

## Replacement Of Lost Stock Certificate Is Not Internal Affair, But So What?

Article By:

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U.S. District Court Judge [Edward M. Chen](#) recently ruled that a stockholder could maintain an action under **California Corporations Code Section 419** for replacement of a lost, stolen or destroyed certificate. As just described, the ruling shouldn't be a surprise. Section 419 provides that if "a corporation refuses to issue a new share certificate or other certificate in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost, stolen or destroyed, the owner of the lost, stolen or destroyed certificate or the owner's legal representative may bring an action in the superior court of the proper county for an order requiring the corporation to issue a new certificate in place of the one lost, stolen or destroyed." What makes Judge Chen's ruling unusual is that the defendant corporation was incorporated in Delaware. Judge Chen didn't see this as a problem, however:

The Court finds that the re-issuance of a lost or missing stock certificate does not concern a matter of internal affairs so as to implicate the internal affairs doctrine, unlike the initial issuance of shares or dividends as required by the bylaws.

*Sender v. Franklin Res., Inc.*, 2015 U.S. Dist. LEXIS 171453, 3-4 (N.D. Cal. Dec. 22, 2015). But that doesn't answer the question of why Section 419 would ever apply to a Delaware corporation. By its terms, Section 419 applies to a "corporation", a term defined in Section 162 referring, unless otherwise expressly provided, to "only a corporation organized under this division [*i.e.*, the General Corporation Law] or corporation subject to this division under the provisions of subdivision (a) of Section 102?". Thus, the statute does not purport to apply to "foreign corporations", a term defined in Section 171.

Delaware has its own statute, Section 168, that authorizes a purported owner to obtain replacement certificate by filing a complaint in the Court of Chancery. The California and Delaware statutes are very similar. Would application of Delaware's statute make a difference? According to Judge Chen,

Defendant admitted that the wording of the statutes were almost identical, and only raised concerns that Delaware case law places the burden of proof on the plaintiff while no California court has decided the issue. However, at the hearing, Plaintiff also acknowledged that it would be the plaintiff's burden to show entitlement to the stock certificate. Thus, because there is no conflict between the California and Delaware statutes, the Court finds that California law applies and will not dismiss

Plaintiff's section 419 claim.

In a future post, I will discuss a California and a Delaware statute not mentioned in the ruling.

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