



State of Connecticut Judicial Branch
Court Operations Unit
Quality Assurance, Performance Measures & Statistics

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Delaware Chancery Court Review

"The arbiter of corporate conflicts and fiduciary disputes and equity matters, all under the mantle of "institutionalized fairness".

-Sam Glasscock, Vice Chancellor Delaware Chancery Court

Background and Jurisdiction

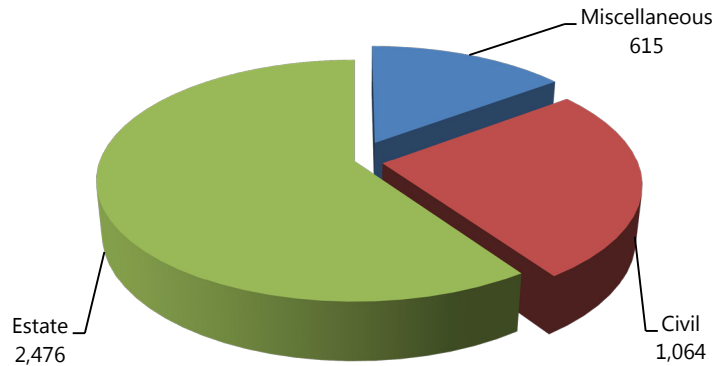
- Delaware created its Court of Chancery in 1792 bucking a national trend away from Chancery Courts.
- Article IV, Section 10 of the Delaware Constitution establishes the Court and provides that it "shall have all the jurisdiction and powers vested by the laws of this State in the Court of Chancery." The Court has one Chancellor, who is the chief judicial officer of the Court, and four Vice Chancellors. It also has two Masters in Chancery, who are assigned by the Chancellor and Vice Chancellors to assist in matters as needed.
- The Court of Chancery has jurisdiction to hear all matters relating to equity.
 - The Court cannot grant relief in the form of money damages to compensate a party for a loss or where another court has coterminous jurisdiction.
 - However, under the rules of equity, the court can grant monetary relief in the form of restitution by ruling that another party has unjustly gained money that belongs to the plaintiff.
- Apart from its general equitable jurisdiction, the Court has jurisdiction over a number of other matters. The Court has sole power to appoint guardians of the property and person for mentally or physically disabled Delaware residents. Similarly, the Court may also appoint guardians for minors, although the Family Court has coterminous jurisdiction over such matters. Will contests and disputes over interpretations of trusts are also heard by the Court.
- The litigation in the Court of Chancery deals largely with corporate issues, trusts, estates, other fiduciary matters, disputes involving the purchase of land and questions of title to real estate as well as commercial and contractual matters.
- The Court of Chancery has a national reputation in the business community and is responsible for developing the case law in Delaware on corporate matters.
- Appeals from the Court of Chancery may be taken to the Supreme Court.

Case breakdown

The Chancery Court divides its cases into three categories:

Number of Court of Chancery Filings by Type FY2013

Source: 2013 Annual Report of the Delaware Judiciary



Estate

- Uncontested probate type matters
 - Delaware has a Register of Wills in each county.
 - The Chancery Court is the judicial arm of the register and oversees the register.
 - The Chancellor appoints a chief deputy register from each party.

Miscellaneous

- Guardianship appointments (both minor and adult)
 - Minor
 - Could be a parent or non-parent.
 - Guardian oversees inheritance, insurance proceeds or other property of a minor under eighteen.
 - Adult
 - A guardian is appointed to make medical or financial decisions for a disabled person.
 - If there is no one to act as a guardian there are companies that provide the service for a fee.
- Trust petitions
- Consent petitions
 - Involves trusts established by provision of a will.
 - Modifications made to terms of existing trusts that are consented to by all parties and beneficiaries.¹

Civil

- Shareholder derivative or merger and acquisition cases
- Contested matters
- Individual disputes

¹ As of January 1, 2015 these matters are now filed as civil matters.

