



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BOILERMAKERS LOCAL 154)
RETIREMENT FUND and KEY WEST)
POLICE & FIRE PENSION FUND, on Behalf)
of Themselves and All Others Similarly)
Situated,)

Civil Action No. -

Plaintiffs,)

v.)

CHEVRON CORPORATION, SAMUEL H.)
ARMACOST, LINETT F. DEILY, ROBERT)
E. DENHAM, ROBERT J. EATON, CHUCK)
HAGEL, ENRIQUE HERNANDEZ, JR.,)
FRANKLYN G. JENIFER, GEORGE L.)
KIRKLAND, SAM NUNN, DONALD B.)
RICE, KEVIN W. SHARER, CHARLES R.)
SHOEMATE, JOHN G. STUMPF, RONALD)
D. SUGAR, CARL WARE, and JOHN S.)
WATSON,)

Defendants.)

VERIFIED COMPLAINT

NATURE AND SUMMARY OF THE ACTION

1. Plaintiffs, as stockholders of Chevron Corporation, a Delaware corporation headquartered in San Ramon, California (“Chevron” or the “Company”), bring this action to protect individual rights and the collective rights of all stockholders of the Company against a board-adopted bylaw which provides that any action that includes a claim falling within four broad categories can only be litigated in the Delaware Court of Chancery (the “Exclusive Forum Bylaw” or the “Bylaw”). The defendants are the Company and the members of the board of directors (the “Board”) that imposed the Bylaw on directors, officers, employees and stockholders of the corporation, while retaining the Board’s ability to choose where claims subject to the Bylaw, including claims against them, will be litigated. In contrast, the Bylaw

requires that Plaintiffs can only bring this action challenging the Bylaw in the Delaware Court of Chancery. Indeed, under Delaware law, Plaintiffs or any other stockholder that sues in any forum other than the Delaware Court of Chancery may be sued by the Company for breach of the Bylaw's exclusive forum provision and held liable for the Company's expenses in the other forum. Therefore, Plaintiffs and the Company's other stockholders are entitled to a prompt determination of the validity, applicability and enforceability of the provisions of the Bylaw and an interpretation of its terms.

2. The Exclusive Forum Bylaw requires that if a single claim falls within any one of the four broad categories, any action raising that claim must be brought in its entirety in the Delaware Court of Chancery. The Bylaw is not limited to class or derivative claims but applies to individual claims by stockholders. Indeed, the Bylaw is not limited to claims brought against the Company and/or its directors, but enables the Company or its directors to bring claims against stockholders, officers and employees of the Company, and even former stockholders, officers or employees of the Company, in the Delaware Court of Chancery. Moreover, being subject to what the Company and its directors claim is a forum selection agreement, Plaintiffs and other stockholders may be deemed under Delaware law to have consented to personal jurisdiction in the Delaware Court of Chancery. Indeed, the Bylaw provides that anyone acquiring any direct or indirect interest in the Company's shares consents to the Bylaw.

3. The Exclusive Forum Bylaw mandates that claims it covers must be brought in the Delaware Court of Chancery regardless of whether the Court has personal jurisdiction over the defendants or subject matter jurisdiction of claims in the action. Indeed, the Bylaw requires that actions arising under provisions of the Delaware General Corporation Law ("DGCL") that

are actions at law must be brought in the Delaware Court of Chancery even though the Court's statutorily and historically defined jurisdiction excludes such claims.

4. The Exclusive Forum Bylaw is not a proper exercise of the Board's ability to enact bylaws under 8 *Del. C.* § 109(b) and the Company's certificate of incorporation. It regulates an external matter (*i.e.*, selection of a judicial forum) and not a matter of internal corporate governance. The Bylaw purports to bind persons who are not subject to bylaw regulation under § 109, such as former stockholders. The Bylaw is also invalid because it is not consistent with Delaware law, including 10 *Del. C.* §§ 341-342, 8 *Del. C.* §§ 102(b)(7), 111, 164 and 324, 6 *Del. C.* § 2708 and 10 *Del. C.* § 3114. Because the Bylaw's overbroad provisions purport to subject Plaintiffs and other stockholders of the Company to personal jurisdiction, counterclaims and ancillary claims and service of process in Delaware, the Bylaw conflicts with Delaware law and violates due process.

5. The Bylaw is not a valid and binding forum selection clause because there was no mutual consent by each of or any of the stockholders. Corporate law concerning bylaw amendments cannot substitute for the contract law requirements for a valid contractual amendment to establish a binding exclusive forum obligation. Moreover, the Bylaw was not only unilaterally adopted, but is unilateral in effect because the Company can choose a forum other than the Delaware Court of Chancery.

6. The Exclusive Forum Bylaw is also invalid because it conflicts with federal constitutional and statutory provisions and impinges on federal jurisdiction and the jurisdiction of other state courts.

7. The overbroad, unilateral and mandatory Bylaw is unreasonable and therefore is invalid. Moreover, the Board breached its fiduciary duties of loyalty and care by enacting the

self-interested Bylaw on an uninformed basis. The Bylaw permits the directors to control the forum for litigation against them and thereby reduces their risk of liability. The public disclosure concerning the Board's adoption of the Bylaw does not reflect any recognition of the effects of the Bylaw. The Bylaw is not entirely fair to the stockholders. It was initiated, timed, structured and approved to benefit the directors at the expense of the stockholders.

