Cahill

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New York Court of Appeals Rejects Challenge to the Internal Affairs Doctrine

Executive Summary

The internal affairs doctrine serves as a cornerstone of American corporate governance. It provides that a corporation's internal governance is subject to the laws of the state or country in which the corporation is incorporated and not the potentially conflicting laws of the various jurisdictions in which it operates. The doctrine promotes consistency and predictability in corporate governance by ensuring a corporation need only adhere to one set of laws.

In *Ezrasons, Inc.* v. *Rudd, Ezrasons, Inc.*, the New York Court of Appeals rejected an argument that a New York statute that has been on the books for over 60 years tacitly overturned the internal affairs doctrine. The case involved a shareholder derivative action brought in New York state court by a New York-based beneficial shareholder of Barclays PLC, a corporation organized under the laws of England and Wales, that sought to hold Barclays' directors and officers liable for alleged oversight failures that resulted in substantial regulatory fines. Plaintiff argued that sections 626 and 1319 of the New York Business Corporation Law (BCL), the statutes governing corporations in New York, displaced the internal affairs doctrine and, therefore, subjected corporations like Barclays to New York's standards for derivative standing. On that basis, Plaintiff contended that Barclays should be subject to New York's corporate governance rules rather than the law of their place of incorporation. The court held that nothing in the BCL expressed the clear and specific legislative intent necessary to override the internal affairs doctrine.

Writing for a six-judge majority, over a strongly worded dissent by Chief Judge Wilson, Judge Cannataro stressed the importance of predictability and uniformity in corporate governance, warning that disregarding the internal affairs doctrine would expose foreign companies to conflicting obligations.[1] The decision ensures that, for now, New York will continue to adhere to the internal affairs doctrine.

Background and Context

The internal affairs doctrine is a longstanding principle in corporate law that provides that the internal governance of a corporation, such as the rights and duties of directors, officers, and shareholders, is governed by the substantive laws of the state or country of its incorporation. Procedural rules relating to the conduct of litigation remain subject to the forum where the lawsuit is brought. Rooted in conflict-of-laws principles and tracing its origins to 19th-century

[1] A companion case, *Haussmann* v. *Baumann*, was decided by the Court of Appeals on the same day. In *Haussmann*, plaintiff raised the same question about the applicability of the internal affairs doctrine, but the court did not reach the question and instead dismissed the case on *forum non conveniens* grounds. Cahill represented one of the defendants in the *Haussmann* action.

jurisprudence, the doctrine ensures that corporations are subject to a single, consistent legal framework for internal matters, thereby avoiding conflicting obligations across jurisdictions.

The principle is widely recognized, and the U.S. Supreme Court emphasized the importance of the doctrine, stating that "[o]nly one State should have the authority to regulate a corporation's internal affairs . . . because otherwise a corporation could be faced with conflicting demands."[2] New York courts have long adhered to this principle as a "rule of general application," with the New York Court of Appeals recently noting that it provides a single, constant, and equal law to govern interdependent corporate relationships.[3]

In recent years, several shareholder derivative lawsuits have been filed in New York courts against corporations incorporated outside of New York that did business in New York.[4] In those lawsuits, plaintiffs challenged the applicability of the internal affairs doctrine and argued that the corporations should be subject to New York's corporate governance rules, rather than the rules of the jurisdiction where the corporation was incorporated. The lawsuits appeared to be a concerted attempt by the plaintiffs' bar to make New York a global forum for resolving corporate governance disputes.