- Contested trusts
- Corporate matters
- Declaratory judgments

Handling of Complex Matters

- Complex cases such as shareholder derivative or merger and acquisition cases are usually not handled any differently than other Chancery cases.
 - However, since these cases are often intertwined with similar cases filed in other states some Delaware cases are stayed pending a ruling in an out of state matter.
- Delaware’s Superior Court, within the last few years, created a complex litigation civil division.
 - Certain conditions and a dollar threshold must be met for the case to qualify.
 - These cases are heard on more expedited and mandated time limit than a Chancery Court case.
 - However, the Chancery Court will move a case along when there are “pending milestone dates.” (Ken Lagowski, Delaware Chancery Court)

Delaware’s Incorporation Profile

- Delaware has more corporate entities, public and private, than people — 945,326 to 897,934. (New York Times 6/12)
- Seventy-five percent of all new incorporations in America occur in Delaware. (Jan Ting “Newsworks”)
- Approximately seventy-five percent of all Fortune 500 companies today are incorporated in Delaware. (Ken Lagowski, Delaware Chancery Court)
- Twenty-five percent of Delaware’s general fund revenue is generated by the incorporation business. (Jan Ting “Newsworks”)
 - Delaware collected roughly \$860 million in taxes and fees from its absentee corporate residents in 2011. (New York Times 6/12)
- One building 1209 North Orange Street Wilmington Delaware, is the legal address of no fewer than 285,000 separate businesses. (New York Times 6/12)

Why Delaware?

Business Friendly Laws and Tax structure

- “The Delaware loophole;” Delaware allows companies to lower their taxes in another state; for instance, the state in which they actually do business or have their headquarters by shifting royalties and similar revenues to holding companies in Delaware, where they are not taxed.
 - The Delaware loophole has enabled corporations to reduce the taxes paid to other states by an estimated \$9.5 billion.

- The bi-partisan political consensus in Delaware is to keep the Delaware corporation statute modern and up-to-date, and to rely on Delaware's corporate law specialists for advice in how to do this.
- It takes less than an hour to incorporate a company in Delaware, and the state is so eager to attract businesses that the office of its secretary of state stays open until midnight Monday through Thursday and until 10:30 p.m. on Friday.

Chancery Court

- Corporate cases do not get stuck on dockets behind the multitude of non-corporate cases.
- Delaware corporations can expect their legal disputes to be addressed promptly and expertly by judges who specialize in corporate law.
- A large body of Delaware case law, court rulings that provides both guidance and predictability to Delaware corporations, lawyers, and judges.
- Under its business judgment rule, the court tends not to second-guess business decisions that company leaders determine to be in the best interest of the stockholders. The court often ends up dismissing plaintiffs' complaints in keeping with this primacy of company directors' discretion on business judgments. (Santa Clara Markula Center Journal 11/12)
- Predictability and stability are attractive to the corporations.

Judicial Philosophy

"Looked at in this way, the directors have a broad arena within which to operate, free of court interference, and subject only to the yearly exercise by the stockholders of their right to elect the board," Glasscock said. "When acting as a disinterested and informed board, they can take whatever actions they believe are in the corporate interest. That includes good, but risky decisions. Note that it also includes poor decisions. It even includes what appear in hindsight to be downright boneheaded decisions, so long as they were taken by disinterested and informed directors."

-Sam Glasscock, Vice Chancellor Delaware Chancery Court

Criticism of Delaware

- Officials in other states complain that Delaware's cozy corporate setup robs their states of billions of tax dollars.
- Over the last decade, the Delaware loophole has enabled corporations to reduce the taxes paid to other states by an estimated \$9.5 billion.
- Delaware is an outlier in the way it does business," said David E. Brunori, a professor at George Washington Law School and an expert on taxation. "What it offers is an opportunity to game the system and do it legally."
- Shell corporations are easily established in Delaware.

Sources

- Delaware Court of Chancery Website
- "How Delaware thrive as a Corporate Tax Haven- Leslie Wayne New York Times 6/30/2012
- "Modest Reflections on the State of Delaware Litigation" Edward McNally, Morris James Delaware 7/30/13
- "Why do so many corporations choose to incorporate in Delaware? Jan Ting, Newsworks, 4/27/2011
- History and Role of the Delaware Court of Chancery, Markula Center for Applied Ethics Journal Santa Clara University

Connecticut Business Caseload Study

Goal

1. Quantify the number of cases filed in Connecticut state courts involving “shareholder disputes, proxy battles, merger and acquisitions and transaction challenges.”²

Methodology

Case Identification

- Identification of these cases is difficult since there is no specific case type designation.
- Identification is further complicated by the fact that the plaintiff selects a case type at filing.
- However, ten case type categories used in the e-file system have been identified as potentially involving these types of matters. They are:

