

[Securities Regulation Daily Wrap Up, CORPORATE GOVERNANCE—Del. Ch.: State law, due process prevent dismissal with prejudice ‘as to the world’, \(Jan. 15, 2016\)](#)

Securities Regulation Daily Wrap Up

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By [Amy Leisinger, J.D.](#)

The Delaware Chancery Court refused to dismiss an action against directors with prejudice as to all potential plaintiffs. The court found that, while Delaware law requires dismissal with prejudice as to the specific plaintiff, it does not contemplate or permit with-prejudice dismissal “as to the world,” as suggested by the defendants. Even if the law of derivative actions allowed for this type of outcome, the court stated, due process principles would prevent the court from imposing a judgment from binding any party other than the named plaintiff (*In re EZCORP, Inc. Consulting Agreement Derivative Litigation*, January 15, 2016, Laster, J.).

Dismissal efforts. Following a multiple filings in an action alleging violations of fiduciary duty and corporate waste by directors of EZCORP, Inc., the Delaware Supreme Court issued its *Cornerstone* decision holding that, to survive a motion to dismiss, a plaintiff seeking only monetary damages must plead non-exculpated claims against directors protected by exculpatory charter provisions. The plaintiff recognized that the complaint did not plead any non-exculpated claim and proposed to dismiss the complaint without prejudice. The defendants refused the proposal and instead argued for a dismissal with prejudice also binding on all other potential plaintiffs.

Substantive law. The court noted that Delaware law requires dismissal with prejudice as to a named plaintiff in an action dismissed following the filing of an answering brief, unless the plaintiff can show good cause for dismissal without prejudice. The shareholder showed no good cause to deviate from this general rule, but the plain language of the rule itself dictates with-prejudice dismissal as to only the shareholder, not “as to the world” in the manner urged by the defendants, the court found. Further, this type of broad bar would prohibit any shareholder, and even EZCORP itself, from litigating against the directors, regardless of what evidence may be discovered in the future.

Due process. The court further found that, even if substantive law allowed for with-prejudice dismissal to potential future plaintiffs, due process principles would prevent such a determination. With minor exceptions, “[a] person who is not a party to an action is not bound by the judgment in that action,” the court stated. To allow dismissal with prejudice as to any potential plaintiff would bar future actions before a plaintiff even had the authority to sue, and due process forecloses the judgment in this case from binding any party other than the named plaintiff, the court concluded.

The case is [No. 9962-VCL](#).

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Companies: EZCORP. Inc.

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