

IC 23-1-32

Chapter 32. Derivative Proceedings

IC 23-1-32-1

Right to commence or maintain proceeding

Sec. 1. A person may not commence a proceeding in the right of a domestic or foreign corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time. The derivative proceeding may not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.

As added by P.L.149-1986, SEC.16.

IC 23-1-32-2

Complaint; stay of proceeding

Sec. 2. A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why the shareholder did not make the demand. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint (including an investigation commenced under section 4 of this chapter), the court may stay any proceeding until the investigation is completed.

As added by P.L.149-1986, SEC.16.

IC 23-1-32-3

Discontinuance or settlement of proceeding

Sec. 3. (a) A proceeding commenced under this chapter may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected.

(b) On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

As added by P.L.149-1986, SEC.16.

IC 23-1-32-4

Committee of disinterested directors or persons

Sec. 4. (a) Unless prohibited by the articles of incorporation, the board of directors may establish a committee consisting of three (3) or more disinterested directors or other disinterested persons to

determine:

- (1) whether the corporation has a legal or equitable right or remedy; and
- (2) whether it is in the best interests of the corporation to pursue that right or remedy, if any, or to dismiss a proceeding that seeks to assert that right or remedy on behalf of the corporation.

(b) In making a determination under subsection (a), the committee is not subject to the direction or control of or termination by the board. A vacancy on the committee may be filled by the majority of the remaining members by selection of another disinterested director or other disinterested person.

(c) If the committee determines that pursuit of a right or remedy through a derivative proceeding or otherwise is not in the best interests of the corporation, the merits of that determination shall be presumed to be conclusive against any shareholder making a demand or bringing a derivative proceeding with respect to such right or remedy, unless such shareholder can demonstrate that:

- (1) the committee was not "disinterested" within the meaning of this section; or
- (2) the committee's determination was not made after an investigation conducted in good faith.

(d) For purposes of this section, a director or other person is "disinterested" if the director or other person:

- (1) has not been made a party to a derivative proceeding seeking to assert the right or remedy in question, or has been made a party but only on the basis of a frivolous or insubstantial claim or for the sole purpose of seeking to disqualify the director or other person from serving on the committee;
- (2) is able under the circumstances to render a determination in the best interests of the corporation; and
- (3) is not an officer, employee, or agent of the corporation or of a related corporation. However, an officer, employee, or agent of the corporation or a related corporation who meets the standards of subdivisions (1) and (2) shall be considered disinterested in any case in which the right or remedy under scrutiny is not assertable against a director or officer of the corporation or the related corporation.

As added by P.L.149-1986, SEC.16.

IC 23-1-32-5

"Shareholder" defined

Sec. 5. For purposes of this chapter, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the owner's behalf.

As added by P.L.149-1986, SEC.16.