To support their view, Plaintiff relied on a set of provisions enacted with the passage of the BCL in 1961, specifically BCL sections 626 and 1319. Section 626(a) provides:

> An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor, by a holder of shares or of voting trust certificates of the corporation or of a beneficial interest in such shares or certificates. N.Y. Bus. Corp. Law § 626(a)

Section 1319, titled "Applicability of other provisions," sets forth a list of BCL articles and sections, including section 626, and provides that these provisions, "to the extent provided therein, shall apply to a foreign corporation doing business in this state, its directors, officers and shareholders." N.Y. Bus. Corp. Law § 1319(a)

Although these provisions had been on the books for 64 years, New York courts had generally applied the internal affairs doctrine. Plaintiff argued that New York courts had erred. Claiming that section 1319 effectively did away with the internal affairs doctrine, Plaintiff argued that section 1319 subjected foreign corporations to section 626 as the standard for establishing derivative standing in New York. In essence, the plaintiff sought to reframe section 1319 as a statutory override of the internal affairs doctrine.

Procedural History

In *Ezrasons*, the New York State Supreme Court for New York County was asked to adjudicate a shareholder derivative suit brought by a beneficial owner of shares in a foreign corporation, Barclays PLC, a company incorporated under the laws of England and Wales. The case was filed New York State Supreme Court for New York County in 2020, after Ezrasons, Inc., a New York-based shareholder, alleged that Barclays' current and former directors and officers had breached their fiduciary duties by failing to prevent or respond to a series of regulatory

[2] *Edgar* v. *MITE Corp.*, 457 U.S. 624, 645 (1982).

[3] *Eccles* v. *Shamrock Capital Advisors, LLC*, 42 N.Y.3d 321, 336 (2024).

[4] *See, e.g.*, *Davis* v. *Scotish Re Group Ltd.*, 30 N.Y.3d 247 (2017) (filed by shareholders of a Cayman Islands reinsurance company); *City of Aventura Police Officers' Retirement Fund* v. *Arison*, 70 Misc. 3d 234 (N.Y. Sup. Ct. 2020) (filed by shareholders of Carnival plc, an English company); *Cattan* v. *Ermotti*, 2021 WL 6200975 (N.Y. Sup. Ct. Dec. 30, 2021) (filed by shareholders of Credit Suisse, a Swiss company); *Eccles* v. *Shamrock Capital Advisors, LLC*, 42 N.Y.3d 321 (2024) (filed by shareholders of Shamrock Capital Advisors, LLC, a Scottish corporation).

violations relating to Barclays' lack of internal financial, legal, and regulatory compliance controls.[5] The complaint sought to hold nearly 40 individuals and Barclays Capital Inc., the company's U.S. affiliate, liable for billions of dollars in penalties Barclays allegedly incurred as a result of ineffective oversight and compliance practices. Ezrasons brought the claims under English law but invoked BCL sections 626 and 1319 to assert standing, notwithstanding Ezrasons's status as a non-registered, beneficial owner.

In 2022, the New York State Supreme Court for New York County dismissed the action, rejecting Ezrasons's challenge to the applicability of the internal affairs doctrine. The court held that English derivative standing rules are substantive, not procedural and so, under the internal affairs doctrine, govern the lawsuit.[6] Applying English law to the question of derivative standing, the court found that English law permits only registered members of a company to sue derivatively and Ezrasons was admittedly not a registered member.[7] In reaching this conclusion, the court clearly held that the BCL "does not override the internal affairs doctrine on the issue of standing to bring a derivative claim because it is a mere statutory predicate to jurisdiction."[8]

Plaintiff appealed the decision to the New York State Appellate Division for the First Department. In June of 2023, the First Department unanimously affirmed the dismissal, holding that the BCL did not "override the internal affairs doctrine."[9] Ezrasons appealed to the New York Court of Appeals, which granted leave to appeal in February 2024.[10]

The Court of Appeals' Decision

In a 6–1 decision, the New York Court of Appeals affirmed the dismissal of Ezrasons's derivative claims on the ground that the BCL did not displace the internal affairs doctrine. Accordingly, English law's derivative standing requirements applied,[11] under which Ezrasons had no standing to sue derivatively on behalf of Barclays.[12] Writing for the court, Judge Cannataro affirmed the "firmly entrenched" nature of the internal affairs doctrine, which he described as "a choice of law rule providing that, with rare exception, the substantive law of the place of incorporation governs disputes relating to the rights and relationships of corporate shareholders and managers."[13]

The court held that the internal affairs doctrine has not been overridden by BCL sections 626(a) and 1319(a)(2), as those statutory provisions did not "manifest legislative intent to displace the long-settled internal affairs doctrine."[14]

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[5] *See generally* Verified Shareholder Derivative Complaint Demand for Jury Trial in *Ezrasons, Inc*. v. *Sir Nigel Rudd*, 2022 WL 20476314 (N.Y. Sup. Ct. May 04, 2022) ("*Ezrasons I*").

