

## California Judge Honors Delaware Forum Selection Bylaw

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In May, I [wrote](#) about Judge Peter H. Kirwan's ruling in *Drulias v. 1st Century Bancshares, Inc.*, (Cal. Super. Ct. Case No. 16-CV-294673, Nov. 18, 2016). As readers may recall, Judge Kirwan declined to approve a disclosure only settlement based on *In re Trulia, Inc. Stockholder Litig.*, 129 A.3d 884 (Del. Ch. Jan. 22, 2016). Recently, Judge Brian C. Walsh ruled that Delaware, not California, was the proper forum for the case based on 1st Century Bancshare's forum selection bylaw. Below are some notable excerpts from Judge Walsh's ruling:

- There is no California authority addressing the enforceability of a forum selection bylaw, as opposed to a contractual forum selection provision. Federal courts in California have split on the issue of whether such bylaws are enforceable [citing *Galaviz v. Berg*, 763 F. Supp. 2d 1170 (N.D. Cal. 2011) and *In re: CytRx Corp. Stockholder Derivative Litig.* 2015 WL 9871275 (C.D. Cal. Oct. 30, 2015)]
- *While it [California Corporations Code Section 2116] provides that liability under the laws of the state of corporation "may" be enforced in California, it does not purport to create a right to sue in California as urged by plaintiff.*
- Notably, there is no dispute that Delaware law will apply to the substance of plaintiff's claims, so there is no concern that a Delaware court would not enforce the protections established by California law.

In reviewing the court's docket, I noted that the plaintiff's first amended complaint included a demand for a jury trial (this was a shareholder class action, not a derivative suit). In opposing the company and individual defendants' motion to dismiss, however, the plaintiffs did not raise the argument that the bylaw constitutes and unconstitutional waiver of the right to a jury trial. See [Court Of Appeal Voids Jury Trial Waiver Notwithstanding New York Choice of Law](#).

"I say, beware of all enterprises that require new clothes . . ."

H.D. Thoreau, Walden (today is the bicentennial of his birth).

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National Law Review, Volume VII, Number 193

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