

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARAMETRIC SOUND
CORPORATION; VTB HOLDINGS,
INC.; KENNETH POTASHNER; EL
WOOD NORRIS; SETH PUTTERMAN;
ROBERT KAPLAN; ANDREW WOLFE;
AND JAMES HONORE,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

Respondents,

and

VITIE RAKAUSKAS, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED; AND
INTERVENING PLAINTIFFS,
RAYMOND BOYTIM AND GRANT
OAKES,

Real Parties in Interest.

No. 66689

FILED

SEP 03 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

**ORDER FOR SUPPLEMENTAL BRIEFING AND INVITING
PARTICIPATION BY AMICUS CURIAE**

This case involves a writ of mandamus challenging the district court's determination that real parties in interest properly stated a claim to bring a direct shareholder suit against petitioners. Following oral arguments on September 1, 2015, this court has determined that supplemental briefing is necessary. In particular, we direct the parties to address two issues.

First, the parties should address how the test articulated in *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 62 P.3d 720 (2003), compares to

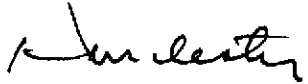
the three primary tests—direct harm, special injury, and duty owed—other jurisdictions use to distinguish direct suits from derivative suits. This analysis should include a critique of the tests, the effect, if any, the tests have on opening litigation floodgates against directors, and fairness considerations regarding whether shareholders or surviving entities are entitled to monetary judgments. Further, the parties should recommend the test best for Nevada to use to distinguish direct suits from derivative suits and articulate what facts must be alleged to sustain a direct shareholder lawsuit at the pleading stage.

Second, the parties should address whether share dilution claims can be brought directly or derivatively. If direct suits are sometimes permissible, the analysis should consider what conditions are necessary to allow a direct suit based on dilution.

Petitioners shall have 15 days from the date of this order to file and serve a supplemental brief. Respondents shall have 15 days from the service of petitioners' supplemental brief to file their supplemental brief. The briefs shall comply with the requirements of NRAP 32(a)(4)-(7).

This court has determined that briefing by amicus curiae may be helpful to the important issues raised by this case. Therefore, the Business Law Section of the State Bar of Nevada is invited to submit an amicus brief on the issues outlined above. If an amicus brief is submitted, it must be filed within 45 days from the date of this order and comply with the requirements of NRAP 32(a)(4)-(7).

It is so ORDERED.

 C.J.
Hardesty

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Dechert LLP/San Francisco
Holland & Hart LLP/Las Vegas
Sheppard, Mullin, Richter, & Hamilton LLP
Snell & Wilmer, LLP/Las Vegas
Dechert LLP/New York
Saxena White PA
Robbins Geller Rudman & Dowd, LLP
O'Mara Law Firm, P.C.
Eighth District Court Clerk