[6] *Ezrasons I*, 2022 WL 20476314, at *12 ("The shareholder lacked standing to bring the derivative claims on behalf of the company because the membership requirement was substantive limit on a shareholder standing to assert a derivative claim and not merely a procedural hurdle.").

[7] *Id.* at *12-13.

[8] *Id.* at 13.

[9] *Ezrasons, Inc*. v. *Rudd* ("*Ezrasons II*"), 217 A.D.3d 406 (2023) (citation and quotation marks omitted), *leave to appeal granted*, 41 N.Y.3d 903 (2024), *and aff'd*, 2025 WL 1436000 (N.Y. May 20, 2025).

[10] *Ezrasons, Inc*. v. *Rudd*, 41 N.Y.3d 903 (2024).

[11] Though the court acknowledged plaintiff could have argued the English law in question was procedural and not substantive, the decision accepted the requirement as substantive, since the "plaintiff failed to preserve [that] argument." *Ezrasons, Inc.* v. *Rudd (Ezrasons III)*, 2025 WL 1436000, at *1 (N.Y. May 20, 2025).

[12] *Ezrasons III*, 2025 WL 1436000, at *8 ("In sum, sections 626(a) and 1319(a)(2) do not clearly manifest legislative intent to override the internal affairs doctrine on shareholder derivative standing questions.")

[13] *Id.* at *1.

[14] *Id.*

Section 626(a), the court explained, "was intended to function as a 'definitional provision' identifying the classes who would be subject to the pleading restrictions," but does not by its terms expand the rights of foreign corporate stakeholders in a manner that overrides the internal affairs doctrine.[15] The court found that ultimately, neither the history nor the text of section 626(a) "imply that the legislature intended to allow persons who would otherwise have no legal authorization to nonetheless bring a derivative suit."[16]

The court emphasized that no common law doctrine, including the internal affairs doctrine, should be lightly displaced—rather, a statute must be unambiguous, with "clear and specific legislative intent to override the common law."[17] The court found no indication that the New York Legislature, in enacting BCL section 626(a) or 1319(a)(2), intended to do so. The opinion pointed out that other provisions of the BCL, such as section 1317, do contain language that "leaves less room for doubt that the legislature intended its regulation to apply notwithstanding conflicting foreign law."[18] Section 1319, by contrast, simply provides that certain articles of the BCL shall apply to "a foreign corporation doing business in this state."[19] That limited scope, the court concluded, could not be read to override the internal affairs doctrine.[20] Applying that principle, the court held that English law, specifically the rules regarding derivative actions, governed.[21]

The court addressed and dismissed the relevance of *Culligan Soft Water Co.* v*. Clayton Dubilier & Rice LLC*, the only New York appellate decision to have "an interpretation similar to plaintiff's" reading of section 626.[22] 118 A.D.3d 422, 422 (1st Dep't 2014). The court observed that *Culligan* had not been followed in any subsequent appellate decisions and was explicitly disavowed by the Appellate Division below. Ultimately, the court concluded that the internal affairs doctrine continued to apply in New York for questions of shareholder standing involving foreign corporations. The BCL provisions at issue simply do not supply a substantive entitlement to sue on behalf of a foreign entity contrary to that entity's home jurisdiction's law. The court reinforced the importance of maintaining legal clarity in cross-border corporate matters and avoided a construction of the BCL that would have rendered New York an outlier in corporate governance.

