

Client Alert.

January 27, 2012

Delaware Court of Chancery Orders Follow-On Derivative Action Stayed in Light of Pending Class Action

By **Judson E. Lobdell**

Today, in an authoritative 18-page ruling, Delaware Vice Chancellor Parsons ordered a follow-on derivative action stayed in light of a federal securities class action arising out of the same underlying facts. This ruling, *Brenner v. Albrecht*,¹ should help defendants seeking to avoid the expense, distraction, and potential prejudice of defending related derivative and class action claims simultaneously.

As surely as federal securities class actions follow stock drops, stockholder derivative actions have come to follow securities class actions. Follow-on derivative actions seek recovery on behalf of the corporation against corporate officers and directors for harm suffered by the corporation arising out of (1) the events leading to the stock drop, and (2) the ensuing class action litigation, including the costs of defense. Unlike securities class actions, which must be brought in federal court, and where discovery is stayed pending resolution of motions to dismiss, these derivative actions are often brought in state courts, where the Private Securities Litigation Reform Act does not apply. Derivative plaintiffs routinely name all corporate directors as defendants and attribute corporate actions to board malfeasance or inaction. Often multiple derivative actions are brought in different jurisdictions. While derivative plaintiffs purport to represent the corporation, their litigation can prejudice the company in its defense of the class action and substantially increase the cost and distraction of the litigation.

In *Brenner*, Vice Chancellor Parsons ordered the follow-on derivative action stayed indefinitely in favor of the class action on two grounds. First, he found that pursuing corporate claims against directors and officers risked prejudicing the corporation's defense of claims made against it in the underlying class action. Second, he found that because the relief sought in the derivative action included any class action recovery, litigation of the derivative claims was premature. Vice Chancellor Parsons found that these considerations outweighed plaintiff's arguments that his claims were factually and legally distinct and that the derivative action would be prejudiced by delay in awaiting resolution of the class action.

The decision in *Brenner* is the clearest articulation to date of the danger follow-on derivative actions pose to the corporations on whose behalf they are supposedly brought. It should prove a valuable guide to courts seeking to manage similar class and derivative actions in the future.

To view the Court's decision, please click [here](#).

Contact:

Judson E. Lobdell
(415) 268-6717
jlobdell@mofocom

¹ Morrison & Foerster represents the defendants in this action.

Client Alert.

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials in many areas. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for eight straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.