



Consumer Federation of America

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*Statement of CFA Financial Services Counsel Micah Hauptman on
Introduction of Fee-Shifting Legislation in Delaware General Assembly*

Washington, D.C. – Legislation introduced yesterday in the Delaware General Assembly begins to repair the damage that the Delaware Supreme Court created last May when the court ruled in *ATP Tour v. Deutscher Tennis Bund* that a corporation's board of directors can unilaterally amend a company's bylaws to include a fee-shifting (or “loser pays”) provision. A fee-shifting provision can shift all litigation expenses to a plaintiff who sues a company for internal corporate wrongdoing, and does not obtain a judgment “that substantially achieves, in substance and amount, the full remedy sought.” In the wake of that decision, more than 70 corporations have adopted such bylaws. The proposed legislation would prohibit the use of fee-shifting bylaws and charter provisions in connection with internal corporate claims. Hauptman released this statement following the legislation’s introduction:

“So-called ‘loser pays’ provisions erect virtually insurmountable legal barriers for shareholders to overcome, thus deterring them from bringing suit against companies and their executives when they have been victims of corporate malfeasance. As a result, these provisions insulate companies and their management from being held accountable when they engage in wrongful conduct to shareholders. The legislation introduced yesterday addresses a critical piece of the problem, and should be commended. We urge the Delaware General Assembly to promptly pass this bill and for Governor Markell to sign it into law, and we look forward to working with policymakers to ensure that any remaining impediments to shareholders' access to the courts as a result of the *ATP Tour* decision are removed.”

The Consumer Federation of America is a national organization of more than 250 nonprofit consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education.