Chief Judge Wilson dissented in a lengthy opinion that challenged the foundational premise of the majority's decision. He argued that the BCL needs to have been read consistent with how the legislature would have understood the legal landscape when the BCL was enacted in 1961. In his view, the internal affairs doctrine was not firmly entrenched when BCL sections 626 and 1319 were enacted in 1961, and had become so only in the decades since the BCL's enactment.[23] Accordingly, he argued that the majority's approach improperly imposed a modern framework onto a statutory scheme that was not enacted with those assumptions in mind.

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[15] *Id.* at *8.

[16] *Id.* at *7.

[17] *Id.* at *5 (quoting *Assured Guarantee [UK] Ltd.* v *J.P. Morgan Investment Management Inc.*, 18 NY3d 341, 351 (2011)).

[18] *Id.* at *7.

[19] N.Y. Bus. Corp. Law § 1319 (a).

[20] *Ezrasons III*, 2025 WL 1436000, at *8.

[21] *Id.*

[22] *Id.* at *7-8. ("It took more than half a century for a New York court to first express an interpretation similar to plaintiff's, in a decision that has not been followed and was firmly disavowed by the Appellate Division in this case.").

[23] *Id.* at *12 (Wilson, J., dissenting).

Chief Judge Wilson also argued that, when the BCL was enacted, the internal affairs doctrine was not then understood as a choice-of-law rule, but rather only as a "discretionary way for New York courts to decline jurisdiction."[24] In 1961, he argued, "enacting sections 626 and 1319 as choice of law provisions would not have conflicted with any common law choice of law doctrine. There was therefore no reason for the legislature to believe it had to override anything at all."[25] Chief Judge Wilson further argued that before 1961, New York courts exercised jurisdiction over shareholder derivative actions involving foreign corporations and often applied New York law in resolving such claims. Citing *O'Connor* v. *Virginia Passenger & Power Co.*, 184 N.Y. 46 (1906) and *Leslie* v. *Lorillard*, 110 N.Y. 519 (1888), he wrote that "we resolved [shareholder] claims without considering the law of the corporation's place of incorporation," and that New York's substantive rules, including those governing fiduciary duties, were applied even where the corporate entity was chartered elsewhere.[26]

With that understanding of the law at the time of enactment, in Chief Judge Wilson's view, "it is clear that [sections 626 and 1319] were intended to function as choice of law provisions, subjecting foreign corporations to the same standards as domestic ones."[27] Chief Judge Wilson highlighted New York's historical and practical interest in maintaining its role as a global commercial forum, with Wilson writing that "the idea that New York would apply substantive provisions of its own law to dictate the liability and rights of foreign corporations was conventional" at the time of enactment.[28] Ultimately, Wilson concluded that the legislature—not the courts—had made a policy choice in 1961 to extend derivative standing more broadly, and that the court's role was to honor the painstaking "balance the legislature struck."[29]

Conclusion and Implications

The *Ezrasons* decision affirms the continued primacy of the internal affairs doctrine. The court's holding clarifies that BCL sections 626 and 1319 do not override foreign substantive law in the context of shareholder standing. Of course, if the New York Legislature wishes to modify the internal affairs doctrine, it can do so. But by rejecting an attempt to read into a 60-year old statute such a modification, the ruling reaffirms New York's continued adherence to the internal affairs doctrine.

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If you have any questions about the issues addressed in this alert, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Joel Kurtzberg (partner) at 212.701.3120 or jkurtzberg@cahill.com; Adam Mintz (counsel) at 212.701.3981 or amintz@cahill.com; or Louis Capizzi (associate) at 212.701.3482 or lcapizzi@cahill.com; or email publications@cahill.com.

[24] *Id.* at *11 (Wilson, J., dissenting).

[25] *Id.* at *10 (Wilson, J., dissenting).

[26] *Id.* at *18 (Wilson, J., dissenting).

[27] *Id.* at *38 (Wilson, J., dissenting).

[28] *Id.* at *30 (Wilson, J., dissenting).

[29] *Id.* at *32 (Wilson, J., dissenting).