8. The premise of the Exclusive Forum Bylaw is that the Delaware Court of Chancery is best equipped to determine issues of Delaware corporate law. However, the Bylaw seeks to force non-Delaware law issues to be litigated in the Delaware Court of Chancery. If one claim in an action is within the scope of the Bylaw, it requires that the entire action be litigated in the Delaware Court of Chancery, regardless of whether the other claims in the action are based on Delaware law, federal law or the law of another state. Indeed, the Bylaw would require that claims relating to stock purchase agreements, subscription agreements, option agreements and agreements relating to convertible securities must be litigated in the Delaware Court of Chancery even if the pertinent agreement provides it is governed by the law of some other state.

9. For these reasons, and as set forth more fully herein, Plaintiffs seek an order declaring that the Bylaw is invalid and enjoining defendants from enforcing the Bylaw.

THE PARTIES

10. Plaintiff Boilermakers Local 154 Retirement Fund ("Boilermakers") is a stockholder of Chevron and has been a stockholder of Chevron at all times relevant hereto.

11. Plaintiff Key West Police & Fire Pension Fund ("Key West", and together with Boilermakers, "Plaintiffs") is a stockholder of Chevron and has been a stockholder of Chevron at all times relevant hereto.

12. Defendant Chevron is a corporation incorporated under the laws of the State of Delaware. Chevron maintains its principal place of business at 6001 Bollinger Canyon Road, San Ramon, CA 94853.

13. Defendants Samuel H. Armacost, Linett F. Deily, Robert E. Denham, Robert J. Eaton, Chuck Hagel, Enrique Hernandez, Jr., Franklyn G. Jenifer, George L. Kirkland, Sam Nunn, Donald B. Rice, Kevin W. Sharer, Charles R. Shoemate, John G. Stumpf, Ronald D. Sugar, Carl Ware, and John S. Watson (collectively, the "Directors") were directors of Chevron on September 29, 2010 when the Bylaw was unanimously adopted by the Board.

CLASS ACTION ALLEGATIONS

14. Plaintiffs bring this action individually and as a class action, pursuant to Court of Chancery Rule 23, on behalf of all common stockholders of Chevron (the "Class"). Excluded from the Class are defendants herein, and any person, firm, trust, corporation or other entity related to or affiliated with any of the defendants.

15. This action is properly maintainable as a class action.

16. The Class is so numerous that joinder of all members is impracticable. As of September 30, 2011, there were in excess of 1.9 billion shares of Chevron common stock outstanding.

17. There are questions of law and fact which are common to the Class including, *inter alia*, the following:

(a) whether the Bylaw is valid and enforceable;

(b) whether the Directors have breached their fiduciary duties to Plaintiffs and

the other members of the Class; and

(c) whether Plaintiffs and the Class are entitled to declaratory relief, injunctive relief or damages.

18. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of claims of the other members of the Class and Plaintiffs have the same interests as the other members of the Class. Accordingly, Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

19. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for defendants, or adjudications with respect to individual members of the Class that would as a practical matter be dispositive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests.

20. Defendants have acted, or refused to act, on grounds generally applicable to and causing injury to the Class, and therefore injunctive relief and/or corresponding declaratory relief on behalf of the Class as a whole is appropriate.

SUBSTANTIVE ALLEGATIONS

The Terms of the Bylaw

21. The complete text of the Bylaw reads as follows:

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware

General Corporation Law, or (iv) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this [bylaw].

22. The Bylaw was adopted on September 29, 2010 by defendants Samuel H. Armacost, Linett F. Deily, Robert E. Denham, Robert J. Eaton, Chuck Hagel, Enrique Hernandez, Jr., Franklyn G. Jenifer, George L. Kirkland, Sam Nunn, Donald B. Rice, Kevin W. Sharer, Charles R. Shoemate, John G. Stumpf, Ronald D. Sugar, Carl Ware, and John S. Watson. The Bylaw was unanimously adopted by the Board and without a stockholder vote.

The Sole and Exclusive Forum Provision

23. The Bylaw provides that the Delaware Court of Chancery “shall” be “the sole and exclusive forum” for any action asserting a claim that falls within any one of four broad categories of litigation:

Derivative Action or Proceeding:

“(i) any derivative action or proceeding brought on behalf of the Corporation” (the “Derivative Provision”).

Breach of Fiduciary Duty Actions:

“(ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders” (the “Fiduciary Duty Provision”).

DGCL Actions:

“(iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law” (the “DGCL Provision”).

Internal Affairs Actions:

“(iv) any action asserting a claim governed by the internal affairs doctrine” (the “Internal Affairs Provision”).

The Bylaw Applies to “Any Action”

24. The expansive scope of the Bylaw is plain from its broad language. The Delaware Court of Chancery “shall” be the “sole” and the “exclusive” forum for “any” action is mandatory and exclusive language that is all-encompassing. The express language of the Bylaw excludes all other courts before which the parties could, or in certain instances must, otherwise bring any action to which the Bylaw applies.

25. “Any action” which raises “a claim” (*i.e.*, one claim) that is within one of the Bylaw’s specified categories must be brought in the Delaware Court of Chancery. Thus, an action asserting several claims, even if only one claim falls within any one of these subparts, must be brought in the Delaware Court of Chancery, regardless of whether the other claims do not fall within the Bylaw and regardless of whether the Delaware Court of Chancery has subject matter jurisdiction over the claims asserted.

