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Avenida Universidad, 8 – Apdo. 28
20560 Oñati – Gipuzkoa – Spain
Tel. (+34) 943 783064 / opo@iisj.net / https://opo.iisj.net

Corporate liability after Car Wash: Spillovers to Brazilian corporate law on liability

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ANNA BINOTTO*

Abstract

Operation Car Wash (OCW) followed one of the largest corruption scandals in Brazil'recent history, leaving broad effects on Brazil's legal order. This paper highlights the rather underexplored spillovers into the law on corporate liability. OCW brought massive financial and reputational damage to major corporations, impacting all corporate stakeholder, while extensive use of leniency agreements revealed detailed accounts of unlawful schemes and the involvement of corporate agents, including controlling shareholders. Together, those elements made corporate law a tool for rebalancing OCW's transversal implications. Through doctrinal analysis and illustrative cases, the paper traces and describes three main developments: (i) investors' standing to sue public companies for losses tied to misconduct; (ii) growing scrutiny of controlling shareholders' liability for corporate wrongdoing; and (iii) expanded application of the principle of protecting corporate activities. The paper argues these spillovers generated relevant doctrinal advances and may inform broader debates on corporate liability.

Key words

Car Wash; leniency agreements; corporate liability; corporate litigation; securities litigation

Resumen

La Operación Lava Jato (OLJ) siguió a uno de los mayores escándalos de corrupción de la historia reciente de Brasil, lo que tuvo amplias repercusiones en el ordenamiento jurídico brasileño. Este artículo destaca las repercusiones, bastante poco exploradas, en la legislación sobre responsabilidad corporativa. La OLJ causó enormes

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* PhD, Commercial Law, University of Sao Paulo, Brazil. LLM, Hauser Global Scholar, New York University School of Law, United States. Email: ab12757@nyu.edu / anna.binotto@gmail.com ORCID: https://orcid.org/0000-0001-7225-4104

daños financieros y de reputación a las grandes empresas, lo que afectó a todas las partes interesadas, mientras que el uso extensivo de acuerdos de clemencia reveló detalles de tramas ilegales y la participación de agentes corporativos, incluidos los accionistas mayoritarios. En conjunto, estos elementos convirtieron el derecho corporativo en una herramienta para reequilibrar las implicaciones transversales de la OLJ. A través del análisis doctrinal y de casos ilustrativos, el artículo traza y describe tres desarrollos principales: (i) la legitimación de los inversores para demandar a las empresas públicas por pérdidas relacionadas con conductas indebidas; (ii) el creciente escrutinio de la responsabilidad de los accionistas mayoritarios por las irregularidades corporativas; y (iii) la ampliación de la aplicación del principio de protección de las actividades corporativas. El artículo sostiene que estas repercusiones generaron avances doctrinales relevantes y pueden servir de base para debates más amplios sobre la responsabilidad corporativa.

Palabras clave

Lava Jato; acuerdos de clemencia; responsabilidad societaria; litigios societarios: litigios sobre valores

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1. Introduction: Operation Car Wash from overarching implications to corporate law spillovers

The *Operação Lava Jato* ("Operation Car Wash" or simply "Car Wash") was a conjoint investigation launched by several offices within the Brazilian bodies of public enforcement, as a reaction to what has been described as the largest corruption scandal in Latin America (Lagunes and Svejnar 2020, xvi), unprecedented even at global levels (Davis *et al.* 2021).

The revealing of the corruption scandals created a mass popular discrediting on public institutions, State-Owned Enterprises (most relevantly oil and gas SOE Petrobras), and politicians across the political spectrum. As some have described, Car Wash was a point of inflection in public-private interactions in Brazil (Pimenta 2020, 18) with spillovers across the Brazilian social, economic, and political spheres.

After the investigation's initial years, some were optimistic about its potential as a driving force for institutional change in Brazil, stating that "operations such as Car Wash are part of a process of institutional advancement and a growing openness of the social order" (Salama 2016). As time went by, however, others started to note that far from promoting a "wholesale 'big bang' reform" (Jones and Pereira Neto 2021), Car Wash left an uncertain legacy to public enforcement and State programs, such as anticorruption and public procurement policies (Rodrigues 2022).

