

THE
NATIONAL LAW REVIEW

Federal Court Blocks Shareholder Inspection Of Delaware Corporation's Records Pursuant To California Statute

Tuesday, February 12, 2019

United States District Court Judge [Haywood S. Stirling, Jr.](#) yesterday blocked a stockholder's attempt to use California's shareholder inspection statute to gain access to a corporation's "books and records and minutes of proceedings of the shareholders". The statute in question was California Corporations Code Section 1601. The corporation in question was Facebook, Inc. When the corporation failed to grant access, the stockholder filed a Verified Petition for Writ of Mandate in California Superior Court, *Natalie Ocegueda v. Facebook, Inc.* (Case No. 18CIV04936). Facebook responded by filing a motion to stay the inspection in the derivative case then pending before Judge Stirling. *In re Facebook, Inc. S'holder Derivative Privacy Litig.*, 2019 U.S. Dist. LEXIS 18604.

Judge Stirling granted Facebook's request based on Section 101(a)(2) of the Securities Litigation Uniform Standards Act of 1998 (aka the "SLUSA") which provides:

"Upon a proper showing, a court may stay discovery proceedings in any private action in a State court, as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this paragraph.

15 U.S.C.A. § 78u-4 (b)(3)(D). He found that several factors weighed in favor of granting the request. First, the shareholder is both petitioner in the state court action and plaintiff in the derivative action. Second, the petitioner/plaintiff is represented by the same counsel in both actions. Third, the state court petition states that the discovery is sought for the purpose of informing plaintiff in this action. Finally, he found that the sheer scope of the petitioner/plaintiff's discovery request would place a substantial burden on Facebook.

Some readers may be wondering why the petitioner invoked the California Corporations Code in seeking inspection of the records of a Delaware corporation. Section 1601 by its terms applies to any foreign corporation keeping any records, or having its principal executive office, in California.

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