

Public Company Adopts Fee Shifting Bylaw

Article By:

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The **Delaware Supreme Court** caused quite a stir when it concluded that a fee shifting bylaw adopted by a non-stock corporation **did not run afoul** of the **Delaware General Corporation Law**. *ATP Tour, Inc. v. Deutscher Tennis Bund*, 2014 Del. LEXIS 209 (Del. May 8, 2014). The Delaware legislature threatened to put the kye-bosk on this type of bylaw but it seems that the **U.S. Chamber of Commerce** put the kye-bosk on the legislation. Since then, I haven't come across any examples of publicly traded corporations that have adopted a fee-shifting bylaw. One of my colleagues, however, did find one recent [example](#):

To the fullest extent permitted by law, in the event that (i) any current or prior stockholder or anyone on their behalf ("Claiming Party") initiates or asserts any claim or counterclaim ("Claim") or joins, offers substantial assistance to, or has a direct financial interest in any Claim against the Corporation and/or any Director, Officer, Employee or Affiliate, and (ii) the Claiming Party (or the third party that received substantial assistance from the Claiming Party or in whose Claim the Claiming Party had a direct financial interest) does not obtain a judgment on the merits that substantially achieves, in substance and amount, the full remedy sought, then each Claiming Party shall be obligated jointly and severally to reimburse the Corporation and any such Director, Officer, Employee or Affiliate, the greatest amount permitted by law of all fees, costs and expenses of every kind and description (including but not limited to, all reasonable attorney's fees and other litigation expenses) (collectively, "Litigation Costs") that the parties may incur in connection with such Claim.

Exhibit 3.2 Echo Therapeutics, Inc. [Form 8-K/A](#) filed June 27, 2014.

Roman Law Applied To The News

Recently, I read this [article](#) about the birth of a baby on an airplane. Being a lawyer, my first question wasn't boy or girl or even how are the mother and child? My question was should the baby be charged for a ticket? I found the answer, where else, in Justinian's *Digest*:

Si quis mulierem vehendam navi conduxisset, deinde in nave infans natus fuisset, probandum est pro infante nihil deberi, cum neque vectura eius magna sit neque his omnibus utatur, quae

ad navigantium usum parantur.

If someone should transport a woman sailing by ship and then a baby is born on the ship, it must be judged that nothing is owed on account of the baby, since its transportation is not big and it doesn't enjoy the things used by those sailing.

Justinian, *Digest* 19.2.19.7 (my translation).

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