
New York Court of Appeals Declines to Expand Outside Advisor Liability

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On October 21, 2010, in a 4-3 decision, New York's highest court issued a ruling that preserves and perhaps strengthens a New York bar on claims by company shareholders or creditors against the company's outside advisors (e.g., auditors, lawyers, investment bankers) where the claims arise out of financial fraud perpetrated by company management. In so ruling, the Court of Appeals found that management's wrongful acts were to be "imputed" to the corporation, and the claims were therefore to be barred under New York's common law doctrine of *in pari delicto*, which mandates that courts will not intercede to resolve a dispute between two wrongdoers. The Court of Appeals declined to accept arguments that management's acts should not be imputed to the corporation under New York's "adverse interest" exception to the doctrine of "imputation."

According to the three-judge dissent: "The majority opinion effectively precludes litigation by derivative corporate plaintiffs or litigation trustees to recover against negligent or complicit outside actors—even where the outside actor, hired to perform essential gatekeeping and monitoring functions, actively colludes with corrupt corporate insiders."

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