



Delaware's 2015 Dominated By Fee-Shifting Fervor, *Law360*, ft. Patrick M. Kennell

Patrick M. Kennell, partner at Kaufman Dolowich & Voluck, LLP (KD) in New York City, has been quoted in a *Law360* article published July 1, 2015. Patrick comments specifically on fee-shifting provisions — which shift legal fees in shareholder litigation onto the losing party — that had been brewing in the state ever since the Delaware Supreme Court ruled last year in *ATP Tour v. Deutscher Tennis Bund* that such provisions adopted by nonstock corporations were "valid and enforceable" under state law. In 2015, the controversy came to a head as legislation to amend Delaware General Corporation Law to prohibit public companies from adopting fee-shifting, or "loser pays," bylaws related to shareholder litigation wound its way through the Delaware Legislature before being signed into law last week by Gov. Jack Markell.

"Now that the bill has become law, shareholders have breathed a sigh of relief after reacting with serious concern to the state high court's ruling," according to Patrick Kennell, a partner with Kaufman Dolowich & Voluck LLP.

"I think things have calmed down," Kennell said. "[Shareholders] just didn't know where it was going to go after the ATP decision, whether that ruling would automatically apply to stock corporations and publicly traded kinds of companies. The Delaware Legislature quickly acted in 2014 to try to calm those concerns, and even though the bill stalled for awhile, the legislative action happened fast."