More than uncertainty, some have pointed to actual disservices following Car Wash, including the promotion of an "illiberal turn" and traces of autocratic legalism in Brazil, (Sa e Silva 2020) or a "constitutional regression" resulting from the clashes between legal and political establishments (Vilhena Vieira 2021). Critics have also described Car Wash as a true "spectacle," accusing it of contributing to the overall criminalization of political activities in Brazil (Warde 2018) and highlighted its democratic deficits (Davis *et al.* 2025). As a result, administrative law, constitutional law, and other spheres of public law have been particularly impacted by the challenges that stemmed from Car Wash.

The institutional framework that supported the operation advanced incrementally as a result of national and international policies (Jones and Pereira Neto 2021, Rodrigues 2022), as well as jurisprudential innovations and idiosyncratic interpretation of legislation, especially in the realm of criminal law and procedure (Prado and Machado 2021). Those include not only the widespread application of the recently passed Anticorruption Law (Law no. 12.846/2013) and the first instances of the newly introduced anticorruption leniency agreements, but also novel interpretations to the legal definition passive corruption, the *mens rea* for corruption, the extension of criminal immunity for elected officials and the increasing discretion on use of coercive measures (Prado and Machado 2021, 17). They also included limitations to the scope of habeas corpus petitions and the right to appeal, and an expansion of the permissible grounds for pre-trial detention (Sá e Silva 2020, 103). Changes also affect the law on improbity or misconduct by public officers, public procurement and bid-rigging (Pimenta 2020, Jones and Pereira Neto 2021).

But enforcement actions directly related to Operation Car Wash, including leniency and plea bargain agreements, as well as private claims that followed, shed light into yet another set of changes in law: that of corporate law. This paper explores what I call spillovers of Car Wash into the law on corporate liability. As I discuss, although some changes did indeed arise from cases brought before courts or arbitral tribunals, they are not only jurisprudential or produced by judicial decisions, but rather wider discussions within corporate law doctrine and scholarship. Scholars and lawyers engaging in such discussions directly refer generally to Car Wash and to some cases stemming from the operation as the main driver for the reflections they take on, but they do so as a broader doctrinal discussion. By describing such spillovers, the paper argues that due to its particularities, Car Wash shed light onto intricacies, challenges and potential limitations of liability for corporate corruption, more narrowly, and corporate wrongdoings more generally, advancing discussions on the field of corporate liability.

This was possible due to two features stemming from Car Wash. First is the fact that it was not constrained to politicians, political parties, or public servants, and the leading role played by companies and high-ranking executives in the schemes unraveled by the operation led to unprecedented consequences for the corporate actors. Second, the public enforcers' particular appeal to leniency agreements, plea bargains, and other consensual mechanisms (Rodrigues 2022, 57) to investigate, trial, and resolve the illegal behavior discovered through the operation. Both have been separately discussed in the literature, and I argue that, taken together, they promoted important spillovers to corporate liability stemming from Car Wash.

The first aspect relates to the very nature of the illegal conduct uncovered by Car Wash. Some of the most prominent domestic corporations were implicated in the schemes. These companies' multinational activities and cross-border eminence led to spillovers of the operation across continents (Charleaux 2017, Pimenta and Greene 2020). Fines and compensation negotiated within leniency and cease-and-desist agreements with multiple authorities amounted to several billions of dollars, leading to comprehensive financial crises and multiple cases of corporate insolvency. Oil and gas, and infrastructure markets were particularly impacted: more than 250 companies in those sectors filed for restructuring and bankruptcy procedures (TMA Brazil 2015), and trailed a severe decline in share value from public-traded companies following the outburst of Car Wash (Torga *et al.* 2021). Exposure, public sanctioning, financial losses and reputational crises that followed the first years of the Car Wash outburst unfolded into multiple and diverse disputes concerning multiple corporate relations, i.e., those among corporations and their constituencies: controlling shareholders, management, minority investors and others (Munhoz 2017, 131, Warde and Valim 2021). These discussions and issues posed relevant questions and challenges to the law of corporate liability and accountability more generally (Carvalhosa *et al.* 2018, Weber 2021, 24).

The second aspect relates to the institutional framework and investigative method of Car Wash: the centrality of leniency agreements, plea bargains, and other forms of public-private arrangements executed between implicated parties and multiple government bodies (Athayde 2019, 25, Pimenta 2020, 18, Jones and Pereira Neto 2021, 25, Davis *et al.* 2025, 17). Those agreements resulted in unique exposure and detailed descriptions of the functioning and structuring of illegal activities within companies, as authorities relied on the main agents to provide narrative and personal accounts, as well as extensive documentation as a requirement to execute or adhere to leniency, cease-and-desist, and plea-bargaining agreements. This enabled access to comprehensive evidence from individualized firms and, in many cases, admissions to personal involvement in illegal activities (in order to benefit from the fine reductions and other benefits offered to leniency applicants.) As negotiated instruments, leniency agreements also allowed companies and company representatives to modulate their cooperation with authorities and the outcomes of negotiation, including acknowledging participation in the misconduct or, in other instances, leaving certain information out (Pargendler and Davis 2023, 13).