The Bylaw Contains No Limitation on Plaintiffs or Defendants

26. The categories of actions identified in the Bylaw contain no limitation with respect to the identity of the plaintiff bringing the action or the defendants against whom it is brought. Indeed, the Bylaw purports to require even *former* stockholders to bring litigation in the Delaware Court of Chancery. Further, the Bylaw is not limited to actions brought by a stockholder against the Company and/or its directors and officers; rather, it applies equally to actions brought by the Company *against* stockholders directors, officers or employees. For example, the Company can bring an action against directors, officers and/or employees asserting a claim of breach of fiduciary duty to the Company. Similarly, the DGCL Provision and Internal

Affairs Provision contain no limitation as to plaintiffs or defendants. Thus, the Company can sue stockholders, directors, officers or employees in the Delaware Court of Chancery in any action where the Company asserts at least one claim “arising pursuant to” any DGCL section or “governed by the internal affairs doctrine,” regardless of any other claims asserted in the action. The Company could also assert claims arising pursuant to the DGCL against officers.

The Derivative Provision

27. The Bylaw includes “any derivative action or proceeding,” but does not define (i) whether an action raising a single derivative claim is a “derivative action,” (ii) what a “derivative...proceeding” is or (iii) whether “brought on behalf of the Corporation” includes actions where the corporation is the plaintiff.

28. The Bylaw is not limited to derivative or class actions but purports to control where individual stockholders may bring individual claims in an individual action. Moreover, it is not limited to derivative claims that are based on Delaware corporation law, but extends to federal claims or claims under the laws of other states that are brought derivatively.

The Fiduciary Duty Provision

29. The Fiduciary Duty Provision covers any action asserting a single claim of breach of fiduciary duty owed by “any director, officer or other employee of the Corporation” to the Company or its stockholders. The Fiduciary Duty Provision does not contain an exclusion for defendants over whom the Delaware Court of Chancery would not have personal jurisdiction. Thus, for example, the Bylaw purports to require stockholders and the Company to bring litigation in the Delaware Court of Chancery against officers and employees of the Company who are not subject to 10 *Del. C.* § 3114, reside outside of Delaware, and did not perform any act in Delaware.

The DGCL Provision

30. The DGCL Provision covers any action where a single claim arises “pursuant to” any DGCL section. This would include not only suits that are specifically authorized by sections of the DGCL, but any case that includes a claim involving the interpretation, application or enforcement of any of the more than 100 sections of the DGCL.

31. Pursuant to 8 *Del. C.* § 111(b), “[a]ny civil action to interpret, apply or enforce any provision of this title may be brought in the Court of Chancery.” Under 8 *Del. C.* § 111(a), the Delaware Court of Chancery may hear any action “to interpret, apply, enforce or determine the validity of the provisions of” the certificate or bylaws, transfer restrictions, proxies, voting trusts or voting agreements, merger agreements or certificates of merger and certificates of conversion, domestication, transfer or continuance. Section 111(a)(1) specifically contemplates that the Delaware Court of Chancery shall determine the interpretation, application, enforceability and validity of the Bylaw.

32. Section 111(a)(2) further places within the statute’s parameters:

Any instrument, document or agreement by which a corporation creates or sells, or offers to create or sell, any of its stock or any rights or options respecting its stock.

This provision encompasses disputes relating to stock subscription agreements, stock purchase agreements, offering memoranda, prospectuses, option plans, option agreements, warrants, warrant agreements, rights plans, rights agreements, convertible debentures and related indentures and any other document related to the offer or sale of stock, options or rights. These various agreements and instruments may or may not be governed by Delaware law. Indeed, many such agreements and instruments may contain a choice-of-law provision designating the law of another state, but not contain any forum selection provision. Under the Bylaw, claims

under such agreements and instruments must be brought in the Delaware Court of Chancery even though the law of another state applies.

33. Section 111(a)(9) expands the scope of the statute even further to include any other instrument, document, agreement or certificate required by any provision of the DGCL. Significantly, the scope of § 111 (and consequently the scope of the Bylaw) is not limited to actions brought by stockholders but includes suits brought by the corporation or even an indenture trustee for noteholders.

The Internal Affairs Provision

34. The internal affairs doctrine provides that a corporation's internal affairs should be governed by the law of the jurisdiction of incorporation, but does not provide that only the Delaware Court of Chancery is capable of adjudicating such matters. The Internal Affairs Provision, however, requires that actions "asserting a claim governed by the internal affairs doctrine," even where the pertinent claim is one of many claims, must be brought in the Delaware Court of Chancery. The Internal Affairs Provision requires such an action to be brought in the Delaware Court of Chancery even if the Court does not have personal jurisdiction over the defendants or subject matter jurisdiction over the additional claims.

The Corporate Control of Forum Clause

35. The Bylaw begins by allowing the Company to designate a forum other than the Delaware Court of Chancery (the "Corporate Control of Forum Clause"):

Unless the Corporation consents in writing to the selection of an alternative forum...

36. Although the terms of the Bylaw are mandatory, the introductory clause of the Bylaw effectively allows the Company to choose the forum for all litigation falling within the Bylaw. Thus, the Company (*i.e.*, the Board) can consent in writing to the Company selecting a

forum other than the Delaware Court of Chancery for bringing any action within the Bylaw against any director, officer, employee or stockholder of the Company.

37. If one stockholder brings an action in the Delaware Court of Chancery and another files an action in another forum, the Company can choose whichever forum the Directors believe presents the least chance of liability or the best prospect for a cheap settlement. Moreover, because the Bylaw allows the Company to choose the forum, it can force the stockholder who filed in Delaware to litigate in a different forum. Thus, far from ensuring that Delaware corporate law issues are litigated in the Delaware Court of Chancery, the Bylaw allows the Company to compel stockholders and others to litigate outside Delaware.

