

# Mark Zuckerberg Has No Duty to Fix the World, Judge Rules

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***Mark Zuckerberg** may be one of the world's most powerful people by dint of his control of Facebook owner Meta, but that doesn't expose him to liability for failing to fix the world's problems, Delaware's Chancery Court ruled.*

In a lengthy opinion that digressed into Modern Portfolio Theory and author David Foster Wallace's exegesis of a joke about fish, **Vice Chancellor J. Travis Laster** put to rest any idea lawyers could bootstrap a lawsuit against Zuckerberg and Meta directors for managing the company in a way that damages the economy as a whole.

Delaware corporate law assigns a duty to directors to protect the interests of shareholders of one company, not investors across the entire economy, Laster wrote.

"That point is so basic that no Delaware decisions have felt the need to say it," the judge wrote in an April 30 decision. "Fish don't talk about water."

(To explain the latter remark, Laster included a lengthy footnote about the "old joke" in which an old fish says "how's the water?" to two younger fish, one of whom then says "what's water?" David Foster Wallace cited the joke in his 2005 commencement speech at Kenyon College, concluding "the most obvious, ubiquitous, important realities are often the ones that are hardest to see and talk about.")

Lawyers at Heyman Enerio Gattuso & Hirzel, who cite Sun Tzu's "Art of War" on their

website (“The victorious warrior first wins and then seeks battle; the defeated warrior first battles and then seeks victory”) sued Zuckerberg, Sheryl Sandberg, Mark Andreeson and others, claiming that according to the economic theory known as modern portfolio theory, Meta directors owed a duty to all shareholders. That theory assumes investors own diversified stock portfolios, which the lawyers said meant corporate directors must act accordingly.

Meta’s controlling shareholders, they said, derives benefits from producing harmful content and other practices that harm the rest of the economy, and therefore the portfolio of diversified investors. Under Delaware law, shareholders can file derivative actions on behalf of the corporation against officers and directors they claim are gaining special benefits not shared by minority shareholders. The lawyers tried to use that procedure to sue Zuckerberg for gaining a personal benefit at the expense of all investors.

Nice try but no dice, Laster ruled.

“In short, the plaintiff has rediscovered the concept of externalities,” he wrote. This is the idea companies can derive a benefit from activities that might harm others, like polluting. The law has ways to deal with externalities, the court said, but not by filing a shareholder derivative suit.

“In the end, the plaintiff paints a Panglossian ideal of a world without externalities. I would like to live in that world,” the court concluded. “But this lawsuit is not the right vehicle for creating that future or for making the trip.”

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