



THE CONTRIBUTIONS OF THE LEGAL INDUSTRY TO THE DELAWARE ECONOMY

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**THE CONTRIBUTIONS OF THE
LEGAL INDUSTRY TO THE DELAWARE ECONOMY**
Paul Larson,¹ William Latham,² and Kenneth Lewis³

Executive Summary

- Drawing upon independent research and newly compiled data, this study reveals the considerable impact the legal industry has on Delaware's economy in terms of employment, tax revenue, and the secondary effects on the businesses that serve the industry.
- The legal industry contributes \$2.4 billion to Delaware's economy, with legal sector jobs contributing to the state's gross domestic product at double the rate of other major sectors. While the legal industry contributed \$1.74 billion directly through the industry itself, the multiplier effect of the industry provides an additional \$731 million to the state's gross domestic product, as firms and employees make purchases in Delaware.
- Individuals employed in Delaware's legal sector contributed \$228,000 per year to the state's gross domestic product. That number is two to three times that of other leading Delaware industries and approximately 83% higher than the average of all Delaware service industries.
- The legal industry generated one-third of the state's total annual revenue for fiscal year 2018, approximately \$1.8 billion. Much of this revenue is generated from out-of-state sources, which helps fund Delaware schools, public safety, medical care for the poor, and other priorities.
- One of main reasons for this considerable economic impact is Delaware's ability to attract out-of-state business, which it does better than any other state except for New York. Wilmington is home to offices of 19 of the largest law firms in the country, a number unmatched by comparable or even larger cities.

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- Compared to other leading Delaware industries such as manufacturing and agriculture, the legal industry has a relatively low carbon footprint and a low rate of workplace injuries. Further, almost all investments and job creation by the legal industry are located in areas of the state where there is already a high degree of existing public infrastructure, minimizing the need for additional investment to sustain the industry.
 - The Delaware legal industry is part of, and prospers from, the state's "Corporate Franchise," Delaware's historic and unique role as the situs for the formation of public corporations. Over 66% of Fortune 500 companies are incorporated in Delaware, and Delaware courts serve as a center of corporate, bankruptcy, and intellectual property disputes.
 - Because of the Corporate Franchise, Delaware continues to grow as a favored place for corporations and alternative entities, such as partnerships, statutory trusts, and limited liability companies. Delaware statutory trusts are the vehicle of choice for the formation of mutual funds, and there is approximately one Delaware limited liability company for every resident of Delaware.
 - The legal industry's success in, and importance to, Delaware is largely anchored in the judgment of decision-makers in the national and international business community that Delaware is the first choice for their corporate home and the resolution of their legal disputes.

Introduction

This study was commissioned by the Delaware State Bar Association and conducted by the authors to provide a detailed examination of the economic impact of the legal industry on the state of Delaware. This study analyzes publicly available data and conducts traditional economic modeling to measure the economic impact of the legal industry and to understand the reasons for this impact. The study also examines original data acquired and analyzed for this specific project, including a detailed survey of every law firm with a substantial presence in Delaware providing data on the number of employees, average salaries, square footage occupied, and other metrics such as vendor



usage and charitable contributions. A second survey of law-related businesses also provides useful data and significant anecdotal information. In addition, the Delaware Department of Finance provided aggregate tax data for this study, the analysis of which provides a deeper and more granular review of revenues generated by the legal industry. Comparing the legal industry in Delaware to that in other jurisdictions, the study

also details the presence of Delaware offices for the world's top law firms, as well as the per capita employment created by the Delaware legal industry compared to that of other states. To contextualize the net value of these jobs and investments, the study reviews and compares workplace injury data and the environmental externalities associated with this and other industries. Similarly, the study also includes a zip code analysis of all the law firms in this state, mapped against the State's priorities for infrastructure investment.

Drawing upon this independent research and newly compiled data, the study reveals the considerable impact the legal industry has on Delaware's economy in terms of employment, tax revenue, and the secondary effects on the businesses that serve the industry. Providing historical context for the evolution of this industry in Delaware, the study concludes this significant contribution is not mere happenstance. Instead, it is the

result of a deliberate and concerted effort by members of the legal industry, including attorneys and judges, together with members of the executive and legislative branches of Delaware government, to preserve and foster Delaware’s status as a national legal center.

Like most studies of this nature, this study begins with an economic analysis of the industry, highlighting the large number of Delawareans employed by the legal industry—second only to New York on a per capita basis. Importantly, these jobs are high paying, with an average salary more than double that of the state average. Further, to support the legal sector, a flourishing legal support market of related industries has emerged, including registered agents, legal service providers, office and equipment suppliers, e-discovery vendors, and trial technologists. In terms of the total impact on the state, the legal industry contributes \$2.4 billion to Delaware’s economy, with legal sector jobs contributing to the state’s gross domestic product (“GDP”) at double the rate of other major sectors.

One of main reasons for this considerable impact is Delaware’s ability to attract out-of-state business, which it does better than any other state except for New York. Wilmington is home to offices of 19 of the largest law firms in the country, a number unmatched by comparable or even larger cities. In 2018, approximately 4,500 out-of-state lawyers sought temporary admission to our courts, generating \$1.7 million in fees. This influx of out-of-state attorneys is far more significant than the admission fees alone, as these attorneys—along with their staff, consultants, and other members of their teams—generate additional revenue for Delaware’s real estate, hospitality, and restaurant industries. To provide context, the study includes anecdotes from members of this broader community, including a large commercial realtor who reveals that 85% of his company’s tenants are law firms and a restaurant that reports 50% of its revenues are attributable to the patronage of the legal industry.



