

Securities Litigation Alert

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A Tale of Two Derivative Suits: Issue Preclusion and Comity Prevail

Delaware Business Court Insider has published “A Tale of Two Derivative Suits: Issue Preclusion and Comity Prevail,” written by [Michelle Reed](#) and [Matthew Lloyd](#), partner and counsel, respectively, in the litigation practice at Akin Gump.

The article discusses the Delaware Supreme Court’s decision in *California State Teachers Retirement System v. Alvarez*, “dismissing a shareholder action against Walmart Inc. and its board and concluding years of deliberation at both the Delaware Court of Chancery and Supreme Court levels over whether a hastily pursued derivative suit should have a preclusive effect against more diligent plaintiffs.” Reed and Lloyd write that the result is that stockholders will have to “fully investigate their claims before pursuing such actions.”

The article provides some background on the case, which began two years ago when the Delaware Court of Chancery “dismissed a derivative action involving Walmart on the ground that dispositive issues had already been litigated and resolved in the U.S. District Court for the Western District of Arkansas.” On appeal, the Delaware Supreme Court neither affirmed nor denied, opting instead to remand the case and ask the Chancery Court whether the facts implicated due process concerns for stockholders. The Chancery Court “conditionally reaffirmed that dismissal was appropriate and that plaintiffs’ due process rights had not been violated.”

Reed and Lloyd analyze the importance of the rulings in the case, writing that they create “a tension with the practice of requiring a shareholder request a company’s books and records before pursuing a derivative suit.” They conclude by noting that courts across different jurisdictions “are still likely to stay similar actions for the same well-established principles of comity and judicial efficiency underlying the Delaware Supreme Court’s decision.”

Click [here](#) to read the full article.

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