38. Because the Bylaw mandates that all actions falling within the Bylaw must be filed in the Delaware Court of Chancery unless the Company consents to “the selection” of an alternative forum, stockholders, officers, employees and others wishing to file any such action apparently must obtain the Company’s consent to any forum other than the Delaware Court of Chancery before selecting a forum. Thus, the Bylaw appears to require a pre-suit request for the Company’s consent before filing in any forum other than the Delaware Court of Chancery.

39. The Bylaw does not require that parties other than the Company must also consent to an alternative forum. Thus, the Bylaw permits the Company to require the plaintiff and other defendants to litigate in whichever alternative forum the Company chooses.

40. In short, the Bylaw allows the Company (*i.e.*, the Board) to choose the forum not only for litigation the Company as plaintiff brings against stockholders, directors, officers or employees, but also allows the Company and its directors as defendants to choose the forum for suits brought by any stockholder, director, officer or employee against them. The Bylaw is not a mutual “forum selection” provision but a one-sided “heads I win, tails you lose” provision giving

the Company the choice of forum. Moreover, the Corporate Control of Forum Clause is inconsistent with the purported rationale of the Bylaw: that the Delaware Court of Chancery is best qualified to determine Delaware corporate law issues. Indeed, this clause appears to concede that the Delaware Court of Chancery may not be the appropriate forum for cases that are within the scope of the Bylaw.

The Consent Provision

41. The Bylaw concludes with a deemed notice and consent provision (the “Consent Provision”) which reads:

Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provision of this [bylaw].

The Consent Provision is a concession that the stockholders have not agreed to the Bylaw and that it was adopted without notice to them. Indeed, proponents of corporate forum selection provisions have recognized that getting the holders of even a simple majority of a corporation’s shares to vote for such a provision would be difficult.

42. The Consent Provision purports to make the bylaw binding on not just buyers of the Company’s stock, but on anyone who acquires any interest in any of the Company’s shares by any means. Therefore, the Bylaw would bind anyone who obtains the Company’s shares through testamentary transfer, as a gift or through any other method of transfer.

43. The Consent Provision purports to make the Bylaw binding not only on anyone acquiring ownership of the Company’s shares, but on anyone acquiring “any interest” in any of the Company’s shares. This would include not only beneficial owners and record holders of the Company’s stock such as depositaries, brokers and nominees but also holders of options, rights, warrants and convertible debentures. Lenders who have stock as collateral and others with a

security interest in stock would also have an “interest” in shares of the Company’s stock and be deemed to have consented to the Delaware Court of Chancery as the exclusive forum for any covered action. Furthermore, if the Company adopts a poison pill rights plan, the unilateral issuance to all stockholders of rights to acquire stock would enable the Directors to fabricate “consent” to the Bylaw by all stockholders.

The Scope of the Bylaw Exceeds Its Purported Rationale

44. The purported justification for bylaws designating the Delaware Court of Chancery as the exclusive forum for suits involving Delaware corporations is that the Court is best qualified to determine issues of Delaware corporate law. However, the expansive scope of the Bylaw is not limited to the determination of Delaware corporate law issues. Rather, it extends to contract issues, including under the laws of other states, federal claims and any claim that must or could be brought in an action asserting a claim that is within any of the broad categories delineated in the Bylaw. In short, such bylaws go beyond Delaware “protecting its turf” and may well be perceived as a power grab by the Delaware courts to wrest cases away from the federal courts and the courts of other states.

45. Exclusive forum bylaws are also supposedly intended to prevent duplicative lawsuits. However, the Company has not shown that it has been the subject of duplicative suits in the various broad areas encompassed by the Bylaw. Indeed, multiple suits most often arise in the context of a Delaware corporation that is being acquired—which tends to be a one-time phenomenon.

46. The overly broad coverage and lack of specific support for the need for the Bylaw supports the inference that the Directors enacted the Bylaw to minimize their own prospects for potential liability.

Principles Governing the Validity and Construction of Bylaws

47. Under 8 *Del. C.* § 109(b), the bylaws of a Delaware corporation “may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees.” Significantly, § 109(b) permits a bylaw that relates to the rights or powers of all “officers or employees” so that such a bylaw would be binding upon them. Section 109(b) does not define specifically what rights or powers of the corporation or its stockholders, directors, officers or employees the bylaws may regulate. Bylaws, by their very nature, set down rules determining the process and procedure by which intracorporate decisions are made. Thus, for example, regulation of the process by which stockholders elect directors is a proper subject for a bylaw.

48. A bylaw is construed using the same rules of construction that are applied to statutes, contracts and other written instruments. A bylaw is to be construed as it is written and its clear language is to be given effect. If a bylaw is unambiguous, the Court will not interpret it or search for the intent behind the bylaw. A bylaw is not made ambiguous merely because the parties do not agree on its proper construction. The bylaw is ambiguous only if it is reasonably susceptible to different constructions or interpretations.

49. The Bylaw is overbroad, unreasonable, and violates Delaware and federal law in numerous ways. The adoption of the Bylaw constitutes a blatant violation of the Directors’ fiduciary duties. By adopting the Bylaw, the Directors sought only to protect their own interests rather than the interests of the Company and its stockholders. Accordingly, the Bylaw is invalid.

