

Justice Steele Discusses Emerging Delaware Law at Society Conference

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Hearing from Chief Justice Myron Steele of the Delaware Supreme Court was another highlight of the Society of Corporate Secretaries and Governance Professionals' National Conference. Justice Steele began his remarks by questioning whether there was a need to discuss a change in the Delaware paradigm given the evolving nature of stock ownership from 1967, when 70% of shares were held by retail investors, to the current composition where institutional investors now hold those 70%.

With this more sophisticated base, he indicated that there will be a struggle going forward as to whether Delaware law should continue to focus on protecting shareholders from themselves. He recommended a similar discussion by Justice Jack Jacobs, where Justice Jacobs stated that the increased power of institutional investors raises question about the implicit model in Delaware case law that assumes a monolithic group of disaggregated retail investors who "need the diligent help of the courts."

Justice Steele also suggested an article featuring an interview with Chancellor Strine of the Delaware Court of Chancery as to emerging trends in Delaware corporations law. In particular, Chancellor Strine discussed the obligations of directors who serve on the boards of U.S. companies with major operations abroad and questions of efficient dispute resolution. He debated the notion that judges on the court acting as arbitrators, as allowed by statute, would diminish the amount of judicial precedent and related guidance.

With respect to other recent developments, Justice Steele referred to the recent HP case where it was alleged that the company failed to adopt a long-term CEO succession plan, and while the case did not proceed, he noted that this is an area we should watch and "see where the law moves." He also summarized the recent case on exclusive forum jurisdiction (see our memo), stating that the "sole issue" remaining is whether other courts will recognize the Delaware internal affairs doctrine. That case has not yet been appealed, but in response to an unrelated inquiry, Justice Steele pointed out that 93% of cases from the Chancery Court are affirmed on appeal.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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