ECCL SYMPOSIUM *DIRECT CLAIMS OF SHAREHOLDERS AND THIRD PARTIES AGAINST DIRECTORS*: REPORT FROM THE SCIENTIFIC LIFE

The English-language journal *ECCL – European Company Case Law*, together with Mykolas Romeris University, School of Law, held the 7th ECCL Conference on *Direct claims of shareholders and third parties against directors* in Vilnius on May 16, 2025.[1]

The conference began with an introductory speech by the organizers and a welcome address by **Lyra Jakulevičienė**, Dean of the Law School, Mykolas Romeris University.

The program was, as usual, divided into morning and afternoon sessions. The first presentation in the morning session, chaired by **Virginijus Bitė** from Mykolas Romeris University, was *Personal liability and the company director – contrasting trends in recent English caselaw*, delivered by **Brenda M. Hannigan** from the University of Southampton (The United Kingdom). The presentation explored the scope of directors' personal liability to third parties and, to a lesser extent, to shareholders, situating the discussion within the broader policy tensions of modern company law. Although there is a common perception that directors face "high risk" of personal exposure, the analysis demonstrates that liability is in fact limited, arising mainly where directors step outside their constitutional role or engage in fraudulent or bad faith conduct. The intersection of corporate personality, limited liability, and the principles of tort law forms the central backdrop, with courts drawing clear distinctions between acts of deceit and intentional wrongdoing, on the one hand, and negligent or good faith conduct, on the other.

The presentation also discussed the recent Supreme Court decision in Lifestyle Equities CV v Ahmed [2024] UKSC 17. In this case, Lord Leggatt explained that directors are not automatically protected from liability in tort, but they can only be held responsible as "accessories" if they knew, or deliberately ignored, the facts that made the company's actions unlawful. The strict liability placed on the company does not automatically extend to its directors. In addition, any remedy such as an account of profits applies only to profits the director personally gained, not to the company's overall profits. In this instance, the directors were found not liable, showing that the situations in which personal responsibility arises remain very limited.

Finally, the presentation highlighted the practical implications of these principles. In smaller companies, directors are more likely to attract personal liability where their conduct is closely tied to the company's operations. By contrast, in larger corporations, liability risks are substantially mitigated by structural separation, indemnities, and insurance. Overall, the presentation argues that tort law functions less as an erosion of

[1] In *Acta Universitatis Carolinae Iuridica*. 2024, Vol. LXX, No. 3, we reported on the conference organized by the journal *ECCL – European Company Case Law* on topic *CSDD, Sustainability and Corporate Law*, which took place on 31 May 2024 at Ghent University Law School.

limited liability and more as a reinforcement of directors' duties to act honestly and in good faith.

This very interesting topic of British law was subsequently followed by the Portuguese perspective. **José Ferreira Gomes** from University of Lisbon (Portugal) delivered his presentation on *Reflexive or direct loss? Shareholders' claims against directors for breach of protective rules and for wilful infliction of damages against good morals*. The presentation examined the legal issues surrounding reflective and direct loss in company law, focusing on how shareholders can claim against directors. Under traditional English law, shareholders are not allowed to claim damages for losses that are similar to those suffered by the company. This approach is based on the idea that allowing such claims could lead to unfair double compensation and disrupt the company's management. Important legal cases, like Marex (2020), support the view that shareholders' losses are tied to the company's losses, meaning the company itself should be the one to pursue claims.

In comparison, German law offers more protection for minority shareholders by allowing them to claim for personal losses under specific legal rules. The presentation further argued that current policies wrongly dismiss the problems faced by minority shareholders, who often suffer their own financial losses separate from the company's situation. The idea that allowing these claims would lead to double liability for directors is too simplistic and overlooks the unique challenges minority shareholders encounter. Ultimately, it calls for a reevaluation of the laws to allow minority shareholders to seek compensation for their losses, thereby ensuring fair treatment and protection against being taken advantage of by those in control.

After a short break, the next substantive part of the morning session followed, this time moderated by **Agnė Tikniūtė**, from the Supreme Court of Lithuania. The third speaker was **Virginijus Bitė** from Mykolas Romeris University (Lithuania). His topic was *Direct claims of shareholders and third parties against directors: Lithuanian approach*. The presentation examined the evolving legal framework for direct claims against company directors under Lithuanian law, analyzing statutory provisions and Supreme Court of Lithuania case law. The research presented multiple statutory grounds for direct claims: creditor claims in intentional bankruptcy cases (Art. 20, § 7 of the Company Bankruptcy Law), subsidiary liability for ultra vires transactions (Art. 2.83, § 3 of the Civil Code), reorganization-related damages (Art. 69, § 6 of the Law on Companies), and general tort liability (Art. 6.263 of the Civil Code).