COUNT I

The Bylaw Is Invalid Because It Is Beyond the Authority Granted in 8 *Del. C.* § 109(b)

50. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

The Bylaw Purports to Apply to Persons Not Subject to Bylaw Regulation

51. Because the Bylaw contains no limitation on what plaintiffs are required to comply with the exclusive forum requirement, the Bylaw purports to require former stockholders (as well as former directors, officers and employees) to file in the Delaware Court of Chancery any action raising a claim falling within the Bylaw. Even assuming § 109(b) permits a bylaw that limits the powers of the corporation and “its stockholders, directors, officers or employees” to bring suit, the statute contains no authorization for restriction of the rights of former stockholders, directors, officers or employees. For example, a former stockholder who has been cashed out of the Company in a short-form merger may bring a post-merger claim for breach of fiduciary duty owed by the directors to the stockholders or a claim that the merger violated the DGCL. The Bylaw purports to require such a former stockholder to sue only in the Delaware Court of Chancery even though he is no longer a stockholder of the Company. Indeed, the Consent Provision states that if such former stockholder acquired shares after the Bylaw was enacted, he has consented to the exclusive forum requirement.

52. The Consent Provision also further expands the persons and entities the Bylaw claims to regulate to include anyone acquiring “any interest” in shares of the Company’s stock, including holders of options, warrants and convertible debentures who are not stockholders. Section 109(b) does not provide that the rights and powers of such non-stockholders can be regulated through a bylaw.

The Bylaw Does Not Relate to Internal Corporate Governance

53. The Bylaw is also invalid under § 109(b) because it regulates matters beyond internal corporate governance. To the extent bylaws are considered a “contract” that can be

amended by the board or the stockholders, they are part of an internal governance contract. To be valid, a bylaw must be directed to a proper subject matter for bylaw regulation.

54. The internal affairs doctrine is a long-standing choice of law principle which recognizes that only one state should have the authority to regulate a corporation's internal affairs - the state of incorporation. The doctrine addresses the substantive law that is to be applied to the conduct of stockholders, directors and officers. The internal affairs doctrine, however, does not control the forum which is to apply the substantive corporation law of the state of incorporation.

55. Moreover, internal corporate affairs involve only those matters which are peculiar to the relationships among or between the corporation and its current officers, directors and shareholders, and the doctrine only applies to those activities concerning the relationships *inter se* of the corporation, its directors, officers and shareholders. Acts which can be performed by both corporations and individuals, such as entering into contracts, committing torts and dealing in property are not subject to the internal affairs doctrine. The Bylaw does not regulate internal corporate matters but instead impermissibly regulates litigation which is an activity external to the corporation and can be engaged in by both corporations and individuals.

56. Mandating where each individual stockholder and others may litigate a wide variety of claims by or against the corporation, its directors, its officers, its employees, other shareholders and third parties is not a proper subject for bylaw regulation. The Bylaw does not regulate an intracorporate process. It instead mandates, among other things, every stockholder's individual decision on the appropriate judicial forum for the litigation of numerous different causes of action against thousands of persons and entities.

57. Delaware law recognizes that federal courts and the courts of other states are competent to apply and interpret Delaware law and that the courts of Delaware are not the only courts which may adjudicate questions of Delaware law. The Bylaw seeks to substitute a jurisprudence of arrogance that makes it impermissible (except at the Board's option) for the federal courts or the courts of any other state to consider the broad range of claims and actions encompassed by the Bylaw.

58. For these reasons, the Bylaw is invalid.

COUNT II

The Bylaw Is Invalid Because It Conflicts With Delaware Statutes

59. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

60. Under 8 *Del. C.* § 109(b), bylaws may only contain provisions that are “not inconsistent with law.” A bylaw that is inconsistent with any Delaware statute or rule of Delaware common law is void.

61. The Bylaw is inconsistent with several Delaware statutes. Therefore, the Bylaw is not a valid exercise of the bylaw power under 8 *Del. C.* § 109(b).

The Bylaw Violates Statutory Limits on the Court of Chancery's Subject Matter Jurisdiction

62. The Delaware Court of Chancery is a court of limited jurisdiction whose subject matter jurisdiction depends on (i) 10 *Del. C.* § 341, which requires that the plaintiff state an equitable claim, (ii) 10 *Del. C.* § 342, which requires that the plaintiff request equitable relief and have no adequate remedy at law, and (iii) other statutes such as 8 *Del. C.* § 111, which confer subject matter jurisdiction over specific matters.

63. Section 111(a) of the DGCL provides that any civil action covered by the section “may be brought” in the Court of Chancery “except to the extent that a statute confers exclusive

jurisdiction on a court, agency or tribunal other than the Court of Chancery.” Under Section 111(b), any action to interpret, apply or enforce any DGCL provision “may be brought in the Court of Chancery.” Section 111, as amended in 2003 and 2010, expanded the Court of Chancery’s subject matter jurisdiction with respect to a wide variety of matters pertaining to Delaware corporations.

