



**BUSINESS LAW:**

**ADVISING THE BOARD OF DIRECTORS ON PRIVACY AND DATA SECURITY**

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# SHAREHOLDER DERIVATIVE LAWSUITS

## Wyndham Shareholder Derivative Lawsuit Dismissed (Delaware law)

Caremark requires that a corporation's "directors utterly failed to implement any reporting or information system ... [or] consciously failed to monitor or oversee its operations thus disabling themselves from being informed." *Stone v. Ritter*, 911 A.2d 362, 370 (Del. 2006). Yet Plaintiff concedes that security measures existed when the first breach occurred, and admits the Board addressed such concerns numerous times. (Compl. ¶¶ 46, 62, 63). The Board was free to consider such potential weaknesses when assessing the lawsuit.

*Palkon v. Holmes*, 2014 U.S. Dist. LEXIS 148799 (D.N.J. Oct. 20, 2014).

## SHAREHOLDER DERIVATIVE LAWSUITS (Con't)

### Home Depot Shareholder Derivative Lawsuit Dismissed (Delaware law)

...the [p]laintiffs essentially need[ed] to show with particularized facts beyond a reasonable doubt that a majority of the Board faced substantial liability because it consciously failed to act in the face of a known duty to act. This is an incredibly high hurdle for the [p]laintiffs to overcome, and it is not surprising that they fail[ed] to do so.

In re The Home Depot, Inc. Shareholder Derivative Litigation, No. 1:15-CV-2999 (N.D. Ga. Nov. 30, 2016).

### Wendy's Shareholder Derivative Lawsuit (Delaware law)

### Yahoo Developments

## SHAREHOLDER DERIVATIVE LAWSUITS (Con't)

### Target Shareholder Derivative Lawsuit Dismissed (Minnesota law)

A Special Litigation Committee established by Target's board of directors pursuant to Minnesota law issued a report to Target's board that concluded it would not be in the best interests of Target to pursue any of the alleged derivative claims and that the derivative action and the alleged derivative claims should be dismissed. The court granted the motions to dismiss the derivative action of the Special Litigation Committee, Target and the defendants and ordered that the derivative action be dismissed with prejudice.

In re Target Corp. Shareholder Derivative Litigation, No. 0:14-CV-00203 (D. Minn. July 7, 2016).

# DATA SECURITY REGULATORY ENFORCEMENT ACTION

Role of the Board described in Consumer Financial Protection Bureau consent order In the Matter of Dwolla, Inc. about deceptive acts and practices relating to false representations regarding data security practices in violation of the Consumer Financial Protection Act:

....the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that it complies with Federal consumer financial law and this Consent Order.

In the Matter of Dwolla, Inc., File No. 2016-CFPB-0007.

**NATIONAL ASSOCIATION OF CORPORATE DIRECTORS  
CYBER-RISK OVERSIGHT HANDBOOK FOR DIRECTORS  
AT [HTTPS://WWW.NACDONLINE.ORG/CYBER](https://www.nacdonline.org/cyber)**

Applicable to public, private and nonprofit company boards.

Organized around five principles to consider in seeking to enhance oversight over cyber risks.

Questions for directors to ask management about cybersecurity, to assess board's "cyber literacy" and to assess board's cybersecurity culture.

## NATIONAL ASSOCIATION OF CORPORATE DIRECTORS

### 2016-2017 NACD PUBLIC COMPANY GOVERNANCE SURVEY

51 percent of respondents indicated that cyber risk is allocated to the audit committee, whereas 41 percent said that cyber risk is allocated to the full board.

89 percent of respondents indicated that cybersecurity is discussed regularly during board meetings, from once per year to once per month, with a median of three discussions per year.

24 percent of respondents were dissatisfied with the quality of cyber risk information provided to the board by management.

15 cyber risk oversight practices performed by the board in the last 12 months were described.

# INCIDENT RESPONSE AND RELATED RESOURCES

Guidance for Incident Response Plans

<https://www.irmi.com/articles/expert-commentary/guidance-for-incident-response-plans>

Data Breach Response: A Guide for Business

[https://www.ftc.gov/system/files/documents/plain-language/pdf-0154\\_data-breach-response-guide-for-business.pdf](https://www.ftc.gov/system/files/documents/plain-language/pdf-0154_data-breach-response-guide-for-business.pdf)

Guide for Cybersecurity Event Recovery

<http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-184.pdf>