



The District Court Approves a Settlement Agreement In Lieu of a Derivative Action Regarding the Salmonella Incident in Strauss's Chocolate Factory, and Delineates the Boundaries of Independent Committees, the Standard of Judicial Review of Their Decisions, and the Applicability of the *Caremark* Doctrine in Israel

Dear Clients,

In this client update, we will present the main points of the judgment of the Tel Aviv-Jaffa District Court (Economic Department) in the matter of **Olir Trade and Industries Ltd. v. Strauss Group Ltd. et al.**,¹ in which a settlement agreement was approved in a proceeding for the discovery of documents prior to filing a motion to certify a derivative action, in connection with the salmonella incident at the chocolate factory of Strauss Group Ltd. in 2022.

Background

The proceeding concerns alleged damages caused to Strauss Group Ltd. (the "**Company**") following the discovery of Salmonella bacteria on a chocolate production line in the Company's factory in Nof Ha'Galil in 2022 and the Company's announcement of a recall of all chocolate products manufactured at the factory at that time (the "**Salmonella Incident**"). Shortly after the Salmonella Incident, a motion for the discovery of documents was filed by one of the Company's shareholders (the "**Applicant**") prior to filing a motion to certify a derivative action, pursuant to Section 198A of the Companies Law, 5759-1999 (the "**Motion**"). The Motion alleged that the Company has causes of action against its directors and officers, including causes of action for alleged breach of the duty of care and the duty of loyalty, including, among other things, oversight failures and deficiencies in the areas of food safety and food quality.

Following the filing of the Motion, the Company's board of directors decided to establish an independent claims committee (the "**Independent Committee**"), which was authorized to examine the Salmonella Incident, the conduct of the Company's directors and officers in connection with the Salmonella Incident, the Company's potential causes of action against its directors and officers in connection with the Salmonella Incident, and whether pursuing and litigating such causes of action would be in the Company's best interests.

The Independent Committee operated for approximately two years and held 47 meetings – during that time the Independent Committee interviewed the Company's directors and officers, dozens of the Company's

¹ D.A. 51733-04-22 **Olir Trade and Industries Ltd. v. Strauss Group Ltd. et al.** (22.4.2026) (Hon. J. A. Zimmerman).

managers and employees, received reports from professional advisors and experts on behalf of the Company, the directors and officers, and the applicants, met with representatives of the Ministry of Health, and reviewed thousands of documents.

After approximately two years, the Independent Committee submitted a report to the Company's board of directors summarizing its conclusions. The Independent Committee found no basis to the allegations regarding breach of the duty of loyalty by the Company's directors and officers. The Independent Committee also found that the Company's directors did not breach their oversight duties. On the other hand, with respect to certain officers in the Company's food quality headquarters and in the chocolate factory's management, the Independent Committee found certain flaws in the implementation of food safety and food quality procedures and in the handling of complaints, but the Independent Committee reached a conclusion that the chances of a possible lawsuit against those officers were not high, among other things, due to the difficulty in proving a causal link between the alleged flaws and the damage caused to the Company. Accordingly, the Independent Committee determined that it is doubtful whether pursuing a claim against those officers would be in the Company's best interests.

The Company also authorized the Independent Committee to engage in settlement discussions with the Applicant and with the Company's insurer (the "**Insurer**") in order to try to resolve the legal proceeding by way of a settlement agreement. Ultimately, the Independent Committee reached a settlement agreement with the Applicant and the Insurer, according to which the Company would be paid compensation in the amount of NIS 27 million (in addition to remuneration, attorney's fees, and expenses for the applicants and their counsel) in exchange for a final termination of all claims and causes of action mentioned in the Motion, and recommended that the Company's board of directors adopt the settlement agreement. The Company's board of directors adopted the Committee's recommendations, and the settlement agreement was brought before the District Court for approval.

The Court's Judgment

The court approved the settlement agreement and held that:

1. **The business judgment rule does not automatically apply to the recommendations of an independent claims committee.** The court held that the mere establishment of an independent committee and the adoption of its recommendations by the board of directors do not necessarily lead to the application of the business judgment rule to the board's decisions. Specifically, the Court held that when there is a concern of "structural bias" on the part of the board of directors - for example, where it must decide whether to file a claim against its current or former members or against parties subject to its supervision, such as senior officers - there is no room to automatically apply the business judgment rule and shield the decision from judicial review.
2. **Great importance is attributed to the work of an independent claims committee.** The court emphasized that, notwithstanding its ruling that the business judgment rule does not apply automatically to the recommendations of an independent claims committee, substantial weight should be given in this case to the Independent Committee's independence and professionalism, and to the vast scope of the factual investigations it conducted. The court stressed that the establishment of an independent claims committee is a "desirable practice" and that independent claims committees have great utility in laying the factual, and even legal, foundation necessary for the court's decision whether to certify a derivative action and whether to approve a settlement agreement in lieu of such action. In the court's words: "The Independent Committee's report is therefore certainly cardinal for the purpose of deciding on the motion to approve the settlement agreement."

3. **The court discussed the duty of oversight applicable to directors under Israeli law and the applicability of the *Caremark* doctrine in Israeli law.** The court determined that Israeli law already recognizes a duty of oversight imposed on directors, but the question of its precise scope and whether to adopt the *Caremark* doctrine and the subsequent case law from the Delaware Court of Chancery into Israeli law has not yet been finally decided in Israel. The Court added that Delaware case law can serve as an important source of inspiration for the Israeli court, but the present case is not the appropriate case to determine – as part of a decision whether to approve a settlement agreement in a case in which there is a substantial difficulty in establishing the potential liability of the directors and officers of the Company – whether it is justified to adopt the *Caremark* doctrine into Israeli case law.

4. **The Court determined that the settlement agreement properly reflects the proceeding's prospects and risks, and that it is in the Company's best interests to approve it.** Among other things, the court gave weight to the fact that the Company will receive significant compensation, to the difficulties in proving liability and a causal link, to the potential costs and damages of a prolonged litigation proceeding, and to the fact that the Company has already implemented substantial corrections and improvements following the Salmonella Incident.

From a practical standpoint, the judgment reinforces the perception that an independent claims committee, when properly established and operated, can play a substantial and effective role in examining derivative claims and assessing the best interests of the company. At the same time, it clarifies that the committee's independence and professionalism do not render the court's critical role superfluous, especially where there is a concern of "structural bias" on the part of the company's decision-makers.

As for the *Caremark* doctrine, the judgment signals that Israeli courts are open to using Delaware case law for the purpose of development of corporate oversight standards, but are not in a rush to fully adopt it at this time. This reflects a cautious approach, according to which the shaping of oversight duties in Israeli law will be done gradually, based on local law and with consideration for the circumstances of each case.

Our firm represented Strauss Group Ltd. in this proceeding.

Sincerely,
FISCHER (FBC & Co.)

We are at your disposal for any questions or clarifications and will be happy to assist as required.

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