MTOM of that airplane is a “fuel efficiency change”, in addition to being a minor or major change as classified in paragraph (a) of this section.

D. MERITS OF THE CASE

- Does the absence of a dedicated, board-level safety committee in an aerospace corporation constitute a "failure of oversight" under the Caremark doctrine, or do general audit committee reports satisfy the duty to monitor mission-critical risks?
- Can the board's passive response following the Lion Air Flight 610 crash be deemed "consciously ignoring red flags," despite management's explicit assurances that the aircraft and MCAS system were fundamentally safe?
- Does the magnitude of the board's failure to oversee safety create a "substantial likelihood of personal liability" sufficient to excuse demand, or does the corporate charter's Section 102(b)(7) exculpation provision shield the directors from suit?
- Can a board's failure to directly monitor the FAA self-certification process (ODA) constitute an abdication of the duty of loyalty, or is the delegation of highly technical certification tasks to engineering experts a protected business judgment?
- Where is the boundary between protected corporate risk-taking and "bad faith" when a board prioritizes production schedules and market competition over resolving known design anomalies in a flagship commercial aircraft?

E. BIBLIOGRAPHY

Administrative Office of the U.S. Courts (2026) *The Federal Court System in the United States: An Introduction for Judges and Judicial Administrators*. Washington, DC: Administrative Office of the U.S. Courts.

Administrative Office of the U.S. Courts (2026) *Understanding the Federal Courts*. Washington, DC: Administrative Office of the U.S. Courts.

Boeing (2019) *The Boeing Company 2019 Schedule 14A (Proxy Statement)*. Washington, DC: Securities and Exchange Commission.

Boeing (2021) *The Boeing Company 2021 Schedule 14A (Proxy Statement)*. Washington, DC: Securities and Exchange Commission.

Court of Chancery of the State of Delaware (2020) *Defendants' Opening Brief in Support of their Motion to Dismiss the Verified Consolidated Amended Derivative Complaint, In re The Boeing Company Derivative Litigation, C.A. No. 2019-0907-MTZ*. Wilmington, DE: Court of Chancery.

Court of Chancery of the State of Delaware (2020) *Verified Consolidated Amended Derivative Complaint, In re The Boeing Company Derivative Litigation, C.A. No. 2019-0907-MTZ*. Wilmington, DE: Court of Chancery.

Court of Chancery of the State of Delaware (2021) *Firemen's Retirement System of St. Louis v. Sorenson, C.A. No. 2019-0965-LWW (Memorandum Opinion)*. Wilmington, DE: Court of Chancery.

Court of Chancery of the State of Delaware (2021) *Memorandum Opinion, In re The Boeing Company Derivative Litigation, C.A. No. 2019-0907-MTZ*. Wilmington, DE: Court of Chancery.

Court of Chancery of the State of Delaware (2021) *Stipulation and Agreement of Settlement, Compromise, and Release, In re The Boeing Company Derivative Litigation, C.A. No. 2019-0907-MTZ*. Wilmington, DE: Court of Chancery.

Delaware Court of Chancery (2026) *Rules of the Court of Chancery of the State of Delaware, Rule 23.1*. Wilmington, DE: Court of Chancery.

Delaware General Assembly (2026) *Delaware General Corporation Law, 8 Del. C. § 101 et seq.* Dover, DE: Delaware Code Online.

Department of Transportation Office of Inspector General (2020) *Timeline of FAA's Certification of the Boeing 737 MAX*. Washington, DC: U.S. Department of Transportation.

Department of Transportation Office of Inspector General (2021) *FAA Oversight of Boeing 737 MAX Certification Timeline Final Report*. Washington, DC: U.S. Department of Transportation.

Ethiopian Aircraft Accident Investigation Bureau (EAIB) (2022) *Aircraft Accident Investigation Report: Ethiopian Airlines Group B737-8 MAX Registered ET-AVJ*. Addis Ababa: Ministry of Transport.

Farnsworth, E. (2010) *An Introduction to the Legal System of the United States*. 4th edn. Oxford: Oxford University Press.

Federal Aviation Administration (FAA) (2019) *Emergency Order of Grounding, Docket No. FAA-2019-0236*. Washington, DC: U.S. Department of Transportation.

House Committee on Transportation and Infrastructure (2020) *Boeing Internal Communications Released by the House Transportation Committee*. Washington, DC: U.S. House of Representatives.

House Committee on Transportation and Infrastructure (2020) *The Boeing 737 MAX Aircraft: Costs, Consequences, and Lessons from its Design, Development, and Certification*. Washington, DC: U.S. House of Representatives.

Judicial Conference of the United States (2026) *Civil Litigation Management Manual*. Washington, DC: Administrative Office of the U.S. Courts.

Komite Nasional Keselamatan Transportasi (KNKT) (2018) *Preliminary Aircraft Accident Investigation Report: PT. Lion Mentari Airlines, Boeing 737-8 (MAX); PK-LQP*. Jakarta: Republic of Indonesia.

Komite Nasional Keselamatan Transportasi (KNKT) (2019) *Aircraft Accident Investigation Report: PT. Lion Mentari Airlines, Boeing 737-8 (MAX); PK-LQP*. Jakarta: Republic of Indonesia.

National Transportation Safety Board (NTSB) (2019) *Assumptions Used in the Safety Assessment Process and the Effects of Multiple Flight Deck Alerts on Flight Crew Performance (ASR-19-01)*. Washington, DC: National Transportation Safety Board.

Securities and Exchange Commission (SEC) (2022) *Order Instituting Cease-and-Desist Proceedings: In the Matter of The Boeing Company and Dennis A. Muilenburg, Release No. 95880*. Washington, DC: Securities and Exchange Commission.

United States District Court for the Eastern District of Virginia (2020) *Corrected Amended Complaint, Seafarers Pension Plan ex rel. The Boeing Company v. Bradway et al.* Alexandria, VA: U.S. District Court.

United States District Court for the Northern District of Texas (2021) *Deferred Prosecution Agreement, United States v. The Boeing Company*. Dallas, TX: U.S. District Court.

United States Government (2026) *Federal Rules of Civil Procedure, Rule 23.1*. Washington, DC: U.S. Government Publishing Office.