

December 27, 2018

California Appeals Court Confirms
Enforceability of Delaware Forum-Selection Bylaws

Last week, the California Court of Appeal became the second appellate court outside of Delaware to recognize the enforceability of forum-selection bylaws adopted by Delaware corporations designating the Delaware Court of Chancery as the exclusive forum for the litigation of intracorporate and fiduciary disputes. [*Drulias v. 1st Century Bancshares, Inc.*, No. H045049 \(Cal. Ct. App. 6th Dist. Dec. 21, 2018\).](#)

The appeal arose from Midland Financial's acquisition of 1st Century Bancshares, a Delaware-chartered bank holding company. When 1st Century's board approved the merger, it also adopted a bylaw establishing Delaware as "the sole and exclusive forum" for intracorporate disputes, including any action asserting a claim for breach of fiduciary duty. A 1st Century stockholder sued, alleging that the board had breached its duties in approving the merger and that the company's financial advisor had aided and abetted the breach.

On defendants' motion, the trial court stayed the action on the basis of 1st Century's forum-selection bylaw. Plaintiff appealed, arguing that the enforcement of the bylaw was unreasonable because the bylaw conflicted with California statute and had been adopted unilaterally by 1st Century's board after the alleged breach of duty.

Rejecting plaintiff's contentions, the appeals court held that the unilateral adoption of the bylaw was "entirely consistent with [plaintiff's] reasonable expectation at the time he chose to purchase stock in 1st Century." The court also observed it should be expected that a Delaware company "would prefer to litigate in Delaware" and that "[f]orum selection bylaws have the effect of consolidating [fiduciary] litigation into a single forum . . . which is beneficial to corporations and their shareholders alike."

Notwithstanding clear guidance in Delaware statute and case law, stockholder plaintiffs have sought for years to invalidate Delaware forum-selection bylaws [in the California trial courts](#). Last week's decision, which the appeals court certified for publication to signify its precedential effect, is the first controlling statement of California law on the issue. *Drulias* should help put an end to Delaware law fiduciary-breach litigation, in California and elsewhere, brought in derogation of duly enacted forum-selection bylaws.

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