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Delaware Supreme Court

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Delaware Supreme Court Reaffirms Core Derivative Standing Principles***Arkansas Teacher Retirement System v. Countrywide Financial Corporation*, No. 14, 2013 (Del. Sept. 10, 2013)**

Today, the Delaware Supreme Court issued a much-anticipated opinion addressing the continuous ownership requirement for stockholders in derivative lawsuits, derivative standing, and the fraud exception to the continuous ownership requirement. The opinion — in which the Delaware Supreme Court ratifies and reaffirms the continuous ownership rule and the fraud exception recognized in *Lewis v. Anderson* — answers a question certified from the U.S. Court of Appeals for the Ninth Circuit to the Delaware Supreme Court in connection with an appeal of dismissed derivative claims filed against directors and officers following a merger.

In the opinion, the court explains that the "fraud" exception to the continuous ownership rule only applies in the "limited circumstances" where the "merger itself is being perpetrated merely to deprive shareholders of their standing to bring the derivative action." The court further explains that its dicta in an earlier opinion, *Arkansas Teacher Retirement Systems v. Caifa*, which upheld the approval of a settlement of a related litigation, did not "change the scope of the fraud exception," or "clarify, expand, or constitute a new material change in *Lewis v. Anderson*'s continuous ownership rule or the fraud exception." Thus, answering the Ninth Circuit's certified question in the negative, the Delaware Supreme Court held that shareholder plaintiffs may not maintain a derivative suit after a merger that divests them of their ownership interest in the corporation on whose behalf they sue by alleging that the merger at issue was necessitated by, and is inseparable from, the alleged fraud that is the subject of their derivative claims.

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