



California Corporate & Securities Law

California Comments On Crescent City Corporate Conference

Posted In [Corporate Governance](#), [Pseudo-Foreign Corporations](#)

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Last week, I attended the 23rd Annual Corporate Law Institute sponsored by [Tulane University Law School](#). Here are some notes.

Who Came

The Institute drew a crowd of nearly 400 people, including about two dozen reporters. Reportedly, [Bloomberg](#), [Reuters](#), [The Wall Street Journal](#) and others had representatives attending the Institute.

Who Spoke

The panels were excellent, featuring Delaware Supreme Court Justice [Jack Jacobs](#) and Vice Chancellors [J. Travis Laster](#), [Donald Parsons](#) and [Leo Strine](#) as well as leading members of the Delaware and New York Bars. The Institute's title is a bit of a misnomer. This is really a conference by East Coast practitioners about Delaware corporate law, as impacted by the federal securities laws. However, I did hear Vice Chancellor Strine briefly refer to California-style non-retention votes, presumably a reference to Section 708.5 of the California Corporations Code.

Choosing the Field of Battle

One panel tackled the question of the validity of bylaws specifying the Delaware Chancery Court as the forum resolving corporate disputes. The panel spent some time, of course, parsing the U.S. District Court's decision in [Galavise v. Berg](#) (N.D. Cal. Jan. 3, 2011). Justice Jacobs, noting that that this was "virtually virgin territory", observed that this question will likely be decided in non-Delaware courts.

Commenting on What Others Make

The general consensus seemed to be that stockholders are, with a few notable exceptions, approving executive compensation. Vice Chancellor Strine was particularly outspoken on whether there was a rational basis for public companies having advisory votes on executive compensation annually.

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Is Air a Gas or Product?

If there had been a vote on the most popular case at the Institute, the Airgas, Inc. versus Air Products litigation would have won hands down. Nearly every panel had something to say about this litigation. I hadn't heard so much talk about air and gasses since attending lectures on Boyle's Law. Vice Chancellor Strine raised the question of whether a Board of Directors could be found liable for not maintaining a shareholder rights plan and whether it would make a difference if the Board was facing an all cash tender offer or a merger.

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