Together, these two features—Car Wash's reach into corporate structures and its reliance on negotiated enforcement—helped inform the field of corporate liability and provide advancements with effects that go beyond the resolution of cases that directly derive from Car Wash. This paper explores how these changes unfolded across three key dimensions.

First, Car Wash resulted in a rise in corporate disputes in arbitration courts, and multiple suits brought on by minority investors (Monteiro *et al.* 2021), looking to be compensated for the financial losses. Shareholders experienced significant harm as the market value of their equity plummeted following revelations of corporate misconduct. As a result, private enforcement supported by corporate law claims emerged as a significant supplement to the public enforcement, expanding the array of legal remedies to the underlying infringements that led the investigations (including collection of damages, instead of monetary sanctions or contributions). As discussed in Section 2, this led to investor claims against public companies, a subfield within corporate and securities litigation, which relates to important doctrinal advancements within corporate law scholarship.

Second, leniency agreements uncovered the functioning of unlawful behavior within the firm-level and put the spotlight on its "masterminds" (Pargendler and Davis 2023, 11). As discussed in Section 3, this brought a heightened attention to the liability of controlling shareholders for corporate wrongdoings and the scrutiny of their agency and role in leading to, influencing, or avoiding unlawful behavior within corporate structures. As was the case with the investor suits for decline in share value, shareholders and companies brought private claims that complemented the operation's enforcement actions and expanded the discussion on the liability of controlling shareholders, rekindling debates on their specific duties, which are relevant spillovers to the field.

Third, the corporate law principle of preservation of corporate activities, a concept that emerges from bankruptcy legislation, has been called upon to justify the review of some of the leniency agreements executed as a result of Car Wash. Section 4 describes this account and discusses how it relates to what some refer to a "structural approach" to corporate liability (Salomão Filho 2017, 2018) proposing measures that remove controlling shareholders from corporate power to remediate wrongdoings. It also suggests that this principle might find relevant application in modulating and designing remedies and sanctions for corporate misconduct.

The following sections describe how those advancements in corporate liability came about and how they can be viewed as spillovers of Car Wash. They also place them into the background of Brazilian corporate law to show how they tensioned the legal doctrine. In the concluding section, the article discusses how those accounts relate to more general doctrinal advancements in the field of corporate liability. All in all, the article aims to contribute to the literature that discusses the aftermath of Car Wash and to present insights on how it affected a different field of law, which is not usually included among the legacies of the operation.

2. Investor litigation and the limits of corporate standing

As discussed before, Car Wash promoted innovations in legal doctrine and jurisprudence, especially in the field of criminal law and procedure (Prado and Machado 2021, Rodrigues 2022) and administrative law (Pimenta 2020, Rodrigues 2022). In this section, I discuss how this was also the case in corporate and securities law, as Car Wash propelled innovations regarding shareholder suits against publicly traded companies following corporate misconduct.

As a background, the inadequacies and restraints of investor protection in emerging markets have long been discussed in the literature (La Porta *et al.* 2000). There has been extensive discussion regarding the various risks associated with weak investor protection regimes and their numerous negative socioeconomic spillovers, including high costs of credit, reduced incentives for funding through capital markets and lower levels of innovation.[1] Brazil is no exception and has been presented as a case study for patterns of corporate governance that provide laxed protection for non-controlling investors (Black *et al.* 2010, Pargendler 2020).

As discussed before, Car Wash led to relevant financial losses for multiple public-traded companies in Brazil and investors experienced massive drops in the value of their shares as a result of such losses. Many sought to recover damages, both in Brazil and abroad. US courts received at least ten complaints, and investors were mostly able to settle with the implicated corporations for millions of dollars in damages. Investors of Petróleo Brasileiro S.A. – Petrobras (In Re Petrobras Securities Litigation, No. 1:2014cv09662), Centrais Elétricas Brasileiras S.A. – Eletrobras (In Re Eletrobras Securities Litigation, No. 1:2015cv05754), among others were able to receive considerable payments in the US following the losses suffered as a consequence of corporate misconduct.