64. In enacting and amending § 111, the Delaware General Assembly could have, but did not, give the Court of Chancery exclusive jurisdiction over the various types of actions listed in the statute. Instead, the legislature conferred only non-exclusive concurrent jurisdiction, which permits such actions to be filed in other forums at the plaintiff’s option. Indeed, the legislature provided in § 111 that when a statute confers exclusive jurisdiction on a court, agency or tribunal other than the Court of Chancery, § 111 confers no jurisdiction at all on the Court of Chancery. Section 111 was enacted to afford plaintiffs the option of pursuing claims within the statute’s scope in the Court of Chancery even if that court would otherwise lack subject matter jurisdiction given the nature of the claim and the relief sought. However, § 111 was specifically not intended to provide exclusive jurisdiction in the Court of Chancery but was intended to allow plaintiffs to opt to file in Delaware Superior Court or other courts with jurisdiction over legal claims, particularly where the plaintiff desires a jury trial.

65. The Bylaw is invalid because it requires that the Delaware Court of Chancery shall be the sole and exclusive forum for actions within § 111. The Bylaw purports to rewrite § 111’s provision that the Court of Chancery is a permissible forum for such actions into a mandatory provision that the Court of Chancery is the only forum for such actions. Even if the Bylaw was a consensual mutual agreement, which it is not, no private agreement can confer

subject matter jurisdiction on the Court of Chancery. Because the Bylaw is inconsistent with § 111, it is invalid.

66. The Bylaw also conflicts with § 111(a)'s requirement that the Delaware Court of Chancery is not even a permissible forum where a statute confers exclusive jurisdiction on another court, agency or tribunal. The Bylaw violates § 111(a) by mandating that the Delaware Court of Chancery is the exclusive forum regardless of whether a statute confers exclusive jurisdiction on another court or tribunal.

67. The Delaware Court of Chancery also lacks subject matter jurisdiction over certain actions that arise under other provisions of the DGCL. For example, 8 *Del. C.* § 164 provides for "an action at Law" to collect amounts owed for stock that stockholders failed to pay. Similarly, 8 *Del. C.* § 324 provides for attachment of shares of stock, a legal remedy that is not available in the Delaware Court of Chancery. The Bylaw is invalid because it requires that actions based on such claims at law must be brought in a court of equity that lacks jurisdiction over such claims.

COUNT III

The Bylaw Cannot Confer on the Delaware Court of Chancery Exclusive Personal Jurisdiction Over All Stockholders

68. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

69. The Bylaw states that the Delaware Court of Chancery is to be the "sole and exclusive forum" for the types of litigation identified in the Bylaw. For example, the Bylaw makes the Delaware Court of Chancery the exclusive forum for "any action" asserting a claim for breach of fiduciary duty, arising pursuant to any DGCL provision, or governed by the internal affairs doctrine. The Bylaw contains no limitation as to the plaintiff(s) or defendant(s) in the action, but instead applies to any action containing the specified types of claims.

70. An exclusive forum selection clause may be sufficient to confer personal jurisdiction even when it does not explicitly reference personal jurisdiction because a clause would be rendered meaningless if the designated court lacked personal jurisdiction. Accordingly, those subject to an exclusive forum provision may be deemed to have intended the provision to be an agreement as to personal jurisdiction as well. For example, the forum selection clause of a merger agreement can constitute consent by a third-party beneficiary to jurisdiction in Delaware for claims within 8 *Del. C.* § 111.

71. By requiring stockholders to bring a wide variety of actions in the Delaware Court of Chancery, the Bylaw also improperly subjects stockholders to personal jurisdiction in Delaware for any counterclaims the corporation, its directors, officers or employees may assert under Court of Chancery Rule 13(a) and (b). Participation in the action in the Delaware Court of Chancery may also enable the stockholders to be personally served in Delaware. Furthermore, having obtained personal jurisdiction over stockholders for claims within the Bylaw, the Delaware Court of Chancery could exercise ancillary jurisdiction over other related claims against the stockholders for which personal jurisdiction would not otherwise exist.

72. For these reasons, the Bylaw is invalid.

COUNT IV

The Bylaw Is Not a Valid and Enforceable Forum Selection Provision

73. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

74. A bylaw unilaterally adopted by directors purporting to require stockholders to bring actions in the Delaware Court of Chancery is not valid. There was no element of mutual consent to the forum choice imposed by the Bylaw unilaterally adopted by the Directors without any notice to stockholders or any opportunity to reject the Bylaw. The Bylaw represented a

unilateral change to the provisions of the bylaws that the Company would not have been able to accomplish under ordinary principles of contract law.

75. The Bylaw is not enforceable as a matter of contract law because bylaws are not like any other contract. Under contract law, the Board could not unilaterally amend the contract. The bylaws cannot be amended as a matter of corporate law in a manner that could not be achieved under contract law.

76. The Bylaw mandates that the Delaware Court of Chancery is the sole and exclusive forum “[u]nless the Corporation consents in writing to the selection of an alternative forum.” Thus, the Bylaw is not a “forum selection” provision where both sides agree to litigate in a particular forum. Instead, the Bylaw is a unilateral action by the Company and its directors to impose a unilateral limitation on where stockholders may sue the corporation or its directors while the Company and its directors remain free to instigate and participate in litigation where they choose.

77. The Bylaw does not establish *ex ante* the forum for dispute resolution in order to dispel any confusion about where suits must be brought and defended. It does not reduce the time and expense of pretrial motions to determine the correct forum and conserve judicial resources that otherwise would be devoted to deciding those motions. Instead, the complicated and vague coverage of the Bylaw will create confusion as to where suits may be brought and generate time-consuming and expensive motion practice.

