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SHAREHOLDER & DERIVATIVE LITIGATION ALERT

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Shareholder & Derivative Litigation

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Delaware Supreme Court Sets the Stage for Direct Shareholder Lawsuits

In May of this year, the Delaware Supreme Court paved the way for corporate shareholders to bring direct claims against a corporation based on misrepresentations made by its officers and directors.

In *Citigroup Inc. v. AHW Inv. P'ship*, a group of Citigroup shareholders sued Citigroup and its directors and officers for losses in share value that the shareholders sustained after relying on misrepresentations made about the extent of the corporation's subprime loan exposure. The question before the court was whether the Citigroup shareholders could sue the corporation directly for their lost share value or whether they were required to sue derivatively on behalf of the corporation.

The difference is significant: If the shareholders were required to sue derivatively, it's the Citigroup corporate treasury that would benefit from a successful derivative lawsuit. On the other hand, if the shareholders could sue directly, they would benefit directly. However, in order to sue directly, the shareholders must show that they suffered harm independent from any harm suffered by the corporation. Up until this decision, the prevailing view in Delaware and other states, including California, has been that when the damages from mis-management are measured by a decline in stock value, shareholders must sue derivatively.

In *Citigroup,* the Court ruled that the shareholders' claims did not belong to the corporation but to the shareholders because it was the corporation itself, through its officers and directors, who had made the misrepresentations. The Court held that the Citigroup shareholders' claims belonged to them, not the corporation, and thus, the shareholders were not confined by Delaware's derivative suit requirement.

Given Delaware's influence and status as the harbinger of corporate and securities law for many other jurisdictions, including California, this decision will likely have far-reaching implications.

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