INSIGHT

Delaware Court Sees Though Plaintiffs' Poorly Disguised Derivative Claims

JANUARY 9, 2025

January 9, 2025

Winston received an *Am Law Litigator of the Week Shout Out* for securing a ruling knocking out US$300M in claims against the former board of managers of Verano Holdings LLC, a subsidiary of Verano Holdings Corp., one of the country's largest publicly traded cannabis companies. Delaware Vice Chancellor J. Travis Laster dismissed a lawsuit brought by former minority shareholders in Verano Holdings finding the plaintiffs lost standing to bring such derivative claims after the combination that resulted in the public company took hold. The judge issued a dismissal with prejudice in an oral ruling from the bench.

Winston's briefing prioritized statute of limitations arguments. Immediately following argument, the Vice Chancellor indicated that his order dismissing the claims with prejudice was based only on the threshold issue of standing and that he need not reach the remaining arguments. Notably, the Vice Chancellor complimented counsel at the end and reserved a "special tip-of-the-hat" to Dan Webb, expressing his great respect for Webb and remembering working on a matter Webb led before he took the bench.

The Vice Chancellor's decision confirms that a plaintiff cannot avoid the standing or pre-suit demand requirements of Chancery Rule 23.1 simply by disguising derivative claims as direct claims. Shareholder dilution claims are classically derivative, so the plaintiff must be a shareholder at the time of the alleged wrong and throughout the litigation to bring such a claim—and when the plaintiff ceases to be a shareholder (such as when the entity's ownership changes by way of a merger), derivative standing evaporates.

1 Min Read

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