78. The Bylaw does not serve the purposes which may establish the reasonableness of a non-negotiated forum-selection clause. Suits arising from the subjects encompassed by the Bylaw are not likely to arise in many locales, but will almost always be filed in Delaware or in the state where the corporation is headquartered. Because the Company and its Board are free to

file or defend actions where they choose, the Bylaw does not eliminate uncertainty as to where litigation must be brought or defended. Indeed, even where the Company consents to litigation in an alternative forum, “any director, officer or other employee of the Corporation” may assert that claims against them must proceed in Delaware. The Company will not realize significant savings because of the forum selection provision, and thus the Bylaw will not benefit the stockholders.

79. Forum selection provisions that are in effect unilaterally imposed are subject to judicial scrutiny for fundamental fairness. The Bylaw prevents suits even where the Company has its principal place of business. The provision was unilaterally imposed by directors with a self-interest in reducing their prospects of personal liability. The stockholders were given no prior notice of the Bylaw and were not given the opportunity to reject the provision.

80. The Bylaw’s Corporate Choice of Forum Provision, which requires the Company’s written agreement “to the selection of an alternative forum,” appears to require stockholders to obtain the Company’s written consent to a forum other than the Delaware Court of Chancery before filing suit. Given the expedited nature of many corporate suits, such a requirement would effectively preclude suits in any forum other than the Delaware Court of Chancery. For example, where the Board agrees to a two-step acquisition and a tender offer is promptly commenced, stockholders desiring injunctive relief cannot await the outcome of a pre-suit demand for agreement to an alternative forum before seeking judicial relief. Stockholders also cannot simply ignore the Bylaw and file in an alternative forum because defendants will claim the protection of the Bylaw, and the opportunity for injunctive relief will be gone before the validity and applicability of the Bylaw is determined. As a practical matter, the Bylaw

precludes an alternative forum, even the forum where the Company has its principal place of business.

81. For these reasons, the Bylaw is invalid.

COUNT V

The Bylaw Is Invalid Because It Improperly Requires Claims Be Brought in the Delaware Court of Chancery Even Where the Court Lacks Personal Jurisdiction

82. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

83. The Bylaw requires that suits against any director, officer or employee of the Company for breach of fiduciary duty must be brought in the Delaware Court of Chancery.

84. Under 10 *Del. C.* § 3114, personal jurisdiction is available only for directors and certain senior officers and only for claims of breach of fiduciary duty. Thus, for most corporate officers, there would be no personal jurisdiction in the Delaware Court of Chancery. Moreover, all or virtually all the Company's employees are outside of Delaware, including all those with any significant potential for breaching a fiduciary duty to the corporation or its stockholders. Delaware's long-arm statute, 10 *Del. C.* § 3104, cannot provide a basis for personal jurisdiction and service over officers and employees who do not reside or work in Delaware and have not performed any wrongful act in Delaware.

85. In short, the Bylaw makes the Delaware Court of Chancery the exclusive forum for claims which cannot be brought in Delaware because of lack of personal jurisdiction. In effect, stockholders are precluded from suing such officers and employees because there is no personal jurisdiction in the sole forum where they are authorized to bring suit. Thus, the Bylaw violates 8 *Del. C.* § 102(b)(7) by effectively providing that the stockholders cannot obtain any remedy against certain officers and employees.

86. Derivative actions have a dual nature where the suit is brought against the directors for failing to enforce a claim of the corporation and on the underlying claim itself. That underlying claim may be against a third party that is not subject to personal jurisdiction in Delaware. Thus, the Bylaw precludes such derivative claims by designating an exclusive forum that does not have personal jurisdiction over an indispensable party.

87. For these reasons, the Bylaw is invalid.

COUNT VI

The Bylaw Is Invalid Because It Conflicts With Federal Statutes and Impermissibly Impinges on Federal Jurisdiction

88. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

89. Under the color of Sections 102 and 109 of the DGCL, the Bylaw conflicts with federal statutes, usurps federal jurisdiction and precludes the bringing of federal claims. Delaware could not permissibly pass a statute that would reduce or eliminate federal jurisdiction based on original jurisdiction, diversity, bankruptcy, the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”) or supplemental jurisdiction over state-law claims. Delaware cannot do so indirectly by sanctioning bylaws that effectively limit or eliminate federal jurisdiction in these areas. Indeed, the Bylaw would even prevent a stockholder from asserting a claim in federal court that a provision of the DGCL, a certificate of incorporation or bylaw violates the Constitution of the United States.

The Bylaw Impermissibly Impinges on Original Federal Jurisdiction

90. The Bylaw provides that the Delaware Court of Chancery is the exclusive forum for determining any action that includes a claim arising pursuant to the DGCL. By making the Delaware Court of Chancery the exclusive forum for claims arising pursuant to 8 *Del. C.* § 111, the Bylaw makes the Delaware Court of Chancery the only forum for all claims interpreting,

applying, enforcing or determining the validity of the provisions of the certificate of incorporation and bylaws. Thus, the Bylaw makes the Delaware Court of Chancery the exclusive forum for determining whether provisions of the DGCL, certificate or bylaws are valid and enforceable under the Constitution of the United States and federal statutes. This conflicts with federal law, pursuant to which federal district courts have original jurisdiction over all civil actions arising under the Constitution or laws of the United States.

91. The Bylaw requires stockholders to bring all derivative and breach of fiduciary duty claims exclusively in the Delaware Court of Chancery. This also conflicts with federal law because federal securities claims under Sections 10(b) and 16(b) of the Securities and Exchange Act and under Section 36(b) of the Investment Company Act can, and in some cases must, be brought as derivative claims in federal court.

