

Lawsuits:

The official name of the lawsuit:

7547 PARTNERS, Plaintiff Below, Appellant, **v. SCOTT A. BECK, SAAD J. NADHIR, JEFFRY J. SHEARER, J. BRUCE HARRELD**, **ARNOLD C. GREENBERG, M. HOWARD JACOBSON, PEER PEDERSON** and **BOSTON CHICKEN, INC.**, Defendants Below, Appellees.

No. 432, 1995

SUPREME COURT OF DELAWARE

682 A.2d 160; 1996 Del. LEXIS 321

May 21, 1996, Submitted: August 19, 1996, Decided

PROCEDURAL POSTURE: Plaintiff partners appealed the judgment of the New Castle County Court of Chancery (Delaware), which denied the partners' motion for leave to amend their complaint in a shareholders' derivative action in order to prove that the partners had standing to bring the action against defendant directors.

OVERVIEW: A group of partners filed a shareholders' derivative action alleging that a corporation's directors breached their fiduciary duties in authorizing a private placement that accompanied the initial public offering (IPO) of the corporation's common stock. The court affirmed the lower court's denial of the partners' motion for leave to amend their complaint to prove that they had standing to bring the derivative suit. ion exempting good faith purchasers from its terms.

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I. Factual and Procedural Background

On **November 9, 1993**, Boston Chicken made an initial public offering of 1.9 million shares of its common stock at \$ 20 per share. Boston Chicken concurrently sold 900,000 shares of its common stock to several of its directors and ex-ecutive officers for \$ 18.60 per share, the equivalent of the IPO **[**3]** price less an underwriter discount of \$ 1.40 (the "Private Placement"). The company specified the pricing terms of the IPO and the Private Placement in its Prospectus, which was issued on November 8, 1993. Due to heavy demand for Boston Chicken stock, public trading opened at \$ 45 per share and closed at \$ 48.50 per share on November 9th. Partners purchased its 100 shares of Boston Chicken stock in the IPO.

On **November 10, 1993**, Partners filed a derivative action in the Court of Chancery alleging that Boston Chicken's directors were grossly negligent in setting the IPO price at the "absurdly low" amount of \$ 20 per share. The complaint also alleged that, "by approving and acquiescing in the pricing of the [IPO]," the **directors enriched Messrs. Beck, Nad-hir, Shearer and Harreld** (Boston Chicken's top executive officers) by permitting them to acquire the stock at a grossly inadequate price. The complaint charged that the company's directors "wasted Boston Chicken's assets and did not act independently, did not remove or properly resolve conflicts of interest, and did not exercise rational business judgment."

The Court of Chancery dismissed Partners' complaint for lack of standing. **[**4]** . g.

Here's the more direct allegation of insider trading:

The proposed amended complaint (the "Amended Complaint") alleged that Boston Chicken's directors misused confidential information about the extraordinary demand for Boston Chicken stock to enrich themselves. The directors allegedly knew, when they authorized the Private Placement, that the demand [**5] for Boston Chicken stock would force the market price up and that they would "reap huge profits...when they acquired [*162] Boston Chicken shares in the Private Placement." The Amended Complaint alleged that the directors' breaches of fiduciary duty "ripened and culminated in the delivery of shares pursuant to the Private Placement," which took place on November 16, 1993, at the same time that Partners received its shares.

Here's the original case, which the plaintiffs are appealing above:

7547 PARTNERS, Plaintiff, v. SCOTT A. BECK, SAAD J. NADHIR, JEFFRY J. SHEARER, J. BRUCE HARRELD, ARNOLD C. GREENBERG, M. HOWARD JACOBSON, and PEER PEDERSEN, Defendants, BOSTON CHICKEN, INC., A Nominal Defendant.

C.A. No. 13252

COURT OF CHANCERY OF DELAWARE, NEW CASTLE

1995 Del. Ch. LEXIS 17

January 19, 1995, Argued
February 24, 1995, Decided