

Glass Lewis Position on Exclusive Forum Provisions

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As the exclusive forum case continues to wind its way through the Delaware courts in an appeal, which we cited [here](#), Glass Lewis [announced](#) that its position remains unchanged.

According to Glass Lewis, 70 companies have adopted exclusive forum provisions since the ruling in June by the Delaware Court of Chancery upholding those bylaws at Chevron and FedEx. Glass Lewis continues to believe that exclusive forum bylaws are “generally not in shareholders’ interests since they unnecessarily limit full legal recourse by preventing shareholders from bringing suit in a forum of their choosing.”

The proxy advisory firm indicates that shareholders should be able to vote on the adoption of such bylaws. However, while Glass Lewis professes to review each situation on a case by case basis, they note that they will generally recommend against any bylaw or charter amendment seeking to adopt an exclusive forum provision unless the company can provide a compelling argument that the provision is necessary, would directly benefit shareholders and the company otherwise has a record of “good governance practices.”

If a company goes ahead and adopts an exclusive forum provision without seeking shareholder approval, Glass Lewis warns that it will generally recommend voting against the chair of the governance committee.

The upshot is that Glass Lewis may very well recommend against any company efforts to seek shareholder approval to adopt an exclusive forum provision in bylaws or charters, but if a company does not ask for this approval, the firm may recommend against the chair of the governance committee. Neither is an appealing proposition.

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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