The presentation traced judicial evolution from earlier Supreme Court of Lithuania practice restricting creditor claims to post-bankruptcy scenarios toward broader recognition of direct rights for creditors and shareholders, though applied restrictively in exceptional cases. These rights are neither contingent upon bankruptcy filing nor limited by the stage of bankruptcy proceedings.

Four critical conditions were established: unlawful actions directly targeting the claimant, individual/direct damage, causal connection, and fault (with rebuttable presumption of intent or gross negligence). The analysis distinguished between derivative damage (affecting creditors generally) and individual/direct damage (harming specific creditor interests). Case examples included breach of restructuring plans, improper tax administration, and creditor priority violations. The subsidiarity requirement mandates objective evidence that the company cannot satisfy creditor claims. Bitė also identified key areas that require further clarification, in particular distinguishing company versus director actions, direct claims against board members, subsidiarity scope, and the continuing relevance of intentional bankruptcy provisions.

Finally, the last presentation of the morning session was by **Iris Barsan** from Université Paris-Est Créteil (France). In her engaging talk, she focused on *Director liability towards shareholders and third parties: the French example*. This presentation examined director liability towards shareholders and third parties under French law, based on general civil liability principles of fault, causation, and damage. The analysis revealed that director liability litigation is rare while companies are solvent but becomes significant during insolvency. French law distinguishes between internal liability (towards the company) and external liability (towards shareholders and third parties).

Directors, including CEOs, board members, and de facto directors, face individual liability. While French law lacks a business judgment rule, courts rarely interfere in management decisions and evaluate fault ex ante. For third-party liability, directors are only directly liable for *"separable fault"* – intentional misconduct incompatible with normal corporate functions. Recent cases show courts strictly apply this standard, rejecting separable fault for creditor omissions and late filings (Cass. com. 2 April 2025; Cass. Com. 3 May 2018), while finding it for personal use of company funds and deceptive business practices (Court of Appeal of Toulouse, 3 December 2024; Cass. Com. 4 November 2020). Shareholder liability requires personal losses distinct from company losses, as seen in loyalty violations involving undisclosed share transactions (Cass. com. 10 July 2018). The 2019 PACTE Law introduced sustainability obligations, with early case law like TJI Paris SNCF (13 February 2025) showing courts' approach to environmental and social duties.

Barsan further concluded that in financial markets, damage evaluation varies between concrete approaches (specific loss of opportunity) and abstract approaches (general restriction of investment choice). The recent transposition of the Representative Actions Directive expanded collective remedies in financial matters.

The first afternoon session, chaired by **Lina Mikalonienė** from Mykolas Romeris University, was opened by **Lucie Josková** from Charles University (Czech Republic), with a contribution on *Does the third party right to claim Pandora's box mean opening Pandora's box, or is it a necessary step towards sustainability?* At the beginning of her speech, Josková emphasized that in most continental European countries, the interests of society are understood as pluralistic: it is necessary to consider not only the interests of shareholders, but also the interests of other stakeholders. With the growing emphasis on sustainability, the circle of actors included among stakeholders is expanding. Managers are therefore required to consider not only the interests of shareholders but also those of employees, creditors, the public, and other groups when fulfilling the company's purpose. If a director fails to sufficiently respect the interests of shareholders, shareholders have the right to seek redress, either through direct actions or derivative actions. Other interested parties are generally not granted this right by law (except for Canadian business law). The key question addressed by Josková in her contribution was whether the current restriction during the transition to sustainability is appropriate or whether sustainable corporate governance should also include granting rights to other stakeholders. She concluded her contribution by saying that granting the right to bring derivative actions to stakeholders could lead to greater consideration of their interests. At the same time, however, she expressed concern that such a measure could lead to an increase in lawsuits.

The next speaker was **Hans De Wulf** from University of Ghent (Belgium), who delivered an online presentation on the topic of *Responsibility for supervision: liability of members of corporate bodies towards third parties for negligent supervision of the company's obligations*. The presentation delved into the concept of oversight liability, focusing on directors' potential legal responsibility not just to the company and its shareholders, but also to third parties. Oversight liability typically arises when directors fail to adequately monitor company operations or ensure compliance with legal and regulatory obligations. While such liability is rare, it is intellectually significant and may become more prevalent, especially considering evolving frameworks like the Corporate Sustainability Due Diligence Directive (CS3D).

