

Corporate Directors Beware: A Shareholder Direct or Derivative Suit Might Be Around the Corner

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Every corporate director needs to be aware of the potential for a shareholder derivative lawsuit or a shareholder direct lawsuit.

In Missouri, a derivative action is a suit by the corporation conducted by shareholders as the corporation's representatives. *Nickell v. Shanahan*, 439 S.W.3d 223, 227 (Mo. banc 2014). Derivative actions are aimed at rectifying injuries to the corporation and not to the shareholders individually. *Id.* The plaintiff will always be a shareholder. But the shareholder is only a "nominal plaintiff"; instead, the corporation is the real party in interest. *Id.* The defendant is typically an officer or director of the subject corporation. *Id.* A common situation is one in which the plaintiff alleges the directors or officers of a corporation have breached their fiduciary duty—a duty that requires officers and directors to act in the best interests of all shareholders on a collective basis—resulting in injury to the corporation and the shareholders collectively.

With a direct action, shareholders can seek to redress individual wrongs. The shareholder is the plaintiff and the defendant is typically the corporation. Unlike a derivative action, a direct action only rectifies an injury unique to the shareholder, rather than an injury to the corporation as a whole. For example, a direct action may arise when a shareholder is denied the right to inspect corporate books and records, *Dawson v. Dawson*, 645 S.W.2d 120, 125 (Mo. App. 1982), or when a shareholder is removed from his or her position as a controlling shareholder. *Place v. P.M. Place Stores Co.*, 950 S.W.2d 862, 865 (Mo. App. 1996).

Derivative and direct actions can be costly to a corporation—both in money and reputation. To avoid litigation, corporate directors must be intimately familiar with what their fiduciary duty entails, and must study in detail their corporation's bylaws. Such preparation will help reduce the likelihood of a derivative or direct action being filed.