

## Nevada Supreme Court Follows Delaware In Overruling *Gentile v. Rosette*

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The line between a direct and derivative action is often indistinct and hence the object of controversy.

In 2017, the Nevada Supreme Court held that a class action lawsuit should be dismissed for failure to plead a direct rather than a derivative claim. *Parametric Sound Corp. v. Eighth Jud. Dist. Ct.*, 401 P.3d 1100 (Nev. 2017). The Court did allow the plaintiffs to replead "equity expropriation" claims that might have been considered direct under the Delaware Supreme Court's holding in *Gentile v. Rosette*, 906 A.3d 1251 (Del. 2006). "Equity expropriation" claims are claims alleging a controlling shareholder's or director's expropriation of value from a corporation that dilute the equity of other shareholders. Although some of the parties in the *Parametric* case later settled, others opted out of the settlement and filed a new class action in Nevada state court alleging claims as direct "equity expropriation" claims under *Gentile*. The Nevada court in this latter case granted judgment for the defendants. Within days, the Delaware Supreme Court reversed *Gentile* in *Brookfield Asset Mgmt., Inc. v. Rosson*, 261 A.3d 1251 (Del. 2021).

In *PAMTP, LLC v. Potashner*, 140 Nev. Adv. Op. 36 (June 6, 2024), the Nevada Supreme Court upheld the trial court's judgment that *Brookfield's* overruling of *Gentile* "largely foreclosed a direct claim under the theory of equity expropriation . . .". The Nevada Supreme Court's reliance on *Brookfield* might seem at odds with NRS 78.012(3) which provides:

The plain meaning of the laws enacted by the Legislature in this title, including, without limitation, the fiduciary duties and liability of the directors and officers of a domestic corporation set forth in NRS 78.138 and 78.139, must not be supplanted or modified by laws or judicial decisions from any other jurisdiction.

However, the distinction between direct and derivative claims is not found in statute and thus does not involve statutory interpretation. Nonetheless, it is somewhat disconcerting to see the Nevada Supreme Court simply following *Gentile* and then *Brookfield* without providing any independent analysis of why one or the other should be followed in the first instance.

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