Code	Description	Sub Category
A10	APPEALS	Taxation
C90	CONTRACTS	All Other
M00	MISCELLANEOUS	Injunction
M10	MISCELLANEOUS	Receivership
M20	MISCELLANEOUS	Mandamus
M40	MISCELLANEOUS	Arbitration
M50	MISCELLANEOUS	Declaratory Judgment
M90	MISCELLANEOUS	All Other
P90	PROPERTY	All Other
T90	TORTS	All Other

Search I: Complex Litigation Assignments for 2014 Filings

- In an effort to get a baseline number for the number of these cases filings the first attempt focused on 2014 filings that had been assigned to complex litigation.
 - There were eighty-four cases assigned to complex litigation.
 - When filtered through the ten case types, forty-four cases were identified.
 - The forty-four cases were distributed among six of the ten case types:

Code	Description	Sub Category
C90	CONTRACTS	All Other
M00	MISCELLANEOUS	Injunction
M10	MISCELLANEOUS	Receivership
M50	MISCELLANEOUS	Declaratory Judgment
M90	MISCELLANEOUS	All Other
T90	CONTRACTS	All Other

² Due to uncertainty regarding the exact meaning of the case type “transaction challenges” the reviewers initially took a liberal approach and included cases that may meet the criteria.

- Only eight cases clearly appeared to fit the case type criteria.
- Three other cases were deemed as possibilities if a broad definition of the term transaction challenges is employed.
- C90, M90 and T90 were the case types that generated the best results; 3, 3 and 2 cases respectively.

Search 2: Added Cases in 2014

- The next step was to broaden the search to all case filings in the Superior Court among the ten specified case types in calendar year 2014. The number of cases was well over 8,000 so it was determined to limit the timeframe to the first six months of 2014.
- This search netted 4,243 cases
- After checking approximately 75 cases at random and finding zero cases that fit the criteria, the Quality Assurance unit decided to focus its efforts on developing a list of attorneys who handle these types of cases.

Search 3: Identification of Attorneys who Handle Specialized Financial Cases

- Created a list of the largest and most prestigious law firms in the state.
 - Accessed the firms' web sites and created a list of lawyers in each firm whose practices encompasses these types of cases.
- Completed an exhaustive internet search designed to identify any Connecticut attorney practicing in this area.
- Obtained a list of attorneys who are members of the Connecticut Bar Association financial/business section.
- These efforts resulted in the identification of 525 lawyers practicing in this area.

Search Criteria

- Cases entered in calendar year 2014.
- Cases in which any of the 525 lawyers electronically certified a pleading.
- Cases that were among the ten case-types specified.

Results

- Of the 525 lawyers identified, 204 attorneys actually certified one or more pleadings.³
- 1,893 cases were identified for all civil case types.
- Of the 1,893 cases, 177 cases were identified in the target case-types.
- The 177 cases were distributed among the following eight case types:

Code	Description	Sub Category
A10	APPEALS	Taxation
C90	CONTRACTS	All Other
M00	MISCELLANEOUS	Injunction
M40	MISCELLANEOUS	Arbitration
M50	MISCELLANEOUS	Declaratory Judgment
M90	MISCELLANEOUS	All Other

³ The reason that not all 525 lawyers had at least one pleading is because they either never filed a pleading, used a juris number not their own or left that field blank or incomplete.

P90	PROPERTY	All Other
T90	TORTS	All Other

- A total of eight cases were found that met the criteria.
- However, six of them were already found in the Complex Litigation search.
- The two remaining cases were C90 and T90 case types.

Search 4: Keywords Search in Filed Pleadings

- A keyword search was done using the phrase “shareholder,” “derivative,” and “stock.”
- Keyword searches were completed using the document description field for filed pleadings.⁴
- Search was completed of all cases, pending or disposed with no date range.
- Sixteen cases were identified as having specified keywords in that field.
- All sixteen cases were entered previous to 2014.

Year	Cases
2013	2
2012	5
2011	4
2010	2
2009	2
2008	1

- The sixteen cases were distributed among six case types.
- Two cases were categorized in P00 and one case was categorized in V04.⁵

Code	Description	Sub Category
C90	CONTRACTS	All Other
M00	MISCELLANEOUS	Injunction
M10	MISCELLANEOUS	Receivership
M90	MISCELLANEOUS	All Other
P00	PROPERTY	Foreclosure
V04	VEHICULAR TORTS	MV Pedestrian vs Driver

⁴ The document description field is a field used by the filer to describe the document being uploaded. This field is not mandatory and does not have a standardized format for describing documents.

⁵ This mis-categorizing underscores the difficulty of tracking these types of cases.