ALERT MEMORANDUM

New York Court of Appeals Reaffirms the Application of the Internal Affairs Doctrine in Shareholder Derivative Actions Involving Foreign Companies

May 27, 2025

On May 20, 2025, the New York Court of Appeals decided two closely-watched cases, *Ezrasons, Inc. v. Rudd* and *Haussmann v. Baumann*, in which plaintiff shareholders sought to assert derivative claims on behalf of foreign corporations. Both disputes posed the question whether New York's Business Corporation Law (BCL) allows a shareholder plaintiff to bring derivative claims on behalf of a foreign corporation in New York so long as it satisfies the BCL requirements for such a suit, even if the plaintiff lacks standing under the law of the place of incorporation. The Court of Appeals rejected that theory and held that the BCL does not displace the well-settled internal affairs doctrine, which applies the substantive law of the place of incorporation (not the law of the forum) to, among other things, the question of who has standing to assert derivative claims on behalf of the corporation. This important ruling should slow a recent trend of shareholder plaintiffs attempting to bring derivative suits in New York courts on behalf of foreign corporations that could not be brought under the laws of such corporations' home jurisdictions—which should come as welcome news to the many foreign corporations doing business in New York.

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Background

The internal affairs doctrine is a conflicts of law rule that provides that courts must resolve corporate governance issues under the law of the state in which an entity is formed regardless of where the suit is brought.[1] This long-settled doctrine is essential in order for corporations, boards, and investors to understand *ex ante* the laws that regulate internal corporate governance and to prevent the application of conflicting rules governing the same conduct.

New York enacted the Business Corporation Law (BCL) in 1961. Among many other provisions in that statute, sections 626 and 1319 of the BCL permit shareholders in certain circumstances to file derivative actions in New York state court on behalf of foreign corporations. In the ensuing decades, however, it was widely understood by both courts and practitioners that the internal affairs doctrine would continue to apply to such derivative suits, including on the issue of whether a shareholder had standing to bring the derivative suit on the foreign corporation's behalf.[2]

More recently, plaintiffs lawyers began to challenge that understanding by bringing a series of shareholder derivative actions in New York state court on behalf of foreign corporations notwithstanding their failure to satisfy requirements for such suits under the laws of the foreign corporations' domicile.

Plaintiffs' lawyers received a boost in one such case, *Davis v. Scottish Re Group Ltd.*, 30 N.Y.3d 247 (N.Y. 2017), in which the Court of Appeals held that a derivative action could proceed in New York on behalf of a Cayman Islands corporation notwithstanding that the shareholder had not satisfied a Cayman Islands rule requiring derivative plaintiffs to seek leave from a Cayman court before bringing such a suit. The court's decision, however, was limited and based on its finding that this Cayman rule was procedural rather than substantive.[3] The court noted, among other things, that the rule (which appeared in the Cayman Islands' civil procedure rules, not in its corporation statute) was intended to apply only to actions brought in the Cayman Islands courts and was not intended to be a gatekeeping provision that kept derivative suits out of foreign jurisdictions.[4] Because the rule was procedural, the court held that it did not implicate the internal affairs doctrine (which only addresses *substantive* law) and thus the plaintiffs in *Davis* could bring the derivative action in New York without first seeking leave from the Cayman Islands court.[5]

The Barclays and Bayer Cases

More recently, plaintiffs' lawyers filed a slew of similar shareholder derivative suits on behalf of foreign companies in New York state court, threatening to turn New York into a "Shangri-La" for such suits given New York's relatively modest requirements to bring a derivative suit compared to the laws of other jurisdictions, particularly in Europe.

In one such case, *Ezrasons, Inc. v. Rudd*, 217 A.D.3d 349 (N.Y. App. Div. 2023), the plaintiffs sought to bring a derivative action on behalf of Barclays, PLC, a British multinational bank, arising out of alleged breaches of fiduciary duty by defendants dating back to at least 2008. Defendants urged the court to find that the English Companies Act applied, which would bar the suit on the basis that the plaintiffs were not registered members as required to bring a derivative action under English law.[6] Plaintiffs instead argued that the BCL displaced English law (and the internal affairs doctrine) on the issue of standing to bring derivative suits in New York court.[7]

In particular, plaintiffs pointed to BCL §§ 626(a) and 1319(a)(2), which allow shareholders in certain

[1] *See, e.g.*, *Eccles v. Shamrock Capital Advisors, LLC*, 42 N.Y.3d 321, 335-37 (N.Y. 2024).
[2] *See, e.g., Stephen Blau MD Money Purchase Pension Plan Trust v. Dimon,* 2015 N.Y. Slip Op. 32909[U], *8–13 (N.Y. Sup. Ct. 2015); *Potter v. Arrington*, 11 Misc.3d 962, 966, 810 (N.Y. Sup. Ct. 2006); *Lewis v. Dicker*, 118 Misc.2d 28, 30 (N.Y. Sup. Ct. 1982).
[3] *Davis*, 30 N.Y.3d at 254.
[4] *Id*.
[5] *Id*. at 257.
[6] *Ezrasons, Inc. v. Rudd*, 2022 WL 20476314, at *1-*2.
[7] *Id.* at *5-6.

