

New York Applies Internal Affairs Doctrine to Shareholder Derivative Claims

June 3, 2025

In a key decision for foreign corporations that do business in New York, the state's highest court recently confirmed that foreign substantive law governing shareholders' standing to pursue derivative litigation displaces New York law in the event of a conflict. On May 20, 2025, the New York Court of Appeals in *Ezrasons, Inc. v. Rudd*¹ affirmed the dismissal of a derivative suit filed by a beneficial owner of shares in Barclays PLC based on an English law limiting standing for derivative suits to a company's registered members. The Court of Appeals held that New York's Business Corporation Law (BCL) did not displace the internal affairs doctrine – a common law choice-of-law rule mandating that the substantive law of a company's place of incorporation generally governs disputes concerning its internal affairs – with respect to questions of shareholder standing under BCL section 626.

Background

Barclays is a bank holding company incorporated under the laws of England and Wales and headquartered in London. In 2021, Ezrasons Inc., a beneficial owner of Barclays shares, filed suit in New York's Supreme Court on behalf of Barclays against dozens of its current and former directors and officers and a local affiliate. Ezrasons asserted claims for breach of the directors' and officers' fiduciary duties under English law and sought billions of dollars in damages by reference to various governmental investigations and civil suits lodged against Barclays over the course of the preceding decade in the United States and the United Kingdom.

Ezrasons's suit against Barclays formed part of a larger trend of shareholders seeking to pursue derivative litigation on behalf of foreign companies in New York. The New York Court of Appeals had issued two important decisions concerning the applicable law in such cases over the past decade.

¹ 2025 N.Y. Slip. Op. 03008, 2025 WL 1436000 (N.Y. 2025).

In May 2024, in *Eccles v. Shamrock Cap. Advisors, LLC*, the Court of Appeals reaffirmed and clarified New York’s application of the internal affairs doctrine in a suit concerning a Scottish company, holding that, “with rare exception, the substantive law of the place of incorporation applies to disputes involving the internal affairs of a corporation.”² Quoting the United States Supreme Court, the Court of Appeals explained that the “policy underlying the internal affairs doctrine” is to ensure that “only one state should have the authority to regulate a corporation’s internal affairs . . . because otherwise a corporation could be faced with conflicting demands.”³ The Court of Appeals then clarified that, in order to overcome that presumption and “establish the applicability of New York law, a party must demonstrate both that (1) the interest of the place of incorporation is minimal – i.e., that the company has virtually no contact with the place of incorporation other than the fact of its incorporation, and (2) New York has a dominant interest in applying its own substantive law.”⁴

Several years earlier, in a case involving a company incorporated in the Cayman Islands, the Court of Appeals had already confirmed that the internal affairs doctrine applies only to substantive law because, “under New York common-law principles, procedural rules are governed by the law of the forum.”⁵

The defendants in *Ezrasons* had moved to dismiss the claims on several grounds, including that under English law *Ezrasons* lacked standing to sue derivatively on behalf of Barclays because it was only a beneficial owner of Barclays shares, and not a registered member of Barclays. According to the defendants’ English law expert, English statutory and common law permits only registered members of a corporation who legally own shares and are recorded on the company’s official register to sue derivatively on its behalf. *Ezrasons* admitted that it was not a registered member of Barclays, but argued that it had standing for a shareholder derivative action under BCL sections 626(a) and 1319(a)(2) and that these provisions of the BCL displaced the common law internal affairs doctrine and mandated application of New York law. The Supreme Court granted the defendants’ motion to dismiss and the Appellate Division unanimously affirmed.

The Decision by the New York Court of Appeals

In a six-to-one decision, the New York Court of Appeals held that BCL sections 626(a) and 1319 do not override the internal affairs doctrine, such that foreign substantive law

² 42 N.Y.3d 321, 328 (2024).

³ *Id.* at 336 (quoting *Edgar v. MITE Corp.*, 457 U.S. 624 (1982)).

⁴ *Id.* at 339.

⁵ *Davis v. Scottish Re Group Ltd.*, 30 N.Y.3d 247, 253 (2017).

concerning shareholders' standing to pursue a derivative action displaces those provisions in the event of a conflict.

As a preliminary matter, the Court concluded that "[f]ew principles are more firmly entrenched in corporate law than the internal affairs doctrine" and that New York courts had applied different iterations of this common law choice-of-law rule for over a century.⁶ Accordingly, it assessed whether BCL sections 626(a) and 1319(a)(2), which were enacted in their current form in 1961, evinced the requisite "clear," "specific," and "unambiguous" legislative intent to override the common law, and concluded that they did not.

