



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

CONFIN INTERNATIONAL )  
INVESTMENTS, INC., )  
 )  
Plaintiff, )  
 )  
v. ) C.A. No. 19997  
 )  
AT&T CORP., EDWARD M. DWYER, )  
R. REED HARRISON, III, JOHN C. )  
PETRILLO, GARY R. WEIS, GEOFF S. )  
WEBESTER, PATRICIO E. NORTHLAND, )  
A. GARY AMES, DAVID C. KLEINMAN, )  
and JORGE P. MONTOYA, )  
 )  
Defendants, )  
 )  
and )  
 )  
AT&T LATIN AMERICA CORP., )  
 )  
Nominal Defendant. )

**MEMORANDUM OPINION AND ORDER**

**Submitted: March 8, 2004**  
**Decided: March 12, 2004**

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LAMB, Vice Chancellor.

This case raises the familiar question of whether alleged fiduciary misconduct by a majority stockholder that concededly gives rise to a derivative claim on behalf of a controlled corporation also gives rise to individual (or class) claims on the part of minority stockholders. The complaint in this matter relates to a course of business dealings between AT&T Corp. and AT&T Latin America Corp. (“ATTL”) starting in 2000, when AT&T created ATTL, and ending in October 2002, when AT&T announced its decisions (i) to stop providing additional funding to ATTL, and (ii) to change the nature of its basic strategic relationship with ATTL to the latter’s disadvantage. As a result of these developments, ATTL announced that it anticipated a \$40 million funding shortfall and expected to breach credit agreements due to falling revenues.

As alleged in the complaint, AT&T’s unilaterally taken actions amounted to a scheme to “ruin” ATTL, in which the individual defendants (ATTL’s directors) acquiesced. The complaint does not address any self-dealing transaction between the two companies. The complaint is drawn in two counts. Count I is alleged as a derivative claim on behalf of ATTL; Count II, which relies upon the same general allegations of fact, purports to be a class action, brought on behalf of ATTL’s minority stockholders.

On April 16, 2003, nominal defendant ATTL filed a suggestion of bankruptcy. The next day, it filed to convert the previously involuntary proceeding into a voluntary filing under Chapter 11 of the federal bankruptcy code. That proceeding remains pending in the United States Bankruptcy Court for

the Southern District of Florida. The parties agree that there is no expectation of any recovery on behalf of ATTL's equity holders.

At oral argument on the defendants' motion for judgment on the pleadings, held on March 8, 2003, counsel for the plaintiff, Confin International Investments, Inc., conceded that the derivative claim (Count I) must be dismissed as a consequence of developments in ATTL's bankruptcy proceeding.<sup>1</sup> She argued, nonetheless, that Count II properly states a direct or individual claim that belongs to Confin and can be maintained by it on behalf of a class of similarly situated minority stockholders of ATTL. Of course, the designation given a claim in a complaint is not controlling. Instead, when deciding whether a complaint states a direct or a derivative cause of action, the court "look[s] to the nature of the wrongs alleged in the body of the complaint, not to the Plaintiff's designation or stated intention."<sup>2</sup>

A shareholder may maintain a direct action "if he complains of an injury distinct from that suffered by other shareholders or a wrong involving one of his contractual rights as a shareholder."<sup>3</sup> Confin concedes, as it must, that its complaint does not raise any issue about any of its contractual rights as a

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<sup>1</sup> See *Pepper v. Litton*, 308 U.S. 295, 307 (1939) (noting that claims for breach of fiduciary duties normally brought through stockholder derivative actions are brought by trustees upon the bankruptcy of the corporation).

<sup>2</sup> *Lipton v. News Int'l, Plc.*, 514 A.2d 1075, 1078 (Del. 1986).

<sup>3</sup> *Id.*

stockholder of ATTL. Thus, the court's inquiry must focus on whether Confin "has alleged 'special' injury, in whatever form."<sup>4</sup>

The focus of Confin's arguments is on the fact that AT&T is also a very large creditor of ATTL.<sup>5</sup> For example, Confin argues there is "special injury" "suffered only by those minority public shareholders of [ATTL] who were deprived on the opportunity to realize the full value of their investment ... in light of the action of AT&T and the other defendants."<sup>6</sup> Implicitly, Confin is suggesting that AT&T's conduct was designed to gain some economic advantage in its capacity as a creditor (or, perhaps, as a competitor) at the expense of ATTL and its stockholders. Confin recognizes that AT&T also suffered in its capacity as the majority stockholder of ATTL, but argues (without adequate explanation) that this harm to AT&T "was separate and distinct from the harm suffered by plaintiff and the other public shareholders of [ATTL]."<sup>7</sup>

No matter how the court looks at the facts alleged, it is impossible to say that Confin (or the public stockholders as a group) suffered any "special" injury. Rather, viewing the allegations in the complaint as favorably to plaintiff's position

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<sup>4</sup> *Id.*

<sup>5</sup> A disclosure statement filed in the ATTL bankruptcy proceeding, dated December 12, 2003, reveals that AT&T and its subsidiaries filed an unsecured claim in that proceeding in the amount of \$690 million. At oral argument, counsel for Confin agreed that the court could take notice of the matters disclosed in this document.

<sup>6</sup> Plaintiff's Br. in Opp'n 7 (Dec. 5, 2003).

<sup>7</sup> *Id.*

as the law allows, the conclusion is inescapable that Confin's injury flows entirely from the diminution in value of ATTL. That injury was suffered equally by all of ATTL's stockholders, including AT&T (at least in its capacity as a stockholder). Under settled principles of law, where injury of that nature is caused by fiduciary misconduct, the claim belongs to the corporation and can only be prosecuted by an individual stockholder, such as Confin, derivatively, in the name of the corporation.<sup>8</sup>

In reaching this conclusion, the court has considered and rejects Confin's effort to analogize the facts of this case to those presented in *In re Gaylord Container Corp. Shareholder Litigation*.<sup>9</sup> That case involved actions taken by a board of directors allegedly to entrench the managers in power, including measures that "markedly diminish[ed] the voting power" of the stockholders.<sup>10</sup> Moreover, the measures taken in that case affected management and non-management stockholders differently.<sup>11</sup> Nothing of the kind is alleged in Confin's complaint. Rather, in this case, the injury alleged is a loss in the value of the ATTL shares held by all stockholders. That loss in value is simply the indirect effect of a diminution in value of the entity as a whole.

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<sup>8</sup> *In re First Interstate Bancorp Litig.*, 729 A.2d 851, 861-62 (Del. Ch. 1998).

<sup>9</sup> 747 A.2d 71 (Del. Ch. 1999).

<sup>10</sup> *Id.* at 83.

<sup>11</sup> *Id.* at 84.

For all these reasons, the motion for judgment on the pleadings is  
GRANTED. IT IS SO ORDERED.