State of New York
Court of Appeals

To be argued Thursday, April 10, 2025

No. 50 Matter of Won Yi v New York State Board of Professional Medical Conduct

Dr. Won Yi was a board-certified radiation oncologist and director of a private radiation oncology practice in Buffalo in 2018, when the State Bureau of Professional Medical Conduct (Bureau) charged him with practicing medicine with gross negligence and incompetence stemming from his treatment of seven patients between 2009 and 2013. At a hearing before a committee of the State Board for Professional Medical Conduct (BPMC), the Bureau called one medical expert, Dr. Isamettin Aral, who testified the doctor had deviated from the generally accepted standard of care, including clinical practice guidelines issued by professional societies including the American College of Radiology (ACR) and the National Comprehensive Cancer Networks (NCCN). Dr. Yi testified on his own behalf and called an expert, Dr. Michael Kos, who testified that he did not deviate from the standard of care. After a nine-day hearing, the BPMC committee sustained 16 of the 17 charges, most of them relating to the use of excessive doses of radiation on patients, and revoked his license. He commenced this proceeding to challenge the determination, arguing, in part, that clinical practice guidelines issued by professional societies do not determine the standard of care.

The Appellate Division, Third Department confirmed the BPMC determination in a 3-2 decision, saying that "the ACR and NCCN guidelines provide contemporary informed treatment recommendations that are flexible and subject to adjustment – but do not purport to define an authoritative standard of care.... Even so, and notwithstanding Aral's express identification of these guidelines as the standard of care, it is evident from his detailed testimony as to each patient that he utilized the guidelines as 'one link in the chain' of his evaluation process" and "he provided a factual basis for his opinions as to both negligence and incompetence going far beyond a mere recitation of the guidelines.... Thus, we conclude that he provided competent expert testimony that the Hearing Committee could rely on in its determinations." The practice guidelines were not included in the record, but the court took judicial notice of them."

The dissenters argued that Dr. Aral's testimony did not provide substantial evidence to support the determination because it was "premised upon professional practice materials [the practice guidelines] intended to be used only as educational tools and which, by express disclaimer, are designed to be merely advisory in nature.... Here, the findings of the Committee were premised entirely on the erroneous understanding of [BPMC's] expert, Isamettin Aral, that professional societies establish the accepted standard of care." They said, "Although we acknowledge that [appellant] pursued what appears to have been aggressive care with the goal of prolonging the lives of patients A-G and was in accordance with their wishes, the record lacks any reference to pervasive standards outlining physician obligations relative to the extraordinary circumstances of terminally ill patients with advanced, late-stage disease."

For appellant Won Yi: Anthony Z. Scher, Rye Brook (914) 328-5600
For respondent BPMC: Assistant Solicitor General Kevin C. Hu (518) 776-2007

State of New York
Court of Appeals

To be argued Thursday, April 10, 2025

No. 51 People v Daniel Sherlock

Daniel Sherlock, a resident of New York State, was arrested on federal charges in 2017 after federal investigators recovered child pornography from his computer in his Manhattan office. Some of the 86 pornographic images depicted sadomasochistic conduct. At the time of his arrest, Sherlock was on probation for a prior crime, third-degree obscenity, based on his possession of a sexual performance of a child. He pled guilty to possession of child pornography in the Southern District of New York and was sentenced to 18 months in federal prison. Prior to his release, because he would be required to register in New York as a sex offender, the Board of Examiners of Sex Offenders prepared a Risk Assessment Instrument (RAI) assessing him 25 points and making him a presumptive level one offender, the lowest risk level available under the Sex Offender Registration Act (SORA).

At Sherlock's SORA hearing, the prosecution sought to designate him a sexually violent offender under Correction Law § 168-a(3)(b), which defines a sexually violent offense to include "conviction of a felony in any other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred." Sherlock opposed the "sexually violent" designation, arguing that section 168-a(3)(b) did not apply to his conviction because his crime occurred in New York and he was required to register in New York.

Suffolk County Court assessed him 85 points on the RAI, including 30 points for one victim being 10-years-old or less, and designated him a level two sexually violent offender. It said the definition of sexually violent offense in Correction Law § 168-a(3)(b) "is plain and unambiguous" and applied to Sherlock's conviction because "the statute uses the term 'any other jurisdiction,' not any other state. Since the defendant's conviction was within the federal jurisdiction, it is a different jurisdiction than New York State." The court held the prosecution properly assessed 30 points for one of the victims being less than 11years old, holding that an investigator's affidavit that said a girl pictured in the photo cache was between 8 and 13 when she was photographed, provided clear and convincing evidence.

The Appellate Division, Second Department affirmed, finding Sherlock "was properly designated a sexually violent offender pursuant to the terms of Correction Law § 168-a(3)(b)" and was properly assessed 30 points for at least one victim being 10 years old or younger.

Sherlock argues that section 168-a(3)(b) does not apply because, although he was convicted of a felony in federal court, he was not required to register in the federal jurisdiction and instead registered in New York. He was not convicted of a "sexually violent offense" recognized by New York law, he says, and section 168-a(3)(b) "only allows for a sexually violent designation if the offender is required to register in that other jurisdiction, a key element which is absent here since there is no federal sex offender registry." He also argues the statute violates his rights to due process and equal protection, in part because he could not have been designated sexually violent if he had been convicted of the same conduct in a New York State court. As for the 30 points assessed for one victim's age, he says the affidavit stating that she was between 8 and 13 years old is not clear and convincing evidence that she was 10 or less.

