directors act in the best interests of the corporation equired by their fiduciary duties, rather than operating the c benefit.

The U.S. scheme to ensure that corporations operate on behalf of shareholders focuses not on the rights of shareholders themselves (who have difficulty organizing and effectively representing their own interests), but on the fiduciary duties of directors to act on behalf of shareholders. Thus, in the United States publicly traded companies are required to have a majority of independent directors and usually have a supermajority of independent directors. There is also an emphasis on private shareholder litigation (shareholder derivative suits under corporate law, as well as securities class action suits under securities law), in which one or a small number of plaintiffs represent a large group of shareholders, to enforce these fiduciary duties. In a real sense Delaware judges are the ones expected to act as a check on the activities of corporate directors.

Shareholder Derivative Suits

A shareholder derivative suit is one in which a corporate shareholder sues on behalf of the corporation to force it to enforce its own corporate rights. If the plaintiff wins, the corporation receives the award and the plaintiff's attorney fees and court costs are paid by the corporation. A derivative suit is different from a direct lawsuit to require the company to pay dividends or to hold a shareholders' meeting, because a derivative action does not try to enforce the rights of a shareholder, only the rights of the corporation. For example, a typical derivative action tries to make the company recover damages for a breach of duty by its executives or directors.

In actual practice, directors are almost never individually liable for damages as a result of shareholder derivative suits. One reason is that the market for director and officer ("D&O") liability insurance is well developed in the United States, and in a typical case the insurance company is responsible for the costs of defending the case and any damages resulting from liability. In addition, virtually no cases go to trial. Most cases, particularly in Delaware, are effectively decided by the defendants' initial motion to dismiss the plaintiffs' claim for failure to state a cause of action. Plaintiffs often lose these motions, thus ending the litigation. If plaintiffs' claims survive the defendants' motion to dismiss, thus raising the possibility of full pretrial discovery and individual liability, defendants typically settle the litigation. Despite this practice, shareholder derivative suits may still help enforce fiduciary duties since Delaware judges regularly use their opinions to discuss issues and problems with corporate governance, even in cases where there is no legal liability. Such discussions presumably help establish and reinforce best practices among directors of major corporations.

All corporate directors have fiduciary duties, and a shareholder derivative action alleging a breach of fiduciary duties can occur in any field of business and under a wide variety of circumstances. The following case involves a minority shareholder bringing suit against the directors of a Delaware company that owned and operated a baseball team, the Chicago Cubs. The lawsuit notes the continuing losses of the Cubs and alleges that the board's decision to refuse to install lights and schedule any night games is the cause, and represents a breach of the directors' duty of care. The plaintiffs further allege that the reason for this decision is the personal views of the team's majority shareholder, Philip K. Wrigley, rather than any true business consideration or decision.

The Cubs had not won the World Series since 1908 and had last appeared in the World Series in 1945. Local folklore held that the reason for the Cubs long lack of success was that in the 1945 World Series a fan who had brought his goat to Wrigley Field, the Cubs' stadium, was ejected by the owner, Philip K. Wrigley. Upon exiting the stadium, the unhappy fan supposedly put a curse on the Cubs, proclaiming they would never appear in the World Series again (often referred to as the "Curse of the Billy Goat").

Shlensky v. Wrigley

95 Ill.App.2d 173, 237 N.E.2d 776 (1968)

Sullivan, J.

This is an appeal from a dismissal of plaintiff's amended complaint on motion of the defendants. The action was a stockholders' derivative suit against the directors for negligence and mismanagement. The corporation was also made a defendant. Plaintiff sought damages and an order that defendants cause the installation of lights in Wrigley Field and the scheduling of night baseball games.

Plaintiff alleges that since night baseball was first played in 1935 nineteen of the twenty major league teams have scheduled night games. In 1966, out of a total of 1620 games in the major leagues, 932 were played at night. Plaintiff alleges that every member of the major leagues, other than the Cubs, scheduled substantially all of its home games in 1966 at night, exclusive of opening days, Saturdays, Sundays, holidays and days prohibited by league rules. Allegedly this has been done for the specific purpose of maximizing attendance and thereby maximizing revenue and income.

The Cubs, in the years 1961-65, sustained operating losses from its direct baseball operations. Plaintiff attributes those losses to inadequate attendance at Cubs' home games. He concludes that if the directors continue to refuse to install lights at Wrigley Field and schedule night baseball games, the Cubs will continue to sustain comparable losses and its financial condition will continue to deteriorate.

Plaintiff alleges that, except for the year 1963, attendance at Cubs' home games has been substantially below that at their road games, many of which were played at night.

