

Corporate Finance/M&A - USA

Chancery court declines to apply fee-shifting bylaw to former shareholder

Contributed by **Ropes & Gray LLP**

June 10 2015

In deciding what it characterised as an issue of "first impression", the Delaware Chancery Court recently held a fee-shifting bylaw to be inapplicable due to the timing of the bylaw's adoption.

The plaintiff in *Strougo v Hollander*⁽¹⁾ challenged the fairness of a 10,000-to-1 reverse stock split completed by First Aviation Services, Inc on May 30 2014. The transaction had the effect of involuntarily cashing out the plaintiff and making First Aviation a privately owned company controlled by its chairman and chief executive officer. On June 3 2014 the company's board of directors adopted a fee-shifting bylaw modelled after the bylaw considered in *ATP Tour, Inc v Deutscher Tennis Bund*.⁽²⁾

Applying contract principles, the court held that the fee-shifting bylaw could have no application to the plaintiff because it was adopted after his interest in the corporation had been eliminated and he therefore was no longer a party to the bylaws at the time of adoption. The court further reasoned that the omission of "former" stockholders from the text of Section 109(a) of the Delaware General Corporation Law indicates that that Section 109(a) authorises only bylaws relating to the rights or powers of existing stockholders.

The court took care to emphasise that it was not called on to decide broader issues involving the bylaw's application, including the "serious policy questions implicated by fee-shifting bylaws in general". The validity of fee-shifting bylaws remains subject to ongoing debate.

For further information on this topic please contact [Patrick Diaz](#) at Ropes & Gray LLP's Boston office by telephone (+1 617 951 7000) or email (patrick.diaz@ropesgray.com). Alternatively, contact [Anne Johnson Palmer](#) at Ropes & Gray LLP's San Francisco office by telephone (+1 415 315 6300) or email (anne.johnsonpalmer@ropesgray.com). The Ropes & Gray LLP website can be accessed at www.ropesgray.com.

Endnotes

(1) CA No 9770-CB (Del Ch March 16 2015).

(2) 91 A 3d 554 (Del 2014).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Authors

Patrick Diaz



Anne Johnson Palmer



Online Media Partners

