



California Corporate & Securities Law

Court Rules Choice Of Law Provision Takes Precedence Over Internal Affairs Doctrine

By Keith Paul Bishop on December 27, 2011

To say that the Delaware courts and bar are very fond of the internal affairs doctrine is about as controversial as wearing white before Labor Day. If you have any doubts about the sacred status of the doctrine in Delaware, I refer you to the Delaware Supreme Court's decision in *Vantagepoint Venture Partners 1996 v. Examen, Inc.*, 871 A.2d 1108 (2005).

While California does not go so far as to deny the existence or validity of the internal affairs doctrine, it is far less rigid in its devotion to it. For example, Corporations Code § 2115 imposes numerous provisions of the California General Corporation Law on foreign corporations to the exclusion of the law of the jurisdiction in which they are incorporated when more than half of the corporation's voting stock is held by California residents, and the corporation conducts a majority of its business in the state (as measured by assets, payroll, and sales). A California Court of Appeal has held that § 2115 does not violate the full faith and credit clauses of the U.S. Constitution; the commerce clause of U.S. Constitution, due process, or the contract clause of either the U.S. or California Constitutions. *Wilson v. Louisiana-Pacific Resources, Inc.*, 138 Cal. App. 3d 216 (1982). Independent of Section 2115, California courts have applied the following provisions of the California Corporations Code to foreign corporations:

- Section 1600 (shareholder inspection rights), *Valtz v. Penta Corp. et al.*, 139 Cal. App. 3d 803 (1983);
- Section 1602 (inspection rights), *Havlicek v. Coast-to-Coast Analytical Services, Inc.*, 39 Cal. App. 4th 1844 (1995); and
- Section 25502.5 (liability for insider trading), *Friese v. Superior Court*, 134 Cal. App. 4th 693 (2005).

In *Johnson v. Myers*, 2011 U.S. Dist. LEXIS 112897 (N.D. Cal. Sept. 30, 2011) the plaintiffs brought a derivative suit on behalf of a dissolved Scottish company alleging, among other things, breach of contract. The contract included a California choice of law provision. Judge Jeremy Fogel found "In cases in which the parties have made choice-of-law arguments based upon both contractual clauses and the internal affairs doctrine, the Ninth Circuit (applying California law) and the California Supreme

Please contact **Keith Paul Bishop** at Allen Matkins for more information kbishop@allenmatkins.com

<http://www.calcorporatelaw.com/>

Court both have analyzed the choice-of-law clauses *before* the internal affairs doctrine.” (emphasis added)

If you are interested in more on this topic, I've written the following articles:

- *Court of Appeal Applies California Inspection Rights to Delaware Corporation*, 17 CEB California Business Law Reporter 168 (1996)
- *The War Between the States – Delaware’s Supreme Court Ignores California’s Corporate Outreach Statute*, 19 Insights 19 (2005)
- *California Appellate Court Holds that the Internal Affairs Doctrine Does not Trump California’s Insider Trading Law*, 20 Insights 15 (2006)

Please contact **Keith Paul Bishop** at Allen Matkins for more information kbishop@allenmatkins.com

<http://www.calcorporatelaw.com/>