De Wulf presented two key Belgian case studies. In the first, a company failed to install a required environmental system due to cost concerns, resulting in pollution, specifically, polluted gases were emitted, causing odours in a wide area on the outskirts of the city. The company, the board chair and CFO were prosecuted as criminal accomplices. The court found that although the chair lacked direct authority to solve the issue, he was aware of the problem (like the whole town) and failed to place it on the board's agenda. This omission constituted criminal complicity, highlighting that passive oversight can lead to liability.

The second case involves VAT and withholding tax obligations. At the end of 1990s Belgian tax authorities began suing directors under tort law when companies failed to remit these taxes. Courts accepted the principle of director liability, though they varied in how negligence was assessed. Eventually, legislation introduced a rebuttable presumption of negligence if companies repeatedly failed to pay, unless insolvency proceedings had begun.

De Wulf emphasized that oversight duties include ensuring internal controls and risk management systems are in place. In smaller firms or critical situations, directors must personally verify compliance. Alarm signals from auditors or banks should prompt further investigation.

He warned against the "reverse attribution" fallacy – if company duties automatically translate into director duties. While directors may be judged more harshly due to their position, liability must be grounded in specific legal frameworks. For example, in France, tort law is broad and does not require pre-existing duties or proximity, but directors are only liable for "detachable faults" – acts distinct from their contractual obligations to the company.

The presentation also explored why third parties or shareholders might sue directors. This typically occurs when the company is insolvent, or the directors (or their insurers) have deeper pockets. Occasionally, lawsuits stem from personal grievances, such as fraud during acquisitions.

Tort law issues such as proximity, causation, and negligence are central to oversight liability. Courts may presume causation once negligence is proven, shifting the burden of proof. The business judgment rule (BJR) may protect directors in some jurisdictions, like Delaware, but statutory duties – such as those under CS3D – can override this protection.

Under CS3D, directors must ensure companies develop and fund due diligence systems. If a company is found liable for adverse impacts, directors may face a presumption of negligence unless they can demonstrate proper oversight and implementation.

In conclusion, oversight duties for directors are expanding across jurisdictions, but actual liability to third parties remains limited and highly dependent on national legal doctrines. While frameworks like CS3D may increase risk, practical enforcement is still constrained by tort law principles and the financial solvency of the company.

This block was concluded by **Hiroyuki Watanabe** from Waseda University (Japan), with a contribution entitled *Article 429 of the Japanese Commercial Code on direct claims of third parties against members of the board of directors and the "status of shareholders as third parties"*. Watanabe's presentation explores the unique legal framework in Japan that allows directors to be held liable to third parties underArticle 429(1) of the Companies Act. This provision, rooted in the 1969 Supreme Court judgment, is rare in comparative law and has become a cornerstone of Japanese company law. The judgment emphasized the societal importance of joint-stock companies and the need to protect third parties from directors' misconduct, establishing that directors could be liable for both direct and indirect damages, and that this liability competes with tort claims under the Civil Code.

Watanabe categorizes the case law into four types. *Type 1* involves indirect damage, where directors' mismanagement – such as ignoring regulatory breaches or continuing failing businesses – leads to company bankruptcy and creditor losses. *Type 2* covers direct damage to third parties, including cases of fraud, regulatory violations, and breaches of safety obligations. *Type 3* addresses failures in supervisory duties, especially by passive or nominal directors, with courts sometimes holding even registered or de facto directors liable. *Type 4* concerns shareholder harm, where directors' actions – such as unfair mergers or undervalued share issuances – directly damage shareholder interests.

Two illustrative examples include a) a director's failure to prevent a major trading partner's default, leading to bankruptcy and creditor losses, was deemed grossly negligent under Article 429(1) and b) in a merger case, the Supreme Court allowed shareholders to claim damages directly from directors for entering into agreements detrimental to shareholder interests.

The presentation also engages with theoretical debates. Critics question whether Article 429(1) disrupts creditor equality and whether its functions could be fulfilled by general tort law or subrogation mechanisms. Alternative views include the "tort liability special rule" theory, which sees the provision as limiting directors' liability, and the "deterrence perspective", which justifies third-party claims to enforce director accountability.