Yet while investor suits gained traction abroad, their domestic viability was constrained by doctrinal limitations in Brazilian law. Brazilian corporate and securities legislations do not expressly allow shareholders to sue the corporations in which they invest – they can only sue (i) directors and board members or (ii) controlling shareholders, for unlawful acts that are harmful to the corporation or the shareholders individually (Art. 159 and Art. 117 of Corporations Act). Neither does Brazilian tort law generally recognize claims for indirect damages. This means that shareholders cannot be compensated for losses they suffer *as a result of* the financial harm inflicted to the companies they invest in. Therefore, if the value of shares declines due to financial difficulties faced by the corporation, shareholders could not claim damages, regardless of who the defendants are (e.g., controlling shareholders, managers, or the corporation

[1] The OECD recently commissioned a study that highlights the many deficiencies in Brazil's private enforcement system for capital markets and securities regulation, in a joint project with Brazil's Securities and Exchange Commission and the Ministry of Finance. Among the diagnoses and recommendations are several procedural adjustments within securities litigation. The report does focus on *derivative* (i.e., not direct) suits and arbitration by shareholders (OECD 2020).

itself). This created an issue for Brazilian investors: on the one hand, they were not offered the same instruments to recover damages as those investing in the US, and, on the other, they would indirectly lose more money as companies settled with foreign investors and paid millions to restore their harm (Gorga 2015).

Shareholders started questioning this interpretation of the corporate and securities legislation. For example, a minority shareholder brought a claim against Petrobras after the first set of leniency agreements showed that the company had been damaged in millions of reais. But a federal court upheld the view that shareholders could not recover losses to their investments that are only indirect (Case no. 50101103020154047200). Later on, Petrobras disclosed information that the same decision was reached by an arbitral tribunal in a confidential arbitration.[2] Meanwhile jurists, including scholars and lawyers began to directly engage with the debate on a theoretical level, although making direct reference to Car Wash a driver for such reflections.[3]

Direct suits filed by minority shareholders seeking to obtain compensation for their own losses as investors, rather than diverting damages to the corporations (as in derivative claims) were highly criticized (Cantidiano 2017, Warde and Valim 2021, Eizirik 2022) because in order to redress the decline in share value and market prices that followed the reputational damage suffered *by* companies, shareholders were asking those same companies to "foot the bill," which distorted the segregation between the capital of corporations and that of the shareholders. The result would be a sort of *bis in idem* from the companies' perspective, since they would be financially penalized twice—first by the corruption, money laundering, and embezzlement schemes that diverted corporate funds and led to multiple damages, and second by being required to reimburse their shareholders for the devaluation of the corporate stock.

On the other hand, while foreign investors were able to achieve favorable compensation for essentially the same wrongdoings though claims in the US, investors in Brazil were not driving scholarly efforts to justify those claims. Thus, in the absence of express legal authorization, some sought to propose a broad interpretation of the legislation regulating collective suits in Brazil (Law no. 7,913 of 1989), which allows federal prosecutors to represent the undetermined class of "investors in the capital markets" for damages arising from fraudulent behavior related to the issuance of securities (Coelho 2018, Carvalhosa *et al.* 2018). However, this type of claim would result in compensation being directed to the federal fund of collective rights, meaning that individual investors could not receive the damages awarded. This is why the legal basis for those claims was initially cryptic.

This scrutiny has led to the development of rigorous requirements for establishing standing to sue under general tort law and corporate and securities statutes. These are primarily informed by complex theories of private enforcement in securities law and supported by the legal regime that safeguards information and mandatory disclosure

[2] In a release to investors published on January 9, 2025, Petrobras informed that "[t]he ruling dismissed the claim, among other reasons, on the grounds that, under Brazilian law, investors cannot bring an action for compensation against the company for indirect damages, such as those related to the devaluation of the value of shares. This arbitration is confidential, as are the others in progress".

[3] See, for example, the works in Carvalhosa *et al.* 2018. See also Cantidiano 2017, Weber 2021, Eizirik 2022, who make direct reference to Operation Car Wash.

standards in capital markets. In a sum, they suggest that public companies are obligated to disclose information accurately; any misinformation, provision of false information, or failure to fully disclose could result in tortious acts; and if the company was aware of underlying illegal activities and failed to adequately inform the market, it should be held liable. Scholars are only now beginning to explore the complexities of these claims and establishing more sophisticated doctrinal studies to answer relevant questions of law. Those include who, among the collective of shareholders, has standing to sue; the intricacies of calculating damages and designing potential awards and injunctions; the applicable timeframes for market transactions and capital underwriting; causation between damages and failures in disclosure; and various agency and representation theories that attribute the actions and omissions of corporate officers to the corporation (Barros 2021, Ferreira 2022, Silva 2022).