For appellant Sherlock: Lisa Marcoccia, Riverhead (631) 852-1650
For respondent: Suffolk County Assistant District Attorney Lauren Tan (631) 852-2469

State of New York
Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, April 10, 2025

No. 2 Ezrasons, Inc. v Rudd

Ezrasons, Inc., a New York corporation, filed this shareholder derivative action in Manhattan on behalf of Barclays PLC, an English corporation that is registered to do business in New York, against 46 current and former officers and directors of Barclays who had been convicted or censured for money laundering, conspiracy to manipulate trading and other misconduct between 2008 and 2018, which cost Barclays $18 billion in fines and sharply reduced the value of its shares. Ezrasons alleged that the defendants violated their fiduciary duties as officers and directors under English Companies Act (ECA) §§ 174 and 178, which governs shareholder derivative actions in England. The defendants moved to dismiss on the ground that Ezrasons lacked standing to bring the suit because it was not a registered "member" of Barclays as required by English law.

Ezrasons argued it had standing under New York law because Business Corporation Law (BCL) § 1319 overrides the common-law "internal affairs" doctrine, which otherwise "provides that relationships between a company and its directors and shareholders are generally governed by the substantive law of the jurisdiction of incorporation," while "procedural rules are governed by the law of the forum" (Davis v Scottish Re Group Ltd. [30 NY3d 247]). BCL § 626(a) states, "An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor, by a holder of shares or of voting trust certificates of the corporation or of a beneficial interest in such shares or certificates." BCL § 1319 clarifies that section 626 "shall apply to a foreign corporation doing business in this state, its directors, officers and shareholders."

Supreme Court dismissed the suit, ruling that BCL § 1319 did not override the internal affairs doctrine because it "is a mere statutory predicate to jurisdiction." It found the ECA's membership requirement for standing is a substantive rule that Ezrasons failed to meet.

The Appellate Division, First Department affirmed, saying the internal affairs doctrine "has been consistently invoked by this Court in derivative actions to apply foreign law on substantive issues, including those affecting a party's right to sue." It said BCL § 1319 "merely confers jurisdiction upon New York courts over derivative suits on behalf of a foreign corporation" and "does not require application of New York law in such suits" nor override the internal affairs doctrine.

Ezrasons argues that the plain text and legislative history of BCL § 1319 demonstrate the Legislature's intent to override the internal affairs doctrine and "apply New York's gatekeeping rules governing derivative actions to foreign corporations doing business in New York." It says the "common-law doctrine must give way to a statutory directive." Ezrasons also argues that it has standing under New York law because the English statute's membership requirement is procedural, not substantive, and the lower courts' contrary conclusion conflicts with Davis v Scottish Re.

For appellant Ezrasons: Francis A. Bottini, Jr., LaJolla, CA (858) 914-2001
For respondents Rudd et al (defendant officers): Lara A. Flath, Manhattan (212) 735-3000

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To be argued Thursday, April 10, 2025

No. 3 Haussmann v Baumann

Rebecca Haussmann and another shareholder of the German company Bayer AG filed this derivative action on its behalf in Manhattan, alleging breach of fiduciary duty by its directors and two New York investment banks involved in Bayer's $66 billion purchase of Monsanto Inc. in 2018. The acquisition, which was negotiated, financed, and closed in New York, resulted in Bayer taking on Monsanto's extensive liability for products posing a risk to human health and led to a decline in Bayer's stock value. The plaintiffs alleged that the defendants violated their fiduciary duties under the German Stock Corporation Act (GSCA) by failing to conduct due diligence on the purchase in order to enrich themselves.

The defendants moved to dismiss for lack of standing and other grounds, arguing that the plaintiffs lacked standing under German law because they did not satisfy the GSCA's requirement that they obtain permission to sue from the regional court in Leverkusen, Germany, where Bayer AG is headquartered. The plaintiffs argued they had standing under New York law because Business Corporation Law (BCL) § 1319 overrides the internal affairs doctrine, which provides that relations between a company and its shareholders are generally governed by the substantive law of the jurisdiction where it was incorporated, while procedural rules are governed by the law of the forum where the suit was brought. BCL § 626 would give plaintiffs standing as shareholders without court permission, and BCL § 1319 provides that section 626 "shall apply to a foreign corporation doing business in this state, its directors, officers and shareholders." The plaintiffs also argued that the GSCA provision requiring court permission to sue is procedural, not substantive, and thus requires courts to apply New York law on the issue of standing.

Supreme Court dismissed the suit, finding the plaintiffs lacked standing under German law. "As Bayer rightfully asserts, the internal affairs doctrine requires application of German law to determine whether the Plaintiffs have standing to bring this derivative suit."

The Appellate Division, First Department affirmed, saying "we agree with Supreme Court that the internal affairs doctrine applies to this shareholder derivative action on behalf of a foreign corporation to make applicable relevant substantive German laws. Furthermore, we agree with Supreme Court's implicit finding that the German Stock Corporation Act § 148 is a substantive law rather than a procedural one and requires plaintiffs to seek leave from the German court to bring a derivative action."

For appellants Haussmann et al: Francis A. Bottini, Jr., LaJolla, CA (858) 914-2001
For respondents Baumann et al: William Savitt, Manhattan (212) 403-1000