



November 18, 2014

Submitted to the Wall Street Journal in response to a November 14, 2014 op-ed by Lisa A. Rickard, entitled, "Delaware Flirts with Encouraging Shareholder Lawsuits."

Lisa Rickard's November 14 Op Ed, "Delaware Flirts with Encouraging Shareholder Lawsuits," provides more spin than truth with her claim that "[Delaware's] reputation as a fair and hospitable business locale is at risk, thanks to a recent attempt by the legislature to prohibit corporations from protecting themselves against predatory lawsuits."

The truth is that earlier this year the Delaware legislature attempted to limit the impact of the May 2014 Delaware Supreme Court decision in ATP Tour. That decision profoundly weakens the ability of investors to hold boards and management accountable via the courts. Since the decision, more than three dozen companies have added so-called "fee-shifting" bylaws to their governing documents. Like Ms. Rickard, we strongly oppose frivolous lawsuits, but fee-shifting bylaws can erect barriers that effectively halt any investor-led litigation.

Moreover, action by the Delaware legislature to address the implications of ATP Tour will likely benefit, not harm, Delaware's "reputation as a fair" business locale. It should be remembered that Delaware's reputation is based in large part on the fact that its courts are recognized as the nation's preeminent forum for determination of disputes involving internal affairs of companies. If corporations continue to adopt fee-shifting bylaws, Delaware judiciary's leadership role will diminish over time because fewer business disputes will be brought before Delaware courts.

As an organization that represents long-term institutional investors with more than \$3 trillion dollars invested in the markets, including in shares of many Delaware corporations, we believe that prompt action by the Delaware legislature is necessary to overturn or narrow the application of ATP Tour. If enacted, such legislation would protect company accountability to owners and serve the interests of Delaware in maintaining its preeminence in the field of corporate law.

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