



California Corporate & Securities Law

Then He Made Proofreaders

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[William Bedsworth](#) is an Associate Justice of the California Court of Appeal, a former NHL goal judge, and a long-time columnist for the *Orange County Lawyer*. If you've never read his nationally syndicated, award winning, legal humor column, "A Criminal Waste of Space", you should.

But this post isn't about Justice Bedsworth or his column *per se*. It's about proofreading, the subject of Justice Bedsworth's most recent column, entitled "[Give Me Your Tired, Your Poor, Your Typos . . .](#)". It's also about one of my favorite Delaware decisions, *McKesson Corp. v. Derdiger*, 793 A.2d 385 (Del. Ch. 2002).

In his column, Justice Bedsworth writes about being the unofficial, part-time copy editor at the court. It's no surprise to learn that he views this as an important job:

If we leave out a "not," or say "affirmed" when we meant "reversed," all hell breaks loose. It's not like newspapers, who simply print corrections when they make mistakes.

(footnote omitted). The need for someone with Justice Bedsworth's proofreading talents finds a real-life example in the *McKesson* decision. That case is one of my favorites, not because it announces some overarching principle of Delaware corporate jurisprudence, but because it gives a clear explanation of how to count 60 days under Section 213(a) of the Delaware General Corporation Law.

Briefly, McKesson Corporation set a record date of May 25, 2001 for an annual meeting to be held on July 25, 2001. The plaintiff challenged the validity on the meeting on the basis that the record date was "more than 60 . . . days before" the meeting in violation of Section 213(a). McKesson countered that it was in compliance because there were exactly 60 days *between* May 25 and July 25. Moreover, McKesson cited an earlier Chancery Court decision, *Aprahamian v. HBO & Co.*, 531 A.2d 1204 (1987), which involved a record date of March 15, 1987 and a meeting date of May 15, 1987. The plaintiff, Derdiger, however, countered:

McKesson's reading of Aprahamian is due to "typographical error" in the published version of the Aprahamian Court's decision. Derdiger's counsel found record evidence in the Aprahamian case indicated that the record date in HBO's notice of its annual shareholder meeting was actually March 16, 1987 (not March 15 as the

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Court's published opinion erroneously recites), i.e., exactly sixty days before HBO's May 15, 1987 annual meeting.

(emphasis in original, footnote omitted). After rejecting a “no harm, no foul” argument by McKesson, Chancellor Chandler upheld the validity of the annual meeting because “a typographical error could have been responsible for McKesson’s erroneous belief”. The Chancellor also noted “it is not reasonable to require that counsel seek out the trial transcript or other record material to determine whether the Court really meant what was contained in its published opinion.” That is a relief!

Justice Bedsworth and, I presume, Chancellor Chandler (who did not write the opinion in *Aprahamian*) recognize the importance of proofreading. “But different folk have different views” – Samuel Clemens (aka Mark Twain), for example. He wrote:

In the first place God made idiots. This was for practice. Then he made proofreaders.

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