



[Back to News](#)

Novack and Macey Defeats Summary Judgment on Behalf of Shareholder in Family-Owned Business

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Novack and Macey attorneys [John Shonkwiler](#) and [Eric Macey](#) defeated summary judgment for their client, a shareholder in a 100 year-old family-run business, who alleges that his brother, a director, officer and shareholder of the company, breached his fiduciary duty by paying himself excessive compensation. The defendant moved for summary judgment, arguing that plaintiff's claims were barred by the statute of limitations and that they were derivative and, thus, had to be brought on the corporation's behalf.

In a recent decision, the federal judge handling the case denied defendant's motion for summary judgment. [Opinion](#). The judge held that genuine issues of fact precluded summary judgment on the statute of limitations because a reasonable jury could find that defendant concealed his breaches of fiduciary duty from plaintiff, which tolls the statute of limitations. The judge also found that plaintiff's claims against his brother were not derivative because, as co-shareholders of a close corporation, they owed each other fiduciary duties akin to partners in a partnership.

Consequently, plaintiff could sue defendant directly for his breaches and did not have to bring his claims on behalf of the company.