

Can Shareholders Sue CEOs For Corporate Social Activism?

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In an August 17, 2017 opinion piece published in *The Wall Street Journal*, Jon L. Pritchett and Ed Tiryakian had the following message for shareholders:

Our message to small shareholders of companies like Starbucks, Merck and Target: You can sue when a CEO decides to institute a corporate social-responsibility program that has no benefit to the business. If you want to ensure shareholder primacy is protected, keep your legal options open.

Professor [Stephen Bainbridge](#) counters that the business judgment rule would bar to such lawsuits. Citing *Shlensky v. Wrigley*, 95 Ill. App. 2d 173, 237 N.E.2d 776 (1968), he asks “Ever hear of the business judgment rule?”

My own acquaintance with the business judgment rule renders me less sanguine about its application to CEOs. The business judgment rule has been applied to decisions made by directors, as it was in *Shlensky*. That case involved a derivative suit against the board of directors of Chicago National League Ball Club (Inc.) for failing to install lights and schedule night games at Wrigley Field. Thus, *Shlensky* is not apposite to the question of whether the business judgment rule applies to officers *qua* officers.

In addressing the question of whether courts will apply the business judgment rule to officers, one must first decide which law governs the application of the business judgment rule. See [Officers and the Business Judgment Rule](#). If Delaware law is applied, the applicability of the business judgment rule to officers is not at all certain. As Professor [Lyman P.Q. Johnson](#), *Unsettledness in Delaware Corporate Law: Business Judgment Rule, Corporate Purpose*, 38 Del. J. Corp. L. 405, 413 (2013):

Surprisingly, given Delaware’s extensive corporate law jurisprudence, it is not settled today whether in cases involving corporate officers, judges will doctrinally deploy the business judgment rule in the same all-encompassing manner that it has been used for corporate directors.

Unsettledness in Delaware Corporate Law: Business Judgment Rule, Corporate Purpose, 38 Del. J. Corp. L. 405, 413 (2013) (footnote omitted). See also [Officers: Got Business Judgment Rule? Nevada Says Yes, Delaware Maybe Not.](#)

Finally, the title for today's blog is a red herring. One can always file a law suit. The question that should be asked is "will you prevail if you sue?"

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