Watanabe concludes that while the provision has theoretical challenges, it serves a practical role, especially in small, closed companies where piercing the corporate veil is difficult. He cautions against abolishing the provision, suggesting that doing so could destabilize legal practice. Instead, he advocates for a thoughtful review of its interpretation and theoretical foundations, especially considering recent legal reforms such as indemnification and liability insurance schemes.

After the break, the second afternoon session was chaired by **Dalia Vasarienė** from Mykolas Romeris University and Supreme Court of Lithuania. Two very interesting presentations were given. First to speak was **Alessio Bartolacelli** from University of Modena and Reggio Emilia (Italy), with a contribution on *Company's commitment towards external constituencies and claims of shareholders and third parties against the directors: the case of benefit companies*. Bartolacelli's presentation explores the legal framework in Italy governing direct claims by shareholders and third parties against company directors, with a particular focus on the emerging model of *società benefit* (benefit companies). Under Italian law, shareholders and third parties – including creditors – can bring direct legal actions against directors for damages resulting from negligent or fraudulent conduct. These actions are distinct from derivative actions, which are filed on behalf of the company to restore its patrimony.

Bartolacelli outlines the legal provisions applicable to joint stock companies (Arts. 2394 and 2395 ICC) and private companies (Art. 2476 ICC), noting that partnerships are generally included by analogy. He distinguishes between claims by creditors – based on insufficient company assets – and those by other third parties who suffer direct damage. However, the law limits these claims to patrimonial damages, raising questions about the protection of non-economic interests.

The presentation then shifts to *società benefit*, a legal form introduced in Italy in 2015, inspired by U.S. benefit corporations. These companies are required to pursue both profit and a clearly defined "common benefit" stated in their articles of association. This benefit may include positive impacts on people, communities, the environment, and other stakeholders. Directors are legally obligated to balance profit-making with the pursuit of this benefit.

Despite this dual mandate, Bartolacelli highlights several challenges. The definition of "common benefit" is often vague, and the law does not provide stakeholders with clear rights or remedies if directors fail to fulfil their obligations. Beneficiaries – such as employees, customers, or communities – have limited legal standing unless they suffer direct patrimonial damage. Even shareholders face hurdles in enforcing benefit-related commitments, especially in non-listed SMEs where reputational harm is hard to quantify.

Bartolacelli compares the Italian model with those in France (*sociétés à mission*) and the U.S., noting that while enforcement mechanisms abroad are more structured, third-party claims remain difficult. He argues for a revision of the Italian model to require clearer articulation of benefit purposes and to expand the concept of damage beyond purely patrimonial interests. This would empower stakeholders and ensure that companies genuinely uphold their social commitments.

In conclusion, Bartolacelli calls for legal reforms that would make benefit companies more accountable, not only to shareholders but also to the broader community.

Extending the scope of actionable damage and clarifying stakeholder rights could transform benefit companies from symbolic entities into meaningful vehicles for sustainable and responsible business.

Bartolacelli was followed online by **Julia Told** from Innsbruck University (Austria) with the topic *Direct claims of shareholders and third parties against directors in Austria and Germany*. Told's presentation offers a comparative legal analysis of how shareholders, creditors, and other third parties can bring direct claims against company directors in Austria and Germany. While both countries share a historically connected legal tradition and a similar structural approach to director liability, they diverge in procedural details and interpretive nuances.

At the core of both systems is the principle of internal liability, meaning directors are primarily accountable to the company itself. This shields directors from personal liability for every breach of duty, including violations of legality. Consequently, statutory provisions governing directors' duties are not designed to protect shareholders or third parties directly.

Shareholders in both jurisdictions can initiate actions to enforce claims on behalf of the company, however they have no direct claims of shareholders due to the problem of reflex damages. Shareholders in both countries may assert claims on behalf of the company against its directors.

The procedural rules, however, differ. She explained the differences between the regulation of limited liability companies and joint stock companies in Austria and Germany. In the case of Austrian limited liability companies, a decision by the shareholders is primarily required in order to assert claims against the managing directors; if this is not adopted, minority shareholders (shareholders holding at least 10% or €700,000 in capital) may file a lawsuit on behalf of the company (it is debatable whether they should seek to have the shareholders adopt the decision). In the case of German limited liability companies, the regulation is more concise, establishing the requirement for a decision by the shareholders, but not expressly regulating the rights of (minority) shareholders; there is debate as to whether they have the right to file an *actio pro socio*. In the case of joint-stock companies, the supervisory board or a special representative must file a lawsuit against members of the board of directors on behalf of the company. The difference between the Austrian and German regulations is that in Austria, minority shareholders [shareholders holding 10% (5% special report)] may only request that the supervisory board or a special representative file a lawsuit, while in Germany minority shareholders (1% or €100,000 in capital) may request that the court allow them to sue on behalf of the company.

