

Client Alert

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Delaware Forum Selection Bylaw Upheld in California

In late December, a California Court of Appeal upheld a forum selection bylaw requiring stockholder litigation to be brought in Delaware. The corporation was a Delaware corporation headquartered in California. Its board of directors adopted the forum selection bylaw at the same time it approved the sale of the corporation. The Court of Appeal held that the bylaw did not conflict with California law or public policy and affirmed the dismissal of the case.

Exclusive forum bylaws, which generally require state corporate law claims to be brought in a designated venue, have gained significant traction in recent years. Most exclusive forum bylaws have been adopted by Delaware corporations, and numerous courts in other jurisdictions have honored these bylaws by dismissing litigation brought in contravention of them.

The California court's ruling in *Drulias v. 1st Century Bancshares, Inc.*, No. H045049 (Cal. Ct. App. 6th Dist. Dec. 21, 2018), is thus another noteworthy step in curtailing abusive litigation tactics. The court held that California residents do not have any "substantive rights" under the California Corporations Code entitling them to sue a foreign corporation in California. The court said that although the California Corporations Code allows a California resident to bring a suit against foreign corporations transacting business in the state, "nothing in the provision requires a California court to exercise jurisdiction over such a case." It continued that, under Delaware law, "the reasonable expectation a stockholder like [plaintiff] should have is that [the corporation's] board may adopt a forum selection bylaw designating Delaware as the exclusive forum for intra-corporate disputes."¹

The court further rejected the plaintiffs' argument that the bylaw should not be enforced because the board adopted it in connection with the challenged merger. Following the rationale of other courts,² the Court of Appeal noted that the timing of the bylaw's adoption was intended to reduce litigation expenses and avoid duplication of effort in defending lawsuits brought against the merger, which was a common occurrence in public company M&A. The bylaw, the court said, "promot[ed] efficient use of judicial resources" and was "beneficial to corporations and their shareholders alike."³

California thus joins numerous other states whose courts have recognized the validity of—and enforced—exclusive forum bylaws.⁴

¹ See also *Boilermakers Local 154 Retirement Fund v. Chevron Corp.*, 73 A.3d 934 (Del. Ch. 2013) (holding that exclusive forum bylaws are facially valid under Delaware law).

² See, e.g., *City of Providence v. First Citizens Bancshares, Inc.*, Consol. C.A. No. 9795-CB (Del. Ch. Sept. 8, 2014) (upholding an exclusive forum bylaw adopted in connection with the approval of a merger).

³ See generally Joseph A. Grundfest & Kristen Savelle, *The Brouhaha Over Intra-Corporate Forum Selection Provisions: A Legal, Economic, and Political Analysis*, 68 Bus. Law. 325 (2013); Joseph A. Grundfest, *The History and Evolution of Intra-Corporate Forum Selection Clauses: An Empirical Analysis*, 37 Del. J. Corp. L. (2012).

⁴ See, e.g., *Daugherty v. Ahn*, Cause No. CC-11-06211 (Cnty. Ct. No. 3, Dallas Cnty. Tex., Feb. 15, 2013); *HEMG Inc. v. Aspen. Univ.*, No. 650457/13 (N.Y. Sup. Ct. Nov. 4, 2013); *Miller v. Beam*, No. 2014 CH 00932 (Ill. Cook Cnty. Mar. 5, 2014); *Groen v. Safeway Inc.*, No. RG14716641 (Cal. Sup. Ct. Order May 14, 2014); *Roberts v. TriQuint Semiconductor, Inc.*, 358 Or. 413 (Dec. 10, 2015) (reversing lower court's decision not to enforce an exclusive forum bylaw).

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