
Cahill Achieves Full Dismissal for Credit Suisse in Bayer Shareholder Derivative Suit

Date: 05/20/25

Cahill prevailed in the New York Court of Appeals on behalf of Credit Suisse in securing the affirmance of a dismissal of a shareholder derivative action brought by shareholders of Bayer stock alleging that Bayer management and its financial advisors, including Credit Suisse, failed to conduct adequate due diligence in connection with Bayer's acquisition of Monsanto and the related litigation risks arising from Roundup, a common herbicide that some consider a carcinogen.

After the First Department affirmed the lower court's dismissal of all claims against Credit Suisse and the other defendants for failure to establish derivative standing and on forum non conveniens grounds, plaintiffs appealed both issues to the New York Court of Appeals. On May 20, 2025, the New York Court of Appeals affirmed the decision, holding that the district court did not err in dismissing all defendants on forum non conveniens grounds. The court did not reach the issue of derivative standing, even though both issues had been fully briefed and argued.

On the same day, in a separate lawsuit brought against Barclays' management involving a similar derivative standing question, the New York Court of Appeals did address the derivative standing question. As part of an effort to make New York courts a forum for litigating shareholder derivative cases against foreign companies, plaintiffs had argued that the New York Business Corporation Law had displaced the internal affairs doctrine. The New York Court of Appeals rejected that argument, reaffirming the internal affairs doctrine and finding that the substantive law of a company's place of incorporation controls questions of derivative standing. Chief Judge Wilson provided a strongly worded dissent, arguing that the Business Corporation Law unambiguously permits plaintiffs to bring shareholder derivative cases in New York courts by satisfying the derivative standing requirements under New York law.

Attorneys

- Herbert S. Washer
- Joel Kurtzberg
- Adam S. Mintz
- Louis Capizzi