

§755. Dismissal

1. Dismissal of proceeding. The court, on motion by the corporation, shall dismiss a derivative proceeding if one of the groups specified in paragraphs A to C determines, in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation:

A. A panel of one or more individuals appointed by the court on motion of the corporation. The plaintiff has the burden of proving that the panel or the determination did not meet the standards required in this subsection; [PL 2007, c. 289, §11 (AMD).]

B. A majority of qualified directors present and voting at a meeting of the board of directors if the qualified directors constitute a quorum; or [PL 2007, c. 289, §11 (AMD).]

C. A majority of a committee consisting of 2 or more qualified directors appointed by majority vote of qualified directors present and voting at a meeting of the board of directors, whether or not such qualified directors constituted a quorum. [PL 2007, c. 289, §11 (AMD).]

[PL 2007, c. 289, §11 (AMD).]

2. Independence of director.

[PL 2007, c. 289, §11 (RP).]

3. Complaint must allege with particularity. If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of qualified directors at the time the determination was made or that the requirements of subsection 1 have not been met.

[PL 2007, c. 289, §11 (AMD).]

4. Burden of proof. If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff has the burden of proving that the requirements of subsection 1 have not been met; otherwise, the corporation has the burden of proving that the requirements of subsection 1 have been met.

[PL 2007, c. 289, §11 (AMD).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2007, c. 289, §11 (AMD).

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