The Court of Appeals first examined BCL section 626(a), which provides that an "action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor" by a beneficial owner of shares in the corporation, among others. The Court concluded that "the text of section 626(a) does not clearly indicate that it was intended to serve as both a New York standing rule *and* a choice-of-law directive." Instead, the Court held, the legislature "established a baseline New York standing rule" and, under the internal affairs doctrine, "foreign substantive law controls in the event of any conflict between New York law and the law of a company's place of incorporation." That section 626(a) "authorizes actions to be brought on behalf of either 'a domestic or foreign corporation' may set the stage for a conflict between New York and foreign standing law, but it does not suggest that New York law should prevail in the event of such conflict."

The Court next concluded that BCL section 1319 "is not a choice-of-law provision either." As the Court explained, section 1319 "merely sets forth a list of various BCL articles and sections, including section 626, and provides that each, 'to the extent provided therein, shall apply to a foreign corporation doing business in this state.'" The Court distinguished BCL section 1317, which provides that "directors and officers of foreign corporations" are subject to certain provisions of the BCL "to the same extent as directors and officers of a domestic corporation." The Court suggested that section 1317 reflects the express legislative intent to displace the internal affairs doctrine and apply New York substantive law that is lacking in section 1319(a)(2).

The Court did not assess Ezrasons's argument that the provisions of English law limiting derivative actions to registered members were procedural rather than substantive – such that New York choice of law principles would mandate the application of forum law – because the Court concluded that Ezrasons had not properly preserved that argument. Assuming that the English membership requirement is substantive, and is therefore subject to the internal affairs doctrine, the Court of Appeals

⁶ Ezrasons, 2025 WL 1436000, at *5-7.

concluded that the Appellate Division had properly dismissed the complaint for lack of standing under English law.

Chief Judge Rowan Wilson wrote a dissenting opinion arguing that the internal affairs doctrine “did not exist as a choice of law rule in 1961,” such that sections 626(a) and 1319(a)(2) did not need to evince any clear intent to displace the non-existent common law. Judge Wilson would have held that the “plain text” of section 626(a) indicates that it “applies to foreign corporations to the exclusion of foreign law.”

On the same day that it decided *Ezrasons*, the Court of Appeals also affirmed the dismissal of a shareholder derivative action brought on behalf of Bayer AG, a German corporation, in *Hausmann v. Baumann*.⁷ The Supreme Court had dismissed the case for lack of standing to pursue a derivative action under German law (applying the internal affairs doctrine), for *forum non conveniens*, and for lack of personal jurisdiction. The Appellate Division unanimously affirmed, discussing only the dismissal for lack of standing. The Appellate Division determined that, pursuant to the internal affairs doctrine, German law requiring a shareholder to seek leave from a German court before filing a derivative action applied and that plaintiffs had concededly not complied with the German law.⁸ The Court of Appeals affirmed the Supreme Court’s dismissal on the grounds of *forum non conveniens*, without expressly addressing the Appellate Division’s discussion of the internal affairs doctrine.

What’s Next

The Court of Appeals’ recent decision in *Ezrasons* and the Appellate Division’s decision in *Hausmann* should discourage derivative litigation on behalf of foreign corporations in New York courts. The courts’ holdings make clear that New York courts will enforce foreign substantive law that imposes stricter requirements for shareholders seeking to establish standing to sue on behalf of the corporation than New York’s BCL does. We also anticipate that shareholders will now argue that any such foreign laws are procedural, rather than substantive, such that the internal affairs doctrine does not apply – and that the shareholder need only satisfy section 626 of the BCL to bring a derivative claim.

* * *

Please do not hesitate to contact us with any questions.

⁷ 2025 N.Y. Slip Op. 03009, 2025 WL 1435989 (2025).

⁸ *Hausmann v. Baumann*, 217 A.D.3d 569, 51 (1st Dep’t 2023).



William D. Regner
Partner, New York
+ 1 212 909 6698
wdregner@debevoise.com



Shannon Rose Selden
Partner, New York
+1 212 909 6082
srselden@debevoise.com



William H. Taft V
Partner, New York
+ 1 212 909 6877
whtaft@debevoise.com



Natascha Born
Associate, New York
+ 1 212 909 6821
nborn@debevoise.com



Elizabeth Anne Weinman
Law Clerk, New York
+ 1 212 909 6299
eaweinman@debevoise.com