Creditors may also enforce claims by seizing and assigning the company's claims against directors. Both systems allow this under specific conditions, particularly in insolvency scenarios. However, Austria is more restrictive in allowing companies to waive such claims, while German literature debates the permissibility of waivers in cases of gross negligence.

When it comes to direct claims of creditors based on tort or contract, both systems distinguish between:

a) Contractual liability, which is rarely recognized unless a special relationship exists.
b) Tort liability, which may arise from i) violation of an absolutely protected right (e.g., property rights), ii) breach of protective statutes (*Schutzgesetze*) or iii) intentional immoral harm.

Germany tends to be more flexible in recognizing tort claims, even when the director's interference is indirect. Austria, by contrast, requires direct interference and is more cautious in recognizing contractual liability based on pre-contractual duties (*culpa in contrahendo*). However, Austria appears more willing to classify certain norms as protective statutes, as seen in the *"Meinl"* case, where misleading securities disclosures led to director liability.

Told presented several case studies illustrate these differences:

In Germany's *"Building Materials"* case (BGH 05.12.1989, VI ZR 335/88), the managing director was held liable for organizational negligence affecting third-party property rights. The essence of the case was that the company used building materials subject to a retention of title clause in breach of the contract, thereby interfering with the plaintiff's property right.

In Austria's *"Retention of Title"* (OGH 30.08.2016, 8 Ob 62/16z) and *"Forest Road"* (OGH 25.10.2022, 2 Ob 152/21y) cases, which were similar in nature to the German case, courts denied personal liability, emphasizing that duties were incumbent on the company, not the individual director.

In the *"AvW"* case (OGH 22.01.2019, 10 Ob 100/18f), the Austrian Supreme Court clarified that directors may be liable under protective statutes only if their actions breach laws specifically designed to protect third parties and are committed with intent.

The *"Meinl"* case (Higher Regional Court [OLG] Wien 19.08.2022, 33 R 127/21w) further affirmed that securities laws requiring truthful disclosures are protective statutes benefiting the public. The essence of both the *"AvW"* and *"Meinl"* cases was the provision of false information about issued securities. In the first case, the Austrian court did not find that the director was obliged to compensate the creditors for the damage caused, while in the second case, the German court found that he was liable.

In conclusion, while Austria and Germany share foundational principles in director liability, their procedural mechanisms and judicial interpretations differ. Austria is more conservative in recognizing direct liability but more open to classifying protective norms. Germany offers broader recognition of tort-based claims but maintains stricter boundaries around statutory protections. These differences reflect each country's approach to balancing director accountability with legal certainty.

As usual, **Alexander Schall** from University of Lüneburg, concluded the conference with summary remarks.

The 7th ECCL Symposium in Vilnius examined when shareholders and third parties can directly sue company directors. Legal experts from England, France, Lithuania, Japan, Germany, Austria, and Italy presented their national approaches, revealing major differences in how courts handle these claims.

English law restricts director liability to cases where directors knowingly participate in company wrongdoing. France uses a "separable fault" test, requiring intentional misconduct beyond normal corporate duties. Lithuania has evolved toward broader recognition of direct claims but applies strict conditions. Japan offers the most liberal approach, allowing both direct and indirect damage claims under Article 429(1).

Common patterns emerged: litigation is rare when companies are solvent but increases during insolvency. New challenges include sustainability obligations under laws like France's PACTE Act, expanding stakeholder rights in benefit companies, and oversight duties under emerging regulations.

The conference showed that while legal systems vary significantly, all struggle to balance director accountability with corporate protection. As corporate law adapts to sustainability demands and stakeholder interests, future developments will need to carefully consider both legal theory and practical enforcement without undermining business operations.

doc. JUDr. Kateřina Eichlerová, Ph.D.
Charles University, Faculty of Law
katerina.eichlerova@prf.cuni.cz
ORCID: 0000-0001-6996-5327

JUDr. Klára Hurychová, Ph.D.
Charles University, Faculty of Law
klara.hurychova@prf.cuni.cz
ORCID: 0000-0002-6449-1641

DOI: 10.14712/23366478.2025.685