

White and Williams Secures Dismissal in Shareholder Derivative Case

7.3.18

On July 2, 2018, Judge Mark Mastroianni, of the United States District Court for the District of Massachusetts, dismissed a purported shareholder derivative lawsuit filed against longtime firm clients Peter Marcia and Walter Smith. The court granted our Rule 23.1 motion to disqualify the plaintiff, Kenneth F. Phillips, finding that he was attempting to use the shareholder derivative suit as a “weapon in his arsenal and not as a device for the protection of all shareholders.”

Since 2009, White and Williams has represented VBenx Corporation, Marcia and Smith in various litigations emanating from the acrimonious relationship between two camps of shareholders of VBenx. Most recently, following a 2017 jury trial in Massachusetts Superior Court, White and Williams secured a \$1.5 million verdict against two former directors, Phillips and Brent Finnegan, for malicious prosecution, breach of fiduciary duties, and aiding and abetting breach of fiduciary duties.

In September 2017, while the \$1.5 million verdict was on appeal, Phillips filed a purported shareholder derivative suit against Marcia and Smith concerning purported wrongdoing by Marcia and Smith in the company’s relationship with Liberty Mutual Insurance Company. White and Williams filed a Rule 23.1 motion to disqualify Phillips based on his unsuitability to represent the shareholders. Rule 23.1 is rarely litigated and very little case law exists on the issue of disqualification. The court accepted the Rule 23.1 argument and found that Phillips was undoubtedly using the shareholder derivative suit as leverage to force a settlement of the \$1.5 million appeal, “given the history of litigation between the parties and in light of the great potential for improper motive, the apparent weakness of the claims asserted, and the ‘element of vindictiveness’ imparted by [Phillips’] reference to Defendant Smith as an ‘evil dwarf’ and the record as a whole.”

David Chaffin and Melissa Nott Davis represented Marcia and Smith.