

“Direct Versus Derivative in Shareholder Litigation: Is It an Ad Hoc Inquiry?”

Today’s General Counsel

January 16, 2019

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Whenever a shareholder brings a claim involving the company’s officers and directors, the court must decide whether the shareholder is suing for harm suffered individually, and the claim is direct – or if the alleged harm is suffered by the company, and the claim is derivative. Distinguishing between direct and derivative claims, however, has become complicated. The following analysis is instructive for all jurisdictions, as most courts follow similar reasoning.

In 2004, the Delaware Supreme Court attempted to clarify the distinction between derivative and direct claims in *Tooley v. Donaldson, Lufkin & Jenrette, Inc.* The *Tooley* court examined three cases – *Kramer v. W. Pac. Indus. Inc.*, *Grimes v. Donald* and *Parnes v. Bally Entm’t Corp.*