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## Delaware Court Upholds Board-Adopted Forum Selection Bylaws

This week, the Delaware Court of Chancery upheld board-adopted forum selection bylaws requiring that stockholder claims against a Delaware corporation or its directors be brought in a Delaware court. A number of Delaware companies have adopted some form of these forum selection provisions.

In *Boilermakers Local 154 Retirement Fund v. Chevron Corp.*, Del. Ch. C.A. No. 7220-CS, and *IClub Inv. Partnership v. Fedex Corp.*, Del. Ch. C.A. No. 7238-CS, Chancellor Leo Strine ruled in favor of the defendants with respect to the statutory and contractual validity of the forum selection bylaws at issue, though the decision did not address the fiduciary duties of directors in adopting these bylaws. The bylaws generally provided that litigation relating to corporate affairs should be conducted in Delaware, the state of incorporation of each company, unless otherwise consented to by the company. The forum selection bylaws applied to derivative suits, breach of fiduciary duty suits, suits based upon the Delaware corporation statute and internal affairs suits.

Board adoption of a forum selection bylaw does not mean that any claim made by a stockholder against the corporation can only be brought in a Delaware court. Claims that are not based on the stockholder-corporation relationship would not be covered by these types of bylaws. Furthermore, stockholder plaintiffs seeking to bring suit in another jurisdiction may be able to challenge the circumstances of adoption or assert that application of the bylaw under the particular circumstances is unreasonable or inequitable, and there is no certainty that courts outside of Delaware will enforce the bylaws. Nonetheless these bylaws may meaningfully reduce the risk of multijurisdictional litigation against corporations and their directors in corporate transactions, and perhaps provide for greater consistency in the application of Delaware law.

This week's ruling remains subject to appeal to the Delaware Supreme Court. However, in light of the Court of Chancery's decision, Delaware corporations that do not have forum selection provisions in their certificate of incorporation or bylaws may wish to consider adoption of such a bylaw.