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## **Delaware Court of Chancery Upholds Forum Selection Bylaw Adopted Concurrently with Merger Agreement and Designating North Carolina as Exclusive Forum**

In *City of Providence v. First Citizens BancShares, Inc.*, the Delaware Court of Chancery held that the board of directors of First Citizens BancShares, Inc., a Delaware corporation with the majority of its operations in North Carolina (“BancShares”), did not breach their fiduciary duties by adopting a forum selection bylaw designating the courts of North Carolina as the exclusive forum for intra-corporate disputes on the same day that it announced that BancShares had entered into a merger agreement to acquire First Citizens Bancorporation, Inc., an entity allegedly controlled by the same group of stockholders that control BancShares.

Relying on the holdings and reasoning of *Boilermakers Local 154 Retirement Fund v. Chevron Corporation*, [detailed here](#), the Court of Chancery dismissed the plaintiff’s claims that the forum selection bylaw was invalid on its face and as applied and that the BancShares board breached their fiduciary duties by adopting the forum selection bylaw, holding that:

- *A bylaw that designates an exclusive forum other than Delaware for intra-corporate disputes is not contrary to Delaware law, even where a Delaware corporation is concerned* – Noting that nothing in *Chevron* prohibited a Delaware corporation from designating an exclusive forum other than Delaware in its bylaws, the court held that the selection of North Carolina as the exclusive forum for intra-corporate disputes did not “call into question the facial validity of the Forum Selection Bylaw.” The court noted the fact that the company was headquartered and had significant operations in North Carolina made the location a reasonable forum.
- *Adopting the forum selection bylaw on the same day as the merger announcement did not render the bylaw invalid* – The plaintiff argued that the adoption of the bylaw was unjust because it occurred simultaneously with the announcement of the proposed merger. The court held that the forum selection bylaw regulated where, not whether, a stockholder could file a suit; therefore, the fact that the BancShares board adopted the bylaw on an allegedly “cloudy” day rather than on a “clear” day was immaterial.
- *The forum selection bylaw was not invalid because minority stockholders could not repeal the bylaw* – Without more, the fact that there is a controlling stockholder who favors a forum selection bylaw does not make the enforcement of the bylaw *per se* unreasonable.

Before adopting such a bylaw without stockholder approval a board of directors should consider possible stockholder reactions to such action, including, for example, that Glass Lewis believes that exclusive forum selection bylaws are not in stockholders’ best interests and that ISS is surveying sentiment surrounding these bylaws as part of its annual policy review. Further, although the majority of courts outside of Delaware have enforced exclusive forum bylaws post-*Chevron*, the response has not been unanimous.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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