



# What is the Court of Chancery?

How it became part of the Delaware Advantage

BY THOMAS P. COLLINS

FUELED BY THE LEGISLATURE'S forward thinking with the passage of the Financial Center Development Act in 1981, the State of Delaware is enriched by the diversity of the financial institutions that choose to do business in the state – adding another element to the Delaware Advantage. The financial services industry is comprised of tax paying international, national and state-chartered banks, savings banks, national non-deposit trust companies, state non-deposit trust companies, state limited purpose trust companies and banks with operations in the State. In addition, the trust business is a “feeder” business as it leads to the formation of additional Delaware business entities. The financial services industry in Delaware employs over 47,000 individuals. Collectively these institutions paid \$89.2 million in bank franchise taxes in fiscal year 2018 according to the State of Delaware, Office of the State Bank Commissioner. By way of comparison, bank franchise taxes collected in 1982 amount to a de minimis \$2.2 million. The trust industry alone was conservatively estimated to contribute between \$600 million and \$1.1 billion annually to Delaware's economy.\*

We in Delaware often speak of and “promote” the Delaware Advantage – a combination of state-of-the-art corporate laws, banking and trust laws

and a highly sophisticated court and judiciary. While other states may clone our statutes, they cannot replicate our Court of Chancery, and it's 200 plus years of carefully considered body of case law.

### What is the Court of Chancery?

Born officially with the adoption of the Delaware Constitution of 1792, the Court of Chancery, according to its website, has authority “to hear and determine all matters and causes in equity. The general equity jurisdiction of the Court is measured in terms of the general equity jurisdiction of the High Court of Chancery of Great Britain as it existed prior to the separation of the American colonies. The General Assembly may confer upon the Court of Chancery additional statutory jurisdiction. In today's practice, the litigation in the Court of Chancery consists largely of corporate matters, trusts, estates and other fiduciary matters, disputes involving the purchase and sale of land, questions of title to real estate, and commercial and contractual matters in general.” It has the authority to grant injunctions and issue temporary restraining orders. There is no jury.

The equitable principles, generally the quality of being fair and impartial, are implemented by judges known as Chancellors, appointed to twelve-year



terms by the Governor and confirmed by the Senate. One Chancellor will hear the case and make the rulings, bringing to bear the Chancellors' skill and experience in the applicable law, eliminating any need to educate a jury on the intricacies of Delaware corporate and trust laws. Therefore, litigants can rely on fair and unbiased decisions based on the law rather than public opinion. With more than 200 years of case law to guide their rulings, the Chancellors provide predictability, consistency and clarity in the application of the law. This, in turn, provides businesses and the bar more confidence in the outcome of the dispute and largely accounts for why the Delaware Court of Chancery is recognized as the nation's leading forum for settling corporate disputes, and is one of the most important reasons why Delaware is the most favorable business court in the world.

Politics, not surprisingly, played an important role in the Court's creation. Historians believe it was established in order to provide a new judicial seat for William Killen, a member of the minority party at the time, who had served as Chief Justice of the Supreme Court since the end of the Revolutionary War. The Constitution of 1792 reorganized the court system resulting in the appointment of George Read, a member of the party in power, to Chief Justice of the Supreme Court. However, to avoid the appearance of superseding Killen and because the Chancellor was to be the official head of the new judiciary, an appointment to Delaware's first Chancellor would be a promotion for Chief Justice Killen. The highly respected Mr. Read was then willing to accept the appointment to Chief Justice of the Supreme Court.

The legal profession in Delaware is highly sophisticated and is both a

cause and effect of the Delaware Advantage. Each year the Delaware Bar's highly skilled and very experienced practitioners on the corporate law and trust law committees propose bills to refine Delaware statutes further to improve the law. The bills are readily adopted by the pro-business-oriented legislature. In national rankings, the Delaware Bench and Bar receive number one rankings of the country's judicial systems. The U.S. Chamber of Commerce Institute for Legal Reform asked corporate attorneys to assess the state systems in which they worked and published a report known as The Lawsuit Climate Survey: Ranking the States. In the 2019 report, which is a comprehensive survey focusing on fairness and reasonableness of state legal systems, Delaware ranks first. Delaware has been ranked number one every year except one since 2002.

Perhaps there is an irony in the fact that the strength and reputation of Delaware's Court of Chancery, as a critical component of the Delaware Advantage and our state's modern economy, dates back more than 250 years to the English High Court of Chancery. However, the Court will always remain relevant if it does not lose sight of its ideal, as articulated by Vice Chancellor Hartnett in 1992:

"That what is right, and is fair, and is equitable, matters above all else." ■



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