

September 30, 2014

Ohio Federal Court Enforces Exclusive Forum Bylaw

In a recent decision, the U.S. District Court for the Southern District of Ohio invoked federal procedural law to enforce a board-adopted [forum selection bylaw](#). [North v. McNamara, No. 1:13-cv-833 \(S.D. Ohio Sept. 19, 2014\)](#). In so ruling, the court recognized that such bylaws can promote “cost and efficiency benefits that inure to the corporation and its shareholders by streamlining litigation into a single forum.”

The litigation involves Chemed, a Delaware corporation headquartered in Cincinnati, Ohio. In August 2013, the corporation’s board adopted a bylaw selecting any state or federal court in Delaware as the exclusive forum for intracorporate litigation. Several months later, a stockholder filed a derivative suit in federal court in Delaware on behalf of the corporation challenging certain conduct dating back to 2010. Shortly thereafter, a different stockholder filed substantially similar litigation, also on behalf of the corporation, against the same defendants concerning the same conduct in Ohio federal court. Invoking the bylaw, defendants moved to transfer the case to the Delaware federal district court under the federal venue statute, essentially seeking to consolidate it with the earlier-filed Delaware federal action.

Over the Ohio plaintiff’s objection, the court granted the motion. In reaching his conclusion, Judge Barrett found persuasive the Delaware Court of Chancery’s seminal [Chevron decision](#) and agreed that, under the “Delaware corporate framework,” stockholders need not “provide contemporaneous consent” to bylaw amendments when they have “previously chose[n] to be bound by those bylaws adopted unilaterally by the board.” Moreover, the Ohio court expressly rejected the [Oregon ruling about which we recently wrote](#) and held that a “forum-selection bylaw does not become unenforceable simply because it was adopted after the purported wrongdoing.” Finally, applying recent United States Supreme Court authority to a forum selection bylaw for the first time, the Ohio district court determined that a transfer to Delaware under the federal venue rules was appropriate, because there is a “strong interest in having the trial of this case in a forum that is at home with the applicable law,” and because consolidating litigation in a single forum avoids the risk of “inconsistent judgments on the same or a similar set of facts and claims.”

With this well-reasoned decision, the Ohio federal court offers a powerful endorsement of exclusive forum bylaws and joins other courts in New York, Texas, Illinois, Louisiana, and California that have enforced such bylaws against stockholders filing litigation in violation of their terms. The decision reconfirms that forum selection bylaws are doctrinally grounded and fully enforceable under both federal and state law principles. We continue to recommend that boards consider forum selection bylaws as a potential means of guarding against wasteful and duplicative multijurisdictional litigation.

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