



California Corporate & Securities Law

Nevada Supreme Court Pragmatically Rules On Delivery Of Dissenters' Rights Notices

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Last week, the Nevada Supreme Court answered the question of whether notice of dissenters' rights must be delivered to both stockholders of record and beneficial owners.

NRS 92A.410(2) provides that when a merger is effected without stockholder approval under NRS 92A.180, the Nevada corporation "shall notify in writing all stockholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in NRS 92A.430." NRS 92A.430, in turn, provides that the corporation "shall deliver a written dissenter's notice to all stockholders entitled to assert dissenters' rights" and details what must be included in the notice.

In [Smith v. Kisorin USA](#), the Nevada high court concluded that the requirement of NRS 92A.410(2) and NRS 92A.430 that all stockholders entitled to assert dissenters' rights receive a notice must be read as meaning that a dissenters' rights notice need only be directly provided to the holder of record, who holds the stock in trust for or as agent of the beneficial stockholder, thereby directly and indirectly providing notice to all stockholders as required by the statutes.

This all sounds as if it should be so. However, it does fly in the face of NRS 92A.325 which quite clearly and unambiguously defines "stockholder" to mean "a stockholder of record or a beneficial stockholder of a domestic corporation." Perhaps it is no surprise that the Nevada Supreme Court omitted any mention of this statute in its opinion. Instead, the court elevated pragmatism over literalism, concluding that the Nevada legislature could not have intended to require notice be given to beneficial owners because corporations do not necessarily have access to information on how to reach them. (The court also omitted any "props" to Charles Sanders Peirce.)

However laudable the result, there is a heavy price to pragmatism. When a court finds exceptions to "absolute rights" as a California Court of Appeal did in *Tritek Telecom, Inc. v. Superior Court*, 169 Cal. App. 4th 1385 (2009) (see this [post](#)), we pay the price in multiple ways. The separation of powers is reduced; the effectiveness of language to communicate ideas and concepts is weakened; and the law itself becomes less accessible and certain. As T.S. Eliot once observed: "The great weakness of Pragmatism is that it ends by being of no use to anybody." T.S. Eliot, "Francis Herbert Bradley" in *Selected Prose of T.S. Eliot* 204.

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In California, this shouldn't be a question because Section 1301(a) of the Corporations Code requires mailing of notice to each *shareholder*. However, "shareholder" is defined in Section 185 as "one who is a holder of record of shares."

For more on Nevada corporate law, see *Bishop and Zucker on Nevada Corporations and Limited Liability Companies*, which was released in March.

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