As discussed in Section 5, those developments are important doctrinal advancements to the field of corporate and securities law in Brazil. Their interaction with the other spillovers discussed below create can be expanded beyond Car Wash and influence the law on corporate liability more generally.

3. Controlling shareholders and the attribution of corporate misconduct

Concentrated ownership and the presence of controlling shareholders are key traits of Brazilian corporate groups and form the core of the legislative intent behind the 1976 Law.[4] The Brazilian Corporations Act defines and regulates the legal concept of a "controlling shareholder" - something widely regarded as unprecedented in comparative corporate law (Eizirik 2003, 233). But although corporate law scholarship has long recognized the vital role of controlling shareholders in Brazil and the statutory provisions governing their duties and responsibilities,[5] the liability of controlling shareholders remains underdeveloped, with successful claims against them still being rare in Brazilian case law (OECD 2020).

Complementing the debate on whether investors have standing to sue public companies for harms relating to the unravelling of corporate misconduct, Car Wash also shed light into the intricacies of how such misconduct took place within those companies. That led to a heightened attention on the pervasive influence of controlling shareholders over corporate affairs and how this translated to a specific role or involvement in corporate wrongdoings such as those uncovered by Car Wash.

[4] Numerous reasons have been explored to explain the resistance of concentrated ownership structures in Brazil, including path dependence and a political and economic resistance of controlling shareholders against corporate governance enhancing reforms the domination of dual class shares with non-voting shares creating an easier (and cheaper) path for corporate domination by controlling shareholders (Gorga 2009, 502, Gilson *et al.* 2010, Pargendler 2020, 961).

[5] According to Article 116, sole paragraph, of the Corporations Act, "a controlling shareholder shall use its controlling power to ensure that the corporation fulfills its purpose and performs its social role and shall have duties and responsibilities towards the other shareholders, employees, and the community in which it operates, whose rights and interests the controlling shareholder must loyally respect and heed." This provision establishes a statutory duty for controlling shareholders towards corporate stakeholders, such as the workforce and the broader community affected by corporate activities. It also implies that controlling shareholders may be held directly liable to these stakeholders for breaching this duty. Scholarship suggests that this duty has a fiduciary nature, given the relationship between the controlling shareholder and the corporate assets (Munhoz 2002, Salomão Filho 2019, Frazão 2021, Binotto 2024).

The influence of controlling shareholders is not merely formal or passive; in many cases, it operates through informal networks, social capital, and discretionary authority. Indeed, controlling shareholders usually hold managerial positions within the company, have long-standing and stable links with managers and/or can widely influence management, either directly (through appointing and dismissing board members) or indirectly (through "corridor talks", personal loans and covenants, personal influence, private information, historical ties to government leaders and public officials etc.). They frequently rise-above company management and internal rules of conduct (such as compliance programs). Their direct and indirect, formal, and informal, means to exert influence over corporate matters result in weak effects of measures aimed at preventing, policing and sanctioning misconduct (Binotto 2024). Controlling shareholders may also prevent themselves from being directly implicated in the infringement, using informal and indirect influence over employees and managers to direct illegal behavior without "getting their hands dirty" (Ferreira 2022, 395, Pargendler and Davis 2023, 22–23).

According to Davis and Pargendler, what they call "controlling shareholder-led bribery" or "CS-led bribery" (Pargendler and Davis 2023, 6) bribery encompassed 86% of the cases investigated within Car Wash.[6] What the Car Wash leniency agreements did was expose the backstage of such pattern of corporate misconduct and acknowledge the role of controlling shareholders in perpetrating or at least failing in oversight against such illegal behavior. This dynamic came into stark relief in some of Car Wash's cases, particularly JBS and Braskem, where parent companies and controllers were directly implicated in misconduct.

In the case of J&F Investimentos S.A., the parent company of JBS S.A., one of the world's largest meat-packing companies. JBS executives were implicated in corruption schemes uncovered during Car Wash investigations -- Ricardo Saud, a JBS executive, provided one of the earliest testimonies in plea bargain negotiations, revealing that the company had bribed nearly 2,000 politicians from multiple parties and offices (Phillips 2015). In order to gain further information on the schemes involving JBS, Car Wash investigative teams and prosecutors signed a leniency agreement, negotiated directly with its controlling shareholders Wesley and Joesley Batista. J&F signed the agreement in its capacity as parent company and controlling shareholder of the JBS Group[7] took responsibility for all unlawful acts "undertaken in its own benefit."[8] Indeed, as one commentator noted, the JBS agreement had the "widest possible scope" (Pimenta 2020, 114) and was "firmly linked to the fate of the controlling shareholders" (Pimenta 2020, 115).

