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NEVADA'S CORPORATE EVOLUTION INTO A VIABLE DELAWARE ALTERNATIVE

The recent corporate trend of exiting Delaware as a state of incorporation merits a review of Nevada's corporate evolution through three decades of statutory refinement and judicial realignment. This article traces that trajectory, beginning with the 1991 codification of the business judgment rule ("BJR") unities, and other stakeholders. Early judicial reliance on Delaware precedents created tension with Nevada statutory text, prompting legislative counter-responses that explicitly reject non-Nevada case law and mandate plain-meaning interpretation of Nevada statutes. Recent Nevada Supreme Court decisions from 2020 to 2024 reinforce this framework by disavowing common-law gross negligence as a liability trigger, abrogating burden-shifting doctrines, and upholding the BJR as the exclusive mechanism for fiduciary challenges.

By Abran Vigil *

Nevada has shaped itself into one of the nation's most business-friendly jurisdictions. This evolution has been driven by a legislature that meets once every two years, and statutory changes have been the subject of judicial challenges — and to some degree judicial activism — which resulted in legislative versus judicial volleying for much of this corporate history. Nevada's legislature has stabilized its corporate laws, and more recently, Nevada's judiciary has reinforced the legislative intent and approach. This article traces that evolution and discusses certain implications about corporate governance and director and officer liability should a company leave Delaware for Nevada.

NEVADA'S STATUTORY APPROACH TO BUSINESS LAW

Nevada's corporate statutes are not accidental. Every odd-numbered year, Nevada's legislature meets in the

State capital, Carson City, for 120 days, to review caselaw, practitioner and interested party feedback, and national trends. The aim has been to develop corporate statutes that favor predictability over judicial improvisation. Nevada courts publish few intermediate appellate decisions involving corporate law, and Nevada's trial courts cannot publish opinions that serve as precedent. Nevada's intermediate appeals court is not likely to issue corporate law precedent and it did not come into existence until 2014. Before then, only the Nevada Supreme Court could issue decisions that could serve as precedent. This, coupled with the biennial legislative calendar, meant reforms arrived in measured, deliberate waves.

The cornerstone of Nevada's corporate laws was built in 1991. Nevada codified the business judgment rule, creating a presumption that directors and officers act (1) in good faith, (2) on an informed basis, and (3) with a

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