



The Delaware Brand An Introduction

BY MICHAEL HOUGHTON

THE DOMINANCE OF DELAWARE in entity formations, especially corporations, is well known. But why is this the case, what goes into making – and keeping – the “Delaware Brand?” Delaware is a small state, we have less than one million people and are the second smallest geographically, yet we are the home of more than 60% of the Fortune 500.¹ We are the clear jurisdiction of choice for the formation of corporations as well as alternative entities (such as partnerships and limited liability companies) which combined in total to more than 1.3 million as of 2018. How did we get here? How do we stay here?

Highly regarded Delaware business and legal experts will help answer these questions in this January/February Annual Report Edition of *Delaware Business*. Ian McConnel, chief compliance and risk officer and deputy general counsel for CSC® provides background on the history, on judicial structure and on the state’s business entity formation advantages in discussing “The Delaware Effect.” Larry Hamermesh of Widener Law School and the University of Pennsylvania tells us “Why Delaware Citizens Should Care About Delaware’s Corporate Brand” noting the important fiscal, and reputational, components and the

¹ See “Delaware’s Continued Resilience, The Next Hundred Years” by A. Gilchrist Sparks III and Daniel D. Matthews published in *Can Delaware be Dethroned? Evaluating Delaware’s Dominance of Corporate Law*, Bainbridge, Anabtawi, Kim and Park, editors, Cambridge University Press (2018); See e.g., Lewis S. Black, *Why Corporations Choose Delaware*, (printed by the Delaware Department of State 2007), available at https://corp.delaware.gov/whycorporations_web.pdf.

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role of the Delaware Bar in maintaining the brand. Tom Collins, Executive V. P. of Government Relations of the Delaware Bankers Association, discusses the “Delaware Advantage” as reflected in our trust and banking laws. And Doneene Damon, President of Richards Layton & Finger, discusses the importance to the Delaware franchise of the Court of Chancery as a court of equity with a worldwide reputation.

Delaware’s reputation, with a history dating back to the ascendancy of Delaware’s corporate law in the early 20th century, centers on the responsiveness and efficiency of the Delaware’s executive branch (especially the Division of Corporations), Delaware’s flexible yet stable corporation law and alternate entity statutes (and the Legislature’s constant work with our Bar) and the state’s highly regarded judiciary. There is constant interplay among members of the legal profession, the Delaware General Assembly and the Governor’s office to preserve and enhance Delaware’s business reputation around the world. This process is pragmatic and functional. However, as the aftermath of the recent TransPerfect litigation demonstrates, in the highly aggressive society in which we live, the norms may not apply and reputations – of the State, of our Courts and of our Brand – may well be under regular assault.²

All Delawareans should care about the quality and reputation of our corporate and business laws and judiciary, particularly its Court of Chancery, because it is that “brand” that translates into significant benefits for Delaware. After a two year effort, the Delaware Bar Association, in June of 2019, issued a report, prepared by respected academics and Bar leaders, on “The Contributions of the Legal Industry to the Delaware Economy.”³ This analysis sets forth the direct and indirect financial (and other) benefits obtained by Delaware from its corporate and business brand. The legal industry in Delaware, which helps refine and maintain the Delaware Brand, contributes \$2.4 billion directly and indirectly to Delaware’s economy each year. Legal sector jobs contribute to the state’s gross domestic product at a rate double that of any other major sector in the state.⁴ And then there is the very significant revenue impact. The Delaware corporate franchise tax, corporate income tax and related sources of income contribute approximately one-third of Delaware’s total annual revenue – \$1.8 billion – which helps to fund Delaware’s schools, public safety, medical care for the poor and other priorities. If this erodes, state services decline and taxes have to be increased.

By maintaining and defending a tradition of balanced laws and decades of quality case law generated by expert judges, Delaware can respond to continued threats to its brand, not only from disgruntled litigants but from other states and legislative assaults at the federal level. As the articles that follow demonstrate, protecting the revenue, employment and reputational benefits from the “Delaware Brand” requires continued commitment by our business, legal and governmental partners. ■



² “Delaware Bar Blasts TransPerfect Chancery ‘Smear’ Campaign”, Jeff Montgomery, *Law 360* (Oct. 1, 2019) (“*The Delaware State Bar Association, in a rare public rebuke, branded as a personal vendetta and fraud a purported grassroots attack targeting Chancery Court Chancellor Andre G. Bouchard, tying it to a “smear” campaign by TransPerfect Global founder Philip Shawe... Delaware’s Supreme Court upheld Chancellor Bouchard’s February 2018 order for the \$770 million sale to Shawe of a 50% stake in TransPerfect held by co-founder Elizabeth Elting, who had a long-running and viciously soured relationship with Shawe. Shawe had to pay for the 50% share of the business owned by Elting in a process controlled by the court.*”)

³ *The Contributions of the Legal Industry to the Delaware Economy*, Larson, Latham and Lewis (2019).

⁴ *The Bar Association study discusses the direct effects of the Delaware business brand on Delaware’s economy e.g. high rates of employment, higher than average salaries, significant tax revenues as well as employment, investment and revenue from industries serving the legal sector, including back office industries, food, beverage, hospitality and real estate.*



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