92. The Bylaw also conflicts with federal law by precluding claims within its scope from being brought in federal court based on diversity jurisdiction or supplemental jurisdiction.

The Bylaw Impermissibly Conflicts With SLUSA

93. SLUSA designates the federal courts as the exclusive venue for nearly all private securities class actions. SLUSA applies to any (1) covered class action, (2) based on state statutory or common law, (3) alleging acts of deception, (4) in connection with the purchase or sale of a covered security.

94. SLUSA requires “securities class actions involving the purchase or sale of nationally traded securities, based upon false or misleading statements, to be brought exclusively in federal court under federal law.” Thus, SLUSA precludes state law class actions, subject to tailored exceptions, including for certain class actions based on the law of the state in which the

issuer of a security is incorporated. SLUSA was intended to prevent the shift of venue for class action securities suits from federal to state courts.

95. Among the few exceptions to SLUSA's broad prohibition to state law securities class actions is a narrow savings clause known as the "Delaware carve-out." The Delaware carve-out in SLUSA states that notwithstanding the exclusive federal venue provisions of the statute, "a covered class action ... that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) ... may be maintained in a State or Federal court by a private party." Among the state law claims that SLUSA's Delaware carve-out permits to be brought in federal or state court are direct claims based on the fiduciary duty of disclosure and all derivative claims. Significantly, the Delaware carve-out does not say that the class or derivative action must be brought exclusively in a State court of the State in which the issuer is incorporated. Rather, the plain language of the statute grants "a State or Federal court" venue over a preserved class or derivative action.

96. SLUSA's carve-outs reflect a careful balancing between federal and state interests. In striking that balance, SLUSA created exclusive federal venue over almost all state law class actions, but concurrent venue in state and federal courts for the state law class actions within the Delaware carve-out. The Bylaw alters that statutory balance. It not only precludes the bringing of a class or derivative action based on Delaware corporate law in the court of any state other than Delaware, but it also forbids stockholders from bringing a class or derivative action based on such claims in a federal court. Thus, the Bylaw creates a mandatory Delaware state venue which is contrary to the limited and non-exclusive Delaware carve-out in SLUSA that permits corporate class actions to be brought in state or federal court.

The Bylaw Impermissibly Impinges on Federal Diversity and Supplemental Jurisdiction

97. The Bylaw will prevent claims within its scope from being brought in federal court based on diversity jurisdiction or supplemental (pendent) jurisdiction.

The Bylaw Impermissibly Impinges on Federal Bankruptcy Jurisdiction

98. If a Delaware corporation files for bankruptcy in federal court, claims among the stockholders, directors, officers and corporation may properly be within the jurisdiction of the federal bankruptcy court. However, the Bylaw makes the Delaware Court of Chancery the sole and exclusive forum for such claims, even if the corporation were to go into bankruptcy.

99. For these reasons, the Bylaw is invalid.

COUNT VII

The Bylaw Is Invalid Because It Is Not Reasonable and Equitable

100. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

101. To be valid, a bylaw must be reasonable and equitable.

102. The Directors' unilateral action in amending the Company's bylaws to give themselves control over where they may be sued is patently unreasonable. Because of its mandatory, excessive and ill-defined nature (as described above), the Bylaw is not reasonable. Therefore, the Bylaw is invalid and unenforceable.

COUNT VIII

The Bylaw Is the Product of the Directors' Breaches of Fiduciary Duty

103. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

104. The power of the directors to amend bylaws is subject to their fiduciary duty to the stockholders. Where directors have a self-interest in a bylaw amendment or did not adequately inform themselves before adopting the amendment, the entire fairness standard is applicable.

105. The Directors have a material interest in the Bylaw because it (i) enables them to cause litigation against them to be confined to the forum where they believe they are least likely to be held liable, (ii) enables them to avoid a jury trial and (iii) may make it difficult or impossible for certain claims to be brought against them.

106. The Directors breached their fiduciary duties by enacting the Bylaw. The Bylaw was initiated and timed by the Directors for their benefit and without any stockholder input. The structure of the Bylaw is flawed for the numerous reasons discussed above. There was no negotiation or independent consideration of the Bylaw. The Directors simply adopted a form bylaw. The public disclosure concerning the Bylaw reflects that there was no consideration by the Directors of the specific terms and effects of the Bylaw. Consequently, they lacked material information, and their approval of the Bylaw was uninformed.

107. The Bylaw was adopted unilaterally by the self-interested Directors with no stockholder vote. Through the Bylaw, the Directors are directing the stockholders to act in a particular manner by filing numerous types of litigation in the Delaware Court of Chancery. Yet the limited disclosure of the Bylaw provides virtually no information as to the reasons for and effects of the Bylaw. As discussed above, the Bylaw will have numerous negative effects on Plaintiffs and the members of the Class.

108. The Bylaw is not entirely fair to the stockholders, and therefore it is invalid and unenforceable.

WHEREFORE, Plaintiffs demand judgment and preliminary and permanent relief, including injunctive relief, as follows:

- A. Declaring that the Directors have breached their fiduciary duties;
- B. Declaring that the Bylaw is invalid and unenforceable;

- C. Interpreting the Bylaw and the scope of its applicability;
- D. Preliminarily and permanently enjoining the Company and the Directors from enforcing the Bylaw;
- E. Awarding Plaintiffs the costs of this action, including reasonable attorneys' fees and experts' fees;
- F. Certifying this action as a class action; and
- G. Granting such other and further relief as this Court may deem just and proper.

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