

## Miami Courts Drive Florida Business Law

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Recent opinions in **corporate governance litigation** make clear that Miami courts are leading the way in developing Florida case law governing key corporate governance issues. In **Dinuro Investments, LLC v. Camacho**, Judge John Thornton of the Miami-Dade Complex Business Litigation Section dismissed an LLC member's claims against the company's members and managers. On July 9th, the [Third District Court of Appeal affirmed that decision](#), and in doing so, issued an opinion that has implications throughout the entire state.

The issue in the case was the same key issue present in almost any shareholder litigation: who gets the money? In other words, is the claim direct or derivative? In a direct claim, the plaintiff-shareholder receives any and all recovery. In a derivative action, the shareholder is still the plaintiff, but any recovery goes to the company. Given the bottom line nature of the distinction, it is not surprising that this is a hotly contested issue.

The difficulty in litigating the issue stemmed from the fact that the Florida Supreme Court has not weighed in on the issue. In the absence of controlling authority, the various District Courts of Appeal have applied various tests and standards over the past 50 years. Unsatisfied with this lack of clarity on a key issue, the Third DCA stepped in, analyzed the history of Florida's law in this area, and set forth a clear two-prong rule: A shareholder must meet both the "direct harm test" and the "special injury test" before proceeding with a direct claim.

This opinion clarifies Florida case law and should give comfort to Florida corporations, particularly those in the Third DCA's South Florida jurisdiction. Under the rule, Florida corporations will benefit in two ways. First, if it is the corporation that is injured, it is the corporation that will recover. Second, the opinion confirms that an improperly asserted direct action should be dismissed at the outset of the case, saving the corporate defendants the time and expense of discovery.

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