

Joel Kurtzberg and Peter Linken Publish “Delaware Court of Chancery Holds that Demand Futility May Be Pleaded with Less “Particularity”” in *INSIGHTS: The Corporate & Securities Law Advisor*

Date: 06/30/20

Delaware law is clear that a shareholder generally may not bring a derivative action on behalf of a corporation unless the shareholder pleads that: (i) it made a pre-litigation demand upon the board of directors of the corporation or (ii) such demand upon the board would have been futile. Chancery Court Rule 23.1, which is modeled after Fed. R. Civ. P. 23.1, requires that these predicate facts must be “allege[d] with particularity,” which is a higher standard than typical notice pleading under Rule 8(a).

In an article for the June 2020 issue of *INSIGHTS: The Corporate & Securities Law Advisor*, partner Joel Kurtzberg and counsel Peter Linken discuss the Delaware Chancery Court’s recent decision in *Elburn v. Albanese*, which addresses for the first time “what is required to plead a fact “with particularity” under Rule 23.1.

Attorney

- Joel Kurtzberg