

# Corporate & Financial Weekly Digest

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## **Creditors of Insolvent Limited Liability Companies Cannot Sue Derivatively**

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The Supreme Court of Delaware recently held that creditors of insolvent Delaware limited liability companies (LLCs) lack standing to bring derivative suits on behalf of the LLCs.

In March 2010, CML V brought both derivative and direct claims against the present and former managers of JetDirect Aviation Holdings LLC in the Court of Chancery after JetDirect defaulted on its loan obligations to CML. The Vice Chancellor dismissed all the claims, finding that, as a creditor, CML lacked standing to bring derivative claims on behalf of JetDirect, and CML appealed.

The Supreme Court affirmed the Vice Chancellor's decision, holding that Sections 18-1001 and 18-1002 of the Delaware Limited Liability Company Act (LLC Act) conclusively establish that only members or assignees of an LLC may sue derivatively in the name of the company. In doing so, the Court rejected CML's argument that creditors of insolvent LLCs should be treated similarly to creditors of insolvent corporations, pointing out that the plain language of the LLC Act precluded such a result. In addition, the Supreme Court further rejected CML's argument that the denial of standing to creditors was an unconstitutional limitation on the Court of Chancery's powers "in equity."

*CML V, LLC v. Bax*, No. 735, 2010 (Del. Sept. 2, 2011, corrected on Sept. 6, 2011).

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