Plaintiff compares attendance at Cubs' games with that of the Chicago White Sox, an American League club, whose weekday games were generally played at night. The weekend attendance figures for the two teams were similar; however, the White Sox week-night games drew many more patrons than did the Cubs' weekday games.

Plaintiff alleges that the funds for the installation of lights can be readily obtained through financing and the cost of installation would be far more than offset and recaptured by increased revenues and incomes resulting from the increased attendance.

Plaintiff further alleges that defendant Wrigley has refused to install lights, not because of interest in the welfare of the corporation but because of his personal opinions "that baseball is a 'daytime sport' and that the installation of lights and night baseball games will have a deteriorating effect upon the surrounding neighborhood." It is alleged that he has admitted that he is not interested in whether the Cubs would benefit financially from such action because of his concern for the neighborhood, and that he would be willing for the team to play night games if a new stadium were built in Chicago.

Plaintiff alleges that the other defendant directors, with full knowledge of the foregoing matters, have acquiesced in the policy laid down by Wrigley and have permitted him to dominate the board of directors in matters involving the installation of lights and scheduling of night games, even though they knew he was not motivated by a good faith concern as to the best interests of defendant corporation, but solely by his personal views set forth above. It is charged that the directors are acting for a reason or reasons contrary and wholly unrelated to the business interests of the corporation; that such arbitrary and capricious acts constitute mismanagement and waste of corporate assets, and that the directors have been negligent in failing to exercise reasonable care and prudence in the management of the corporate affairs.

The question on appeal is whether plaintiff's amended complaint states a cause of action. It is plaintiff's position that fraud, illegality and conflict of interest are not the only bases for a stockholder's derivative action against the directors. Contrariwise, defendants argue that the courts will not step in and interfere with honest business judgment of the directors unless there is a showing of fraud, illegality or conflict of interest.

Plaintiff in the instant case argues that the directors are acting for reasons unrelated to the financial interest and welfare of the Cubs. However, we are not satisfied that the motives assigned to Philip K. Wrigley, and through him to the other directors, are contrary to the best interests of the corporation and the stockholders. For example, it appears to us that the effect on the surrounding neighborhood might well be considered by a director who was considering the patrons who would or would not attend the games if the park were in a poor neighborhood. Furthermore, the long run interest of the corporation in its property value at Wrigley Field might demand all efforts to keep the neighborhood from deteriorating. By these thoughts we do not mean to say that we have decided that the decision of the directors was a correct one. That is beyond our jurisdiction and ability. We are merely saying that the decision is one properly before directors and the motives alleged in the amended complaint showed no fraud, illegality or conflict of interest in their making of that decision.

While all the courts do not insist that one or more of the three elements must be present for a stockholder's derivative action to lie, nevertheless we feel that unless the conduct of the defendants at least borders on one of the elements, the courts should not interfere. The trial court in the instant case acted properly in dismissing plaintiff's amended complaint.

There is no allegation that the night games played by the other nineteen teams enhanced their financial position or that the profits, if any, of those teams were directly related to the number of night games scheduled. There is an allegation that the installation of lights and scheduling of night games in Wrigley Field would have resulted in large amounts of additional revenues and incomes from increased attendance and related sources of income. Further, the cost of installation of lights, funds for which are allegedly readily available by financing, would be more than offset and recaptured by increased revenues. However, no allegation is made that there will be a net benefit to the corporation from such action, considering all increased costs.

The record shows that plaintiff did not feel he could allege that the increased revenues would be sufficient to cure the corporate deficit. The only cost plaintiff was at all concerned with was that of installation of lights. No mention was made of operation and maintenance of the lights or other possible increases in operating costs of night games and we cannot speculate as to what other factors might influence the increase or decrease of profits if the Cubs were to play night home games.

[P]laintiff's allegation that the minority stockholders and the corporation have been seriously and irreparably damaged by the wrongful conduct of the defendant directors is a mere conclusion and not based on well pleaded facts in the amended complaint.

For the foregoing reasons the order of dismissal entered by the trial court is affirmed.

* * *

Topics for Further Discussion

1. Do you believe that the decision to refuse to install lights for night games was based on the best interests of the corporation rather than on the personal views of Philip K. Wrigley? Does the court?

2. What is the court's standard for deciding whether the directors breached their fiduciary duty to the corporation and shareholders by refusing to schedule night games? Is there any discussion about the extent to which a board of directors may consider factors other than the maximization of shareholders' economic benefit when making decisions?

3. If you were the lawyer for the plaintiff shareholders, what could you have tried to do differently?

4. Subsequently, the Chicago Cubs were sold to the Tribune Corporation, and some night games were scheduled beginning in 1988. In 2016 the Chicago Cubs