

Part 10

Actions by Partners

48-2e-1001 Direct action by partner.

- (1) Subject to Subsection (2), a partner may maintain a direct action against another partner or the limited partnership, with or without an accounting as to the limited partnership's activities and affairs, to enforce the partner's rights and otherwise protect the partner's interests, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.
- (2) A partner maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.
- (3) A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Enacted by Chapter 412, 2013 General Session

48-2e-1002 Derivative action.

A partner may maintain a derivative action to enforce a right of a limited partnership if:

- (1) the partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or
- (2) a demand under Subsection (1) would be futile.

Enacted by Chapter 412, 2013 General Session

48-2e-1003 Proper plaintiff.

A derivative action to enforce a right of a limited partnership may be maintained only by a person that is a partner at the time the action is commenced and:

- (1) which was a partner when the conduct giving rise to the action occurred; or
- (2) whose status as a partner devolved on the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

Enacted by Chapter 412, 2013 General Session

48-2e-1004 Pleading.

In a derivative action to enforce a right of a limited partnership, the complaint must state with particularity:

- (1) the date and content of the plaintiff's demand and the response to the demand by the general partner; or
- (2) why demand should be excused as futile.

Enacted by Chapter 412, 2013 General Session

48-2e-1005 Special litigation committee.

- (1) If a limited partnership is named as or made a party in a derivative proceeding, the limited partnership may appoint a special litigation committee to investigate the claims asserted in the

proceeding and determine whether pursuing the action is in the best interests of the limited partnership. If the limited partnership appoints a special litigation committee, on motion by the committee made in the name of the limited partnership, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

- (a) enforcing a person's right to information under Section 48-2e-304 or 48-2e-407; or
 - (b) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.
- (2) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be partners.
- (3) A special litigation committee may be appointed:
- (a) by a majority of the general partners not named as parties in the proceeding; and
 - (b) if all general partners are named as parties in the proceeding, by a majority of the general partners named as defendants.
- (4) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited partnership that the proceeding:
- (a) continue under the control of the plaintiff;
 - (b) continue under the control of the committee;
 - (c) be settled on terms approved by the committee; or
 - (d) be dismissed.
- (5) After making a determination under Subsection (4), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under Subsection (1) and allow the action to continue under the control of the plaintiff.

Enacted by Chapter 412, 2013 General Session

48-2e-1006 Proceeds and expenses.

- (1) Except as otherwise provided in Subsection (2):
- (a) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the plaintiff; and
 - (b) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the limited partnership.
- (2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited partnership.
- (3) A derivative action on behalf of a limited partnership may not be voluntarily dismissed or settled without the court's approval.

Enacted by Chapter 412, 2013 General Session