It was also the case of Braskem S.A., one of Brazil's leading petrochemical companies, which negotiated an agreement with US, Swiss and Brazilian authorities alongside its controlling shareholder Odebrecht S.A. for schemes that involved members of Odebrecht family who occupied managerial positions within the companies of the group

[6] Those represented 11% of all cases assessed through the US's Foreign Corrupt Practices Act (FCPA).

[7] According to the agreement, J&F had "full prerogative to exercise control power to determine compliance with [the] agreement to all controlled companies." Clause 4 of the Leniency Agreement executed between the Federal Prosecutors Office and J&F Investimentos S.A. on June 5, 2017.

[8] Clause 3 of the Leniency Agreement executed between the Federal Prosecutors Office and J&F Investimentos S.A. on June 5, 2017.

(Pargendler and Davis 2023, 2). According to a study reporting the case, within the negotiations of the leniency agreement executed by the Odebrecht Group and federal prosecutors the government even discussed the possibility of including a mandatory selling of controlling shares by Odebrecht but later dropped as negotiations progressed so as not to make leniency with Odebrecht unfeasible (Spercel 2021, 197).

The fact that the involvement of controlling shareholders was described (in more or less detail) in the leniency agreements allowed corporate constituents, notably minority shareholders, to use that information to bring private claims against the companies (as discussed in Section 2) and/or their controllers to discuss liability for the damages inflicted to investors or the companies resulting from the illegalities uncovered by Car Wash. Minority shareholders at Petrobras sought to recover damages directly from the company, for the financial harm they suffered after the corruption schemes were revealed, sprawling the debate on whether corporations should be directly accountable before shareholders for decline in share value and loss in company value. Minority shareholders at Braskem filed a derivative claim seeking redress from Odebrecht for influencing Braskem and directing its officers to engage in the illegalities admitted to in the agreement signed with U.S. authorities. The Sao Paulo Court of Appeals (TJSP) recently upheld a district judge's decision in favor of Braskem shareholders, finding Odebrecht violated its statutory duties as controlling shareholders of Braskem (TJSP 10 December). Minority shareholders at JBS filed a similar claim against J&F and the Batista Brothers, before an arbitral tribunal, seeking compensation for the damages JBS suffered due to their unlawful influence over the company. The dispute escalated to the Brazilian Superior Court of Justice (Superior Tribunal de Justiça—the highest court for non-constitutional matters) as these investors accused the controlling shareholders of hijacking the dispute and compelling JBS to challenge their legitimacy to sue on behalf of the corporation.[9] Other concurrent cases, including confidential arbitration proceedings, discuss similar matters and remain under discussion.

Although litigation outcomes are pending, the examples show how controlling shareholders were put back on the spotlight by Car Wash. As discussed further in Section 5, this promoted a heightened attention to their roles in influencing or supervising against corporate misconduct, as well as their duties and liability for getting involved. This represents a relevant doctrinal development to the field of corporate law and has potentials that far exceed Car Wash.

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[9] Superior Court of Justice (STJ) Conflict of Competence no. 185.702 – DF, Rel. Min. Marco Aurélio Bellizze, d.j., 22 jun. 2022. The conflict arose from a corporate technicality: Brazilian Corporate Law regulates shareholder derivative suits, allowing investors holding at least 5% of voting shares to sue managers or controlling shareholders on behalf of the corporation. Under this framework, damages are awarded to the corporation, indirectly benefiting the investors. In a context of concentrated ownership, this legal instrument is crucial for bypassing the dominance of controlling shareholders over corporations, as these shareholders would have little incentive to pursue lawsuits against themselves or the managers they appointed. Derivative suits apply when the corporation does not directly sue its shareholders or officers. This was precisely the situation with JBS. Minority investors waited for the legal deadline for JBS to initiate legal action, and when it passed, they filed an independent claim against J&F for the abusive exercise of controlling power before an arbitral tribunal. Only after the derivative suit was filed did JBS submit a concurrent claim based on the same facts, a process that many believe was manipulated by the controlling shareholders, who were themselves defendants.

