

The Delaware Supreme Court Issues Key Opinion on Shareholder Standing to Challenge Stock Options

On May 30, 2008, the Delaware Supreme Court issued its opinion in the case of *Feldman v. Cutaia*, and provided further guidance on the nature of direct and derivative stockholder claims. The decision is certain to play a key role in the continued development of Delaware corporate jurisprudence on shareholder litigation.

In *Feldman*, the plaintiff initially raised several derivative claims alleging that stock options issued by The Telx Group, Inc. to certain defendants (represented by Ashby & Geddes) were invalid. Following a cash-out merger with an unrelated third-party, which extinguished his standing to maintain those derivative claims, the plaintiff amended his complaint. The plaintiff purported to add a direct claim challenging the merger on the grounds that the company had not reconsidered the validity of the challenged options before approving a merger transaction in which the holders of the options would participate in the distribution of the merger proceeds. The defendants moved to dismiss, and the Court of Chancery granted the motion finding, among other things, that the plaintiff lacked standing as plaintiff's asserted claims were derivative rather than direct. On appeal, the Supreme Court, relying on settled authority, affirmed the Court of Chancery and concluded that the plaintiff's challenges to the merger were, in fact, derivative in nature and, therefore, had been properly dismissed by the Court of Chancery for want of standing. In so doing, the Court further clarified the distinction between direct and derivative shareholder claims under Delaware law.

This opinion is significant for its discussion of the standard by which shareholder claims are characterized as derivative or direct. That threshold determination is critical as it will often dictate whether a plaintiff may maintain a cause of action following a merger. A team of Ashby & Geddes attorneys from the Corporate Litigation and Counseling practice group, including Stephen E. Jenkins, Richard L. Renck and Andrew D. Cordo, represented

defendants Rory J. Cutaia, Jonathan Lawrence and J. Todd Raymond in this action. The case is *Feldman v. Cutaia*, No. 466, 2007 (Del. May 30, 2008) (read the opinion [here](#)).