

Contracting Around Extrinsic Evidence in Delaware

WRITTEN BY

Mike Swallow | Tyler Wilson | Taylor B. Bartholomew | Christopher B. Chuff | Matthew M. Greenberg

In *Texas Pacific Land Corp. v. Horizon Kinetics, LLC, et al.*, the Delaware Court of Chancery enforced a “no drafting history clause” that restricted the court’s ability to consider “the events of drafting or preparation” to resolve ambiguities while interpreting a contract. The dispute related to a stockholder’s agreement (the agreement) that required the signing stockholders (defendants) of Texas Pacific Land Corporation (plaintiff) to vote in accordance with the board’s recommendations (the Voting Commitment), subject to certain exceptions.

The plaintiff filed suit against the defendants when the defendants voted against a proposed charter amendment to increase the number of authorized shares, despite the board’s recommendation in favor of the amendment. The plaintiff sought to enforce the Voting Commitment, asserting that the defendants breached it by voting against the board’s recommendation. The defendants argued that they were permitted to vote against the board’s recommendation because the proposal fell within one of the exceptions.

Analysis

According to the court, because the exceptions, as drafted, were ambiguous, it needed to consult extrinsic evidence to determine whether voting for the charter amendment fell within one of the agreement’s Voting Commitment exceptions. The agreement contained an interpretation and construction provision that stated that “any controversy over interpretations of this Agreement will be decided without regard to events of drafting or preparation.” The plaintiff argued that this provision was unenforceable.

The court found that parties are generally free to prescribe certain rules of evidence in the event of a lawsuit resulting from an alleged breach of contract, so long as it does not interfere with the inherent power and ability of the court to consider relevant evidence. Consistent with Delaware’s history of being a contractarian state, the court explained that sophisticated parties can “make their own judgments about the risks they should bear” and that Delaware courts are cautious to relieve “sophisticated business entities of the burden of freely negotiated contracts.”

Against this backdrop, the court enforced the agreement’s Voting Commitment provision for a few reasons. First, the parties had valid reasons for agreeing to this provision, including addressing known risks and eliminating uncertainty that may come with a court’s consideration of drafting history. Second, the provision did not unduly burden the court’s ability to consider relevant evidence, but instead allowed parties to agree on what evidence was relevant. Finally, the provision did not prevent the court from considering *any* extrinsic evidence, but only prevented the court from considering drafting history. Thus, the court could, and in this case the court did, look to other extrinsic evidence such as trade usage, custom and practice, and the parties’ post-contracting course of conduct to interpret ambiguous language in the agreement.

Takeaway

The court's decision in *Texas Pacific* is notable for transactional attorneys because it recognizes that parties may contractually agree to preclude courts tasked with interpreting ambiguously drafted contracts from considering evidence of the party's negotiations. It is unclear whether the court would enforce a contractually agreed upon provision precluding the court from considering *all* extrinsic evidence in a similar context.

Mike Swallow also contributed to this article. He is not admitted to practice law in any jurisdiction, and his bar admission is pending.

RELATED INDUSTRIES + PRACTICES

- [Business Litigation](#)
- [Corporate](#)
- [Life Sciences Transactions](#)
- [Private Equity](#)