4. Preserving corporate activities: Structural remedies and liability design

Finally, Car Wash led off a discussion on an expanded application of the so-called principle of preservation of the corporate activities and to what some have described as a "structural approach" to corporate liability.

The principle of preservation of the corporate activities is established by insolvency legislation (Law no. 11,101 of 2005),[10] and dictates that "instead of simply liquidating assets, [Brazilian insolvency law] tries to maintain and preserve economic activities and their consequent positive externalities and spillovers, while also seeking to increase creditors' expected returns" (Neder Cerezetti 2021, 171). By establishing a common and sharable interest between all corporate stakeholders – that of the sustained continuance of corporate activities[11] – the principle of preservation serves a guidepost to the interpretation and implementation of corporate statutes (Neder Cerezetti 2012, 159) and corporate law more broadly.

In this context, the principle of preserving corporate activities gained renewed relevance as a normative lens for assessing liability design. In the wake of Car Wash the principle of preservation has been commanded to criticize the toll that the operation had on corporations and its constituents. Commentators have denounced the effects discussed in Section 1 as an attempt to "destroy" the great national companies (Warde and Valim 2021) and called for the application of "structural" remedies for corruptive behavior, more narrowly, and corporate wrongdoings more generally as a means to preserve corporate activities (Frazão 2016, Warde 2018, Salomão Filho 2018).

Those structural remedies relate to proposals that controlling shareholders be removed from corporate power, either through government intervention or by mandating the sale of their controlling stock. The proponents argue that such measures would facilitate the recovery and preservation of companies central to the Brazilian economy and promote accountability for those in charge during the illegal activities, while helping companies regain credibility with the public, the government, the market, and investors (Salomão Filho 2018). This particular mobilization of the principle of preservation of the corporate activities is largely related to heightened attention to the role of controlling shareholders in corporate wrongdoing discussed in Section 3 and found specific attention in the upshot of Car Wash.

This principle also shaped new legal and political debates over the legitimacy and effects of Car Wash-era leniency agreements, remedies and sanctions. In 2023, several political parties filed a claim before the Brazil Supreme Court (ADPF no. 1,051), requesting a review of leniency agreements executed during Car Wash. The request follows the fallout from Car Wash and allegations that its most prominent leaders acted abusively and used illegal methods to coerce companies and individuals into cooperation, all

[10] In English: "Art. 47. The purpose of the judicial reorganization is to enable the debtor to overcome the situation of economic and financial crisis, in order to allow the continuation of the production, the employment of workers, and the interests of creditors, thereby promoting the preservation of the company, its social function, and the stimulation of economic activity."

[11] Indeed, not only shareholders (whether controlling or minority, active or passive investors) have an interest in the preservation of the company. Employees, contractual counterparts, creditors, the State, the community surrounding the company's operations, and many other stakeholders have an interest in the company's preservation.

under an excessively punitive approach. According to the petitioners, the agreements had questionable legal basis (an "unconstitutional state of affairs") and were unreasonably detrimental and burdensome to the companies, harming the Brazilian economy (as they led to a "cascading effect of the widespread collapse of strategic companies", putting economic sovereignty as risk) (Petition no. 30260/2023, filed in ADPF no. 1,051).

The request unveils a political discourse in favor of the principle of preservation of corporate activities. As previously discussed, this is not strange to Brazilian corporate law and can be regarded as legitimate ground for interpreting and guiding the execution of agreements that have targeted the implicated companies. From that perspective, the request to review the agreements might be viewed as necessary step to ensure that effective liability is achieved – either through public enforcement, private enforcement or a combination of both.

The claim also highlights the relevance of adequate distribution of corporate liability and singles out the role of controlling shareholders in negotiating such agreements:

> To obtain release from precautionary imprisonment, [and] to avoid it or even to ward off the effects of a conviction, the troubled controlling shareholder (especially under pressure from officials who were equally troubled) was led to collaborate and execute plea-bargain agreements and, in doing so, to drag controlled companies to the core of collaboration. (Petition no. 30260/2023, §76, filed in ADPF no. 1,051)

The issue is still unresolved, but the Supreme Court and instances of the Federal Government are actively collaborating with the petitioners, the companies affected by the claim and other members of the society. As of now, there have been advancement in renegotiating the terms of monetary contributions established by the agreements.

