

## Delaware Court of Chancery Declines to Dismiss Claims Against U.S. Independent Directors for Failure to Monitor China-Based Company

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In a bench ruling issued on February 6 in *In re Puda Coal, Inc. Stockholders Litig.*, the Delaware Court of Chancery declined to dismiss breach of loyalty claims against the U.S. independent directors of a Delaware company with assets and operations solely in China. Chancellor Strine found it “perfectly conceivable” that the directors breached their fiduciary duties of oversight when they failed to discover that the Chairman/CEO had “stolen the company” through the unauthorized transfers of its operating subsidiary. Although the pleaded facts here are extreme, the decision serves as a reminder that independent directors of Delaware-incorporated companies must take all necessary steps to satisfy their fiduciary duties, even when faced with the obvious challenges of a company whose assets and operations are primarily outside the U.S.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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