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L Brands Executives Face Derivative Suit

Corporate Defense and Disputes Blog on **January 27, 2021**

As we move into 2021, shareholders of public corporations continue to seek to hold corporate executives accountable for workplace discrimination and misconduct, a trend that began in connection with the Me Too movement and does not show any signs of stopping.

On February 2, 2020, the New York Times featured a report on Victoria's Secret – a subsidiary of L Brands, Inc. – and its "culture of misogyny," detailing specific allegations against Ed Razek, former Chief Marketing Officer at L Brands. Almost a year later, on January 12, 2021, a putative shareholder of L Brands filed a derivative complaint against the company's current and former senior executives reiterating many of the article's allegations. In particular, the complaint alleges that the executives breached their fiduciary duties to L Brands through failed oversight, which led to "an entrenched culture of misogyny, bullying and harassment" and other "egregious mismanagement" causing financial and reputational harm to the company. It claims that at least one of the defendants, former CEO and Chairman Leslie Wexner, was made aware of Razek's inappropriate behavior, and that women who complained about his conduct faced retaliation in contravention of company policies.

The complaint also alleges that Wexner's relationship with the now-deceased Jeffrey Epstein caused reputational damage to the company. Relatedly, the complaint alleges that L Brands retained Davis Polk & Wardwell, LLP to investigate the relationship between Epstein, Wexner and the company, notwithstanding the fact that both defendant Dennis Hersch, a former L Brands board member, and Wexner's wife had been members of the firm. Although the company hired another law firm to take over the investigation in response to the plaintiff's assertion of a conflict of interest before she filed her lawsuit, the complaint alleges that the fees paid to Davis Polk amounted to a waste of corporate assets because the conflict was avoidable.

Finally, the complaint also includes allegations beyond those in the New York Times article. It alleges that the plaintiff's formal demand that the company bring suit against its corporate executives before her complaint was filed led to the mismanagement of a transaction between L Brands and Sycamore Partners, a private equity firm. This planned sale of Victoria's Secret fell apart due to actions taken by L Brands during the COVID-19 pandemic, actions which Sycamore claimed breached commitments made in the sale agreement. L Brands later settled litigation with Sycamore without obtaining a "break-up fee." The complaint alleges that the facts and circumstances alleged by the plaintiff in the demand letter provided Sycamore with leverage against L Brands during the settlement negotiations, and L Brand's mismanagement, therefore, caused a waste of corporate assets because the company received no benefit for releasing Sycamore from the sale agreement.

The complaint has been filed in the Delaware Court of Chancery. Check back here for additional updates as the case moves forward.

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