In a sum, Car Wash led to an expanded interpretation and mobilization of the principle of preservation of corporate activities to stances that exceed its original formulation in bankruptcy law. This appeared to be particularly the case of calling for structural remedies in corporate liability, but also its use to interpret and guide interpretation of public enforcement and the optimal design of sentencing or negotiating agreements, as illustrated by the current claim under review of the Supreme Court. Although further developments of these discussions are yet to be seen, the examples show the revival of such corporate law principle and expansion into the field of corporate liability.

5. Rethinking corporate liability in post-Car Wash Brazil

This article has argued that the cases and discussions stemming from the overarching effects of Operation Car Wash have had important spillovers to the discipline of corporate law and liability. While much has been written about Car Wash's impact on criminal enforcement and democratic institutions, its spillovers into corporate law remain less explored. Placed within debates that inform the field, those examples and discussions offer relevant doctrinal advancements which can be applied more broadly and have the potential to inform the discipline of corporate liability in Brazil beyond Car Wash and the fields of law (or types of misconduct) which Car Wash concentrated its attention.

Car Wash encouraged corporate law to advance the discussion on how to address the involvement of controlling shareholders when they use their influence to involve controlled companies in corporate wrongdoing. Some of the leniency agreements negotiated in the realm of Car Wash shed light on the role of controlling shareholders in directly influencing or failing to supervise against the involvement of companies in the schemes uncovered by the investigation. By that they allowed corporate constituents, most notably minority investors, to use that information to seek redress for the harms that affected corporations as a result of the operation, which is illustrated by the cases discussed in Section 3.

This analytical shift reflects a broader contribution to the field of corporate accountability in Brazil, with consequences that go beyond the Car Wash context. The possibility of holding the "actual" agents of illegal activities accountable could enable corporations to recover more swiftly and benefit other constituents, such as employees, creditors, and even the government. Indeed, the systematic failure of parent companies to fulfil their duties to monitor the behavior of subsidiaries, as well as to ensure security and provide accurate information, raises significant concerns. If parent companies and controlling shareholders benefit from the activities of their subsidiaries, they should also bear the associated burdens. Conversely, if they create or contribute to a company-specific risk, they should be held responsible for all consequences that fall within the scope of those risks. This normative argument is largely supported by general regime of the Brazilian Corporations Act, which provides legal grounds to hold controlling shareholders *directly* liable for corporate wrongdoings, as I discuss in different work (Binotto 2024). The regime regulating the duties and liability of controlling shareholders can be further advanced as a consequence of the cases and debates which stemmed from Car Wash and – as mentioned before – remain largely under discussion.

Crucially, the three spillovers examined—investor litigation, controlling shareholder liability, and corporate preservation—are not isolated. The spillovers discussed in Sections 2 and 4 are greatly intertwined with such enhanced focus on controlling shareholders. First, the expanded applicability of the principle of preservation of corporate activities is consistent with a focus on rendering the true "masterminds" of corporate misconduct liable and protecting the company (and its constituents, including minority investors) from experiencing greater loss of having to "foot the bill" for wrongdoings that were caused by or ought to have been avoided by controlling shareholders and others in charge. The calling to target controlling shareholders and through an assessment of the internal decision-making process within corporations, those stances are connected to a "structural approach" to corporate liability (Salomão Filho 2017, 2018), which prioritizes structural remedies that remove controlling shareholders from power whilst preserving the corporation and the corporate activities. Thus, it also opens the floor for further discussions in modelling remedies and sanctions in a manner that does not compromise the preservation of the corporate activities.

Second, in regard to investors' standing to sue public companies for decline in share value after corporate misconduct, as the requirements to build a claim begin to be more clearly formulated, there appears to be a promising path for shifting liability from the company to controlling shareholders. If one considers claims of failure to disclose information (which have been the cornerstone for investor litigation), it is reasonable to contemplate that such irregularities perpetrated by controlling shareholders could not be accurately reflected in the company's financial disclosures, including financial statements, registration forms, and other periodic or *ad hoc* disclosures to the market (that is: potentially exposing the company to shareholder claims). This is also in line with the proposed reading of the principle of preservation of corporate activities.

These changes in legal doctrine were propelled by the unfolding of Car Wash and the complex scenario and disputes involving corporations and their constituents. As with other Car Wash's effects as mentioned in the Introduction, these changes seem incremental and not yet finalized, as, for example, the applicability of such interpretations of the law to other cases involving corporate liability for wrongdoings (e.g., environmental, antitrust, human rights etc.) remains to be discussed. However, because they have been construed as larger doctrinal discussions, rather than solutions specific to the Car Wash cases, they are advancements to the field of corporate liability and seem prolific for further application and discussion.

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