Banking and Finance Law Daily Wrap Up, DIRECTORS, OFFICERS AND EMPLOYERS—Del. Ch.: Delaware court allows shareholder derivative suit against regions directors over illegal overdraft practices, (Oct 1, 2025)

By Shashi Kant, BALLB, LLM.

Chancery permits suit where evidence suggests directors prioritized revenue strategy over consumer compliance obligations in overdraft policy decisions.



The Delaware Court of Chancery denied Regions Financial Corporation's motion to dismiss a shareholder derivative lawsuit seeking to recover $191 million that the bank paid to settle charges of illegal overdraft fee practices. Chancellor McCormick ruled that shareholder Katherine Richards Brewer adequately alleged that nine of fourteen board members faced a substantial likelihood of liability for consciously ignoring warnings about the bank's unlawful overdraft practices between August 2018 and July 2021 (*Brewer v. Turner*, No. 2023-1284-KSJM (Del. Ch. Sept. 29, 2025)).

Background of the overdraft violations. In September 2022, Regions Bank entered into a consent order with the Consumer Financial Protection Bureau to resolve allegations that it charged customers surprise overdraft fees on transactions that showed sufficient funds at authorization but later settled with insufficient balances (see *Banking and Finance Law Daily*, Sept. 28, 2022). The CFPB found that the bank employed manipulative processing methodologies from Aug. 1, 2018, to July 14, 2021, charging overdraft fees even after telling consumers they had sufficient funds at the time of transactions. The consent order required the bank to pay $50 million to the CFPB's victims' relief fund and refund at least $141 million to harmed customers. The CFPB determined that the bank's leadership knew about the illegal practices and could have discontinued them years earlier but chose to wait while pursuing changes that would generate new fee revenue to offset the expected loss from ending the illegal fees.

The derivative lawsuit and claims. Katherine Brewer, who has held the bank stock continuously since 1999, filed the derivative suit in December 2023 after obtaining approximately 20,000 pages of documents through a Section 220 books and records demand. The complaint asserts claims against twenty-two current or former directors and five officers who held positions during the three-year period of wrongdoing. Brewer's primary theory alleges that directors breached their fiduciary duties by failing to respond adequately to red flags concerning the bank's unlawful overdraft practices. The complaint identifies several categories of information that should have alerted the board to compliance issues.

Key red flags identified by the court. The court found the most significant red flag was a draft complaint sent to the bank in November 2019 by Jeffrey A. Lee, the company's former Deputy General Counsel. Lee alleged he was fired for calling attention to the illegal overdraft practices and claimed that the bank's executives purposefully avoided changing the posting order until the company could implement a plan to increase overdraft fee revenue. Lee's complaint detailed how he had advised management that the bank's overdraft policy violated federal regulation based on CFPB guidance. He explained that charging overdraft fees on authorized signature-based point-of-sale transactions that settle into negative balances violated Section 5 of the FTC Act. Lee stated that the Customer Transparency Working Group, formed in November 2018, was not empowered to stop the illegal overdraft practices.

The board also discussed a July 2018 Federal Reserve Bulletin that provided guidance to banking institutions concerning unfair and deceptive overdraft practices. Meeting minutes from October 2019 show the Risk Committee and Board discussing the bulletin and resolving to alter the company's posting methodology to address the bank's

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failure to comply with the guidance.

The board's response and the court's analysis. After receiving the Lee complaint, the board hired law firm Buckley LLP to review the overdraft practices. Buckley sent a memorandum to the Audit Committee on Dec. 27, 2019, though the version produced in discovery was largely redacted. The court noted that merely hiring an attorney in response to a red flag does not provide absolution from liability under Caremark and found it reasonably conceivable that the directors consciously ignored the red flags. The CFPB's findings support this inference, stating that the bank "could have stopped charging these fees sooner, but instead continued to charge them for years while it pursued changes to generate alternative fee revenue that would fully offset its expected revenue loss from eventually eliminating the illegal fees."

Ruling on demand futility. The court applied the Zuckerberg test for demand futility, examining whether at least half of the fourteen-member demand board faced a substantial likelihood of liability. Nine directors who served during the period of wrongdoing and remained on the board when the complaint was filed met this threshold: Turner, Golodryga, Johns, Marshall, McCrary, Prokopanko, Styslinger, Suquet, and Vines.

The court also found that directors Di Piazza, Byrd, Defosset, and Fast, who left the board before the complaint was filed but served after the Lee complaint surfaced, could face liability. However, claims were dismissed against directors who left before receiving the Lee complaint and those who joined after the wrongdoing ceased.

The case is No. 2023-1284-KSJM.

Judge: McCormick, C.

Attorneys: Seth D. Rigrodsky (Rigrodsky Law, P.A.) for Katherine Richards Brewer. Raymond J. DiCamillo (Richards, Layton & Finger, P.A.) for John M. Turner, Jr., Mark A. Crosswhite, Noopur Davis, Samuel A. Di Piazza, Jr., Zhanna Golodryga, J. Thomas Hill, John D. Johns, Joia M. Johnson, Ruth Ann Marshall, Charles D. McCrary, James T. Prokopanko, Lee J. Styslinger, III, José S. Suquet, Timothy Vines, Alison Rand, Carolyn H. Byrd, David J. Cooper, Sr., Don DeFosset, O.B. Grayson Hall, Jr., Susan W. Matlock, John E. Maupin, Jr., David J. Turner, Jr., C. Matthew Lusco, John B. Owen and Tara A. Plimpton.

Companies: Regions Bank; Regions Financial Corporation

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