



Seventh Circuit Holds That Delaware Forum Bylaw Cannot Force Litigation of Securities Exchange Act Claims In Delaware State Court

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The U.S. Court of Appeals for the Seventh Circuit held on Friday, January 7, 2022, that a district court erred in holding that Boeing Corporation could use its Delaware forum selection bylaw to force a shareholder derivative claim alleging violations of Section 14(a) of the Securities Exchange Act of 1934 into Delaware state court. The 2-1 split decision in *Seafarers Pension Plan v. Bradway, et al*, No. 20-2244, has significant implications for the ability of Delaware corporations to use forum selection bylaws to force parties to litigate derivative claims that allege underlying Exchange Act violations in Delaware state court.

This case arose from Boeing's challenges with the 737 Max aircraft. The derivative shareholder plaintiffs alleged that the defendant directors and officers made false and misleading statements in the company's proxy statements in violation of Section 14(a) of the Exchange Act. The defendants moved to dismiss on *forum non conveniens* grounds, citing Boeing's forum selection bylaw. That bylaw provides that the Delaware Court of Chancery shall be the exclusive forum for shareholder derivative claims brought on behalf of the company. The district court agreed and dismissed the case.

On appeal, the Seventh Circuit reversed. The majority held that to apply Boeing's forum bylaw to the 14(a) claims would defeat the claims entirely and frustrate the purpose of the Exchange Act, which establishes exclusive federal jurisdiction for Exchange Act claims. As a result of this decision, the plaintiffs are allowed to proceed with their derivative case in federal district court in Chicago.

In dissent, Judge Frank Easterbrook noted that the complaint alleged state law breach of fiduciary duty claims, which do not transmogrify into federal securities claims just because the plaintiffs allege that the conduct at issue violated the federal securities laws. He also highlighted that nothing in application of the bylaw bars plaintiffs from bringing a direct Section 14(a) claim in federal court. Therefore, he says, the majority is wrong to conclude that application of the forum bylaw frustrates the purposes of the Exchange Act.

If other courts adopt the Seventh Circuit's holding and reasoning, this decision could limit the effect of Delaware forum bylaws. Plaintiffs often allege federal securities violations in derivative complaints, along with state law claims. The Seventh Circuit has essentially now held that plaintiffs may circumvent a forum selection bylaw by doing so.