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Forum-Selection Bylaws — Another Brick in the Wall

The Superior Court of California for the County of Los Angeles has added to a growing judicial consensus that forum-selection bylaws adopted in conjunction with public-company mergers will be enforced to direct transaction-related litigation to a single board-designated forum. RealD Inc. is a Delaware-chartered, California-headquartered corporation. When the company's board of directors approved a merger agreement with Rizvi Traverse Management LLC, a California-based private equity firm, it also adopted a bylaw requiring that any fiduciary-duty litigation involving the company be brought in the courts of Delaware.

A stockholder plaintiff nevertheless sued in California, claiming that RealD's directors breached their fiduciary duties in approving the merger and that other parties aided and abetted that breach. Arguing that California was a more convenient forum, that no duplicative litigation was pending in Delaware (or anywhere else), and that claims against third-party defendants should not be subject to the RealD bylaw, the plaintiff urged the court to ignore the bylaw and allow his case to proceed. The California court refused. Finding that "litigating in Delaware will be reasonable and fair" and that "Delaware courts have special expertise in corporate matters," the court rejected the plaintiff's assertion that confining his suit to a Delaware forum would be inequitable.

Forum-selection bylaws have proved resilient against attack, withstanding challenges in New York, Texas, California and several other jurisdictions. Deal planners should continue to consider and refine the state of the art in such bylaws, which are becoming an established tool to reduce the risk of opportunistic stockholder litigation.

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