

## **Shareholder derivative suit**

### **Abstract**

This thesis concerns itself with the topic of derivative suits and shareholder derivative suits in particular. In the ever-changing landscape of corporate governance, derivative suits serve as a tool for the minority shareholder to enforce claims, which arise following a breach of duty by the directors in the case that the company itself is paralyzed by the directors' unwillingness to litigate.

The core of the issue at hand lies in striking the balance between enhancing shareholder and company rights and allowing the directors to perform their duties without too much impediment and thus stifling the prosperity of the corporation. In such cases, the very goal which all business companies intend to pursue, the generation of profit, may be jeopardized. The hypothesis of this thesis seeks to answer the question, whether the Czech regime of shareholder derivative suits is suitably positioned to match the relevant provisions, contained in some of the countries with the most advanced corporate governance systems.

To confirm or deny this hypothesis, the first section of this thesis puts forth a general summarization of the derivative suit in its basic form. The next step examines the historical evolution of the derivative suit within the two countries in which the concept of derivative suit has the longest history, that being the United States of America and the United Kingdom. Section one concludes with laying out the parameters upon which the second section builds, utilizing them in a comparative analysis. This analysis sets the Czech shareholder derivative action side by side with similar provisions concerning the derivative actions in Germany and the UK, examining which of the jurisdictions facilitates shareholder derivative suits the most permissively, and which place the greatest restrictions on their use. The conclusion of this section proposes three *de lege ferenda* changes to the Czech shareholder derivative action, seeking to enhance its performance while not suffocating the managerial sphere. A short mental exercise is given to the very foundations upon which corporate law is built and debates, whether a shift would be beneficial to corporate governance as a whole.

**Klíčová slova: derivative suit, minority shareholder, corporate governance.**