

## Do Judges Need To Put Wax In Their Ears To Avoid Delaware's Siren Song?

Article By:

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**"But I with my sharp sword cut into small bits a great round cake of wax, and kneaded it with my strong hands, and soon the wax grew warm, forced by the strong pressure and the rays of the lord Helios Hyperion. Then I anointed with this the ears of all my comrades in turn; and they bound me in the ship hand and foot, upright in the step of the mast, and made the ropes fast at the ends to the mast itself; and themselves sitting down smote the grey sea with their oars."**

Homer, *Odyssey*, Book XII (A.T. Murray, Trans.)

A recently published article in the *Nevada Law Journal* is a *cri de coeur* for state and federal judges to reject Delaware precedent and apply Nevada's corporate law as written. Chodorow & Lawrence, "The Pull of Delaware: How Judges Have Undermined Nevada's Efforts To Develop Its Own Corporate Law", 20 Nev. L.J. 401 (Spring 2020). The authors argue that courts' predilection for applying Delaware precedent "undermines democracy, weakens the rule of law, and upsets the federal system where states may forge their own paths". In a strikingly militant conclusion the authors argue:

"If the Nevada courts continue to ignore Nevada law, state lawmakers can and should take steps to educate judges about Nevada corporate law and make clear that Nevada courts should not follow Delaware law, at least when it comes to the fiduciary duties of directors and shareholder primacy."

Maybe a little wax will get the job done.

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National Law Review, Volumess X, Number 140

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