Cooley

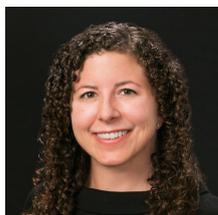# District Court Upholds Forum Selection Provision for Claims Brought Derivatively Under Section 10(b)

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In what appears to be a novel decision, the US District Court for the Northern District of Texas recently upheld a Delaware forum-selection clause as to claims asserted derivatively under Section 10(b) of the Exchange Act. As Cydney Posner observes in this Cooley PubCo post (and as we recently wrote about here), we have previously seen cases addressing enforcement of Delaware forum-selection clauses in the context of claims regarding allegedly false or misleading proxy statement disclosures under Section 14(a) of the Exchange Act, and there, the circuits are split. According to Tulane Professor Ann Lipton, though, this Texas district court decision "breaks new ground…because it extends forum selection enforcement to derivative 10(b) claims," reflecting "a gradual ability of corporations to opt out of the securities laws." Will this case—and, should it be widely followed, others like it—effectively put the kibosh on derivative Section 10(b) claims? Read more on Cooley's PubCo blog here: Federal district court upholds forum selection provision for claims under Section 10(b).

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