circumstances to bring derivative suits in New York on behalf of foreign corporations doing business in New York just as they can on behalf of domestic corporations. Plaintiffs argued that the requirements set forth in these provisions for bringing a derivative action in New York court[8] constituted the *only* requirements to do so, *regardless* of whether the corporations' home jurisdictions' laws imposed additional requirements. The trial court disagreed in a bench ruling, and plaintiffs appealed to the Appellate Division, First Department.[9]

Meanwhile, in a separate case, *Haussmann v. Baumann*, 217 A.D.3d 569 (N.Y. App. Div. 2023), the plaintiffs sought to bring a derivative action on behalf of Bayer AG, a German corporation. The breach of fiduciary duty claims arose out of Bayer AG's June 2018 purchase of Monsanto, Inc.[10] In that case, the New York Supreme Court held that the claims should be dismissed for multiple independent reasons, including that (i) the case had only a tenuous connection to New York and a stronger connection to Germany and thus should be dismissed for *forum non conveniens*, (ii) the court lacked personal jurisdiction over defendants, and (iii) the plaintiffs lacked standing under German law, which applied under the internal affairs doctrine.[11] Plaintiffs also appealed that decision.

In both cases, the Appellate Division, First Department agreed with the New York Supreme Court's application of the internal affairs doctrine. In *Ezrasons*, the First Department found that BCL § 1319 did not require the application of New York law nor did it override the internal affairs doctrine. In *Haussmann*, the First Department further agreed with the Supreme Court's implicit finding that the underlying German law was substantive, not procedural, and thus German law applied and the plaintiffs lacked standing to bring the claim. Notably, the court reached this conclusion even though the German law at issue, i.e., German Stock Corporation Act § 148, which requires shareholders to request permission from a German court to assert derivative claims, was facially similar to the Cayman rule at issue in *Davis*.[12] While the court did not expressly distinguish *Davis*, an obvious distinction is that the German rule is found in the corporation statute, unlike the Cayman rule which is found in the civil procedure rules.

Plaintiffs were then granted permission in both cases to further appeal to the New York Court of Appeals, New York State's highest court.

The New York Court of Appeals' Decision

On May 20, 2025, the Court of Appeals decided both cases in two separate opinions.

In *Ezrasons*, the Court of Appeals held (in a 7-1 decision) that the BCL does not displace the internal affairs doctrine, and the substantive law of a foreign corporation's domicile applies notwithstanding anything to the contrary in the BCL. In so holding, the court focused on the longstanding, firmly rooted nature of the internal affairs doctrine and the importance of that doctrine to corporate law.[13] The majority rejected the plaintiff's arguments that the New York legislature intended to override the doctrine 60 years ago in enacting BCL sections 626(a) and 1319(a)(2), finding nothing in the text of either provision sufficiently clear to prove legislative intent to override such a well-settled common law doctrine.[14]

Chief Judge Wilson authored a lengthy dissent, arguing that the BCL was intended to displace the internal affairs doctrine as it relates to shareholder standing to bring derivative suits.[15] The majority, however, rejected the dissent's reasoning, noting

[8] Those requirements are, in sum, that the plaintiff is an owner or beneficial holder of shares of the corporation (and held such shares at the time of the transaction complained of) and sets forth with particularity the efforts it made to demand the board initiate the action or why such efforts would have been futile.
[9] *Id*. at *14.
[10] *Haussmann,* 217 A.D. 3d at 569-70.
[11] *Haussmann v. Baumann*, 73 Misc.3d 1234(A) at *1-2 (N.Y. Sup. Ct. 2021).
[12] *Id.*
[13] *Id.* at *5-10.
[14] *Id.* at *5-7.
[15] *Id.* at *10.

among other things that the applicability of the internal affairs doctrine to derivative suits on behalf of foreign corporations has (until the recent wave of cases) been virtually unquestioned in the many years since the BCL was enacted.[16]

The Court of Appeals, however, did not reach the issue whether the English or German requirements were substantive or procedural (and did not even mention its prior decision in *Davis*). In *Ezrasons*, although plaintiff argued on appeal that the English registration requirement at issue was procedural, rather than substantive, the Court declined to reach the argument, finding it was not preserved below.[17]

In *Haussmann*, the Court of Appeals did not reach the internal affairs doctrine or standing issue at all. Instead, the Court of Appeals affirmed on the *forum non conveniens* ground that was addressed only by the Supreme Court.[18]

Practical Impact

In *Ezrasons*, the New York Court of Appeals emphatically endorsed the internal affairs doctrine and thwarted plaintiffs' attempts to turn New York courts into unofficial arbiters of the internal corporate governance of corporations around the world. Foreign corporations and their boards should take comfort that they will not necessarily subject themselves to derivative suits in New York simply by doing business here. That said, it is important to note that shareholders still have some ability to bring derivative claims on behalf of foreign corporations if doing so is consistent with substantive foreign law and if plaintiffs can show that any contrary foreign law rule is merely procedural, not substantive.

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[16] *Id.* at *9.
[17] *Id.* at *2.
[18] *Haussmann v. Baumann*, 2025 N.Y. Slip Op. 03009 (May 20, 2025) at *1.