Policymakers should consider the net benefit of an industry, including the public infrastructure investments necessary to support it, its impact on the environment, and its potential associated increased healthcare costs. To that end, this study contrasts this sizeable economic impact with the marginal impact on quality-of-life factors, such as the environment and workplace safety. For example, the study compares the relatively low carbon footprint and the low rate of workplace injuries of the legal industry to that of other leading Delaware industries such as manufacturing and agriculture. Finally, almost all investments and job creation by this industry are located in areas of the State where there is already a high degree of existing public infrastructure, minimizing the need for additional investment to sustain the industry.



The study goes behind the numbers to explain why Delaware’s legal industry stands out from its peers in other jurisdictions. In particular, the study focuses on the “Corporate Franchise,” Delaware’s historic and unique role as the situs for the formation of public corporations. There are various components of this Corporate Franchise, including the responsiveness and efficiency of the Division of Corporations, the flexible yet stable Delaware General Corporation Law, and Delaware’s judiciary—especially the

Court of Chancery. The study reviews the critical interplay between these symbiotically related components and how members of the legal industry, Delaware legislators, and the executive branch work together to preserve and enhance the Corporate Franchise. The collective effects of these efforts include the incorporation in Delaware of over 66% of Fortune 500 companies, and the establishment of Delaware courts as a center of corporate, bankruptcy, and intellectual property disputes, as evidenced by an analysis of cases filed and pending. These efforts have also resulted in Delaware's emergence as a favored place for alternative entities, such as partnerships and limited liability companies, with almost 200,000 entities formed in 2017 alone.

The positive effect of the Corporate Franchise on Delawareans is perhaps most evident in the revenue it generates—approximately \$1.8 billion in fiscal year 2018, one-third of the state's total annual revenue. Much of this revenue is generated from out-of-state sources and helps fund our schools, public safety, medical care for the poor, and other priorities. Specific carve-outs for revenue also flow directly to city and county governments to support the services they provide. Simply put, the robust tax revenue associated with the legal industry is not limited to the direct taxes from law firms and those working in this industry; it includes the revenue created by the Delaware Corporate Franchise, of which this industry is an integral part.

In the end, the study makes clear the contributions of the legal industry to the State are significant by almost any measure. The study also cautions that maintaining Delaware's preeminence as a legal center and all the resultant benefits requires the consistent and thoughtful cooperation and support of several Delaware constituencies. The industry is largely anchored in the well-supported view of decision-makers in the national and international business community that Delaware is the first choice for their corporate home and the first choice for the resolution of their most important disputes. Other jurisdictions continually try to convince these same decision-makers otherwise. It is critical that industry representatives, the judiciary, elected officials, and policymakers continue to be vigilant in their efforts to keep Delaware first.

I. Delaware’s Legal Industry: A Pillar of the State’s Economy

The legal industry plays a unique role in the economy of the state of Delaware. Based upon independent research and newly compiled data, this study documents the substantial economic impact the legal industry has made, and continues to make, upon the State.

The authors of this study and their collaborators—including the Delaware State Bar Association (“DSBA”), various government agencies, members of the judiciary, and individual attorneys—compiled and analyzed data regarding the legal sector and the broader legal industry in Delaware. The data involved: (i) law firms, (ii) law-related businesses, (iii) employment and wages in the legal sector, (iv) the “multiplier effects” of the Delaware legal industry throughout Delaware, (v) tax revenues attributable to the legal sector, (vi) workplace safety, and (vii) the environmental impact of various industries. The picture that emerges from the data and analysis is clear: Delaware’s legal industry is a pillar of the Delaware economy.

The legal industry bolsters the Delaware economy both directly and indirectly. The direct effects on Delaware’s economy include high rates of employment, higher-than-average salaries (for both lawyers and non-lawyers), and substantial tax revenue, both from the law firms practicing in the state as well as from Delaware’s unique “Corporate Franchise”—i.e., the “outsized place in the formation of business entities, particularly publicly held corporations,”⁴ that Delaware has retained “[f]or over two centuries.”⁵ The indirect effects on Delaware’s economy include employment, investment, and revenue from industries serving Delaware’s legal sector, including “back-office” industries, couriers, and process servers, as well as general service providers, such as the food, beverage, hospitality, and real estate industries. There are substantial effects on the incomes of all those employed both directly and indirectly, which result in significant additional employment and spending in the state. Finally, as detailed further below, the contributions to the state’s tax revenue constitute a major part of the legal industry’s impact on the state. These contributions occur with relatively small burdens on Delaware’s resources: the legal industry’s carbon footprint and pollution impacts are low,

the industry grows without the need for significant changes in infrastructure investment, and it results in few workplace injuries.

The legal industry's success and the many benefits it brings to Delaware are not the product of happenstance. They are the product of public officials working closely with the members of the legal profession to carefully support the Corporate Franchise through (i) the passage of responsive and innovative legislation, (ii) support for the judiciary both financially and through the retention and recruitment of highly qualified personnel and (iii) the establishment and support of the Division of Corporations of the Delaware Secretary of State's Office. The legal industry's continued success requires planning and the support of key constituencies in this state—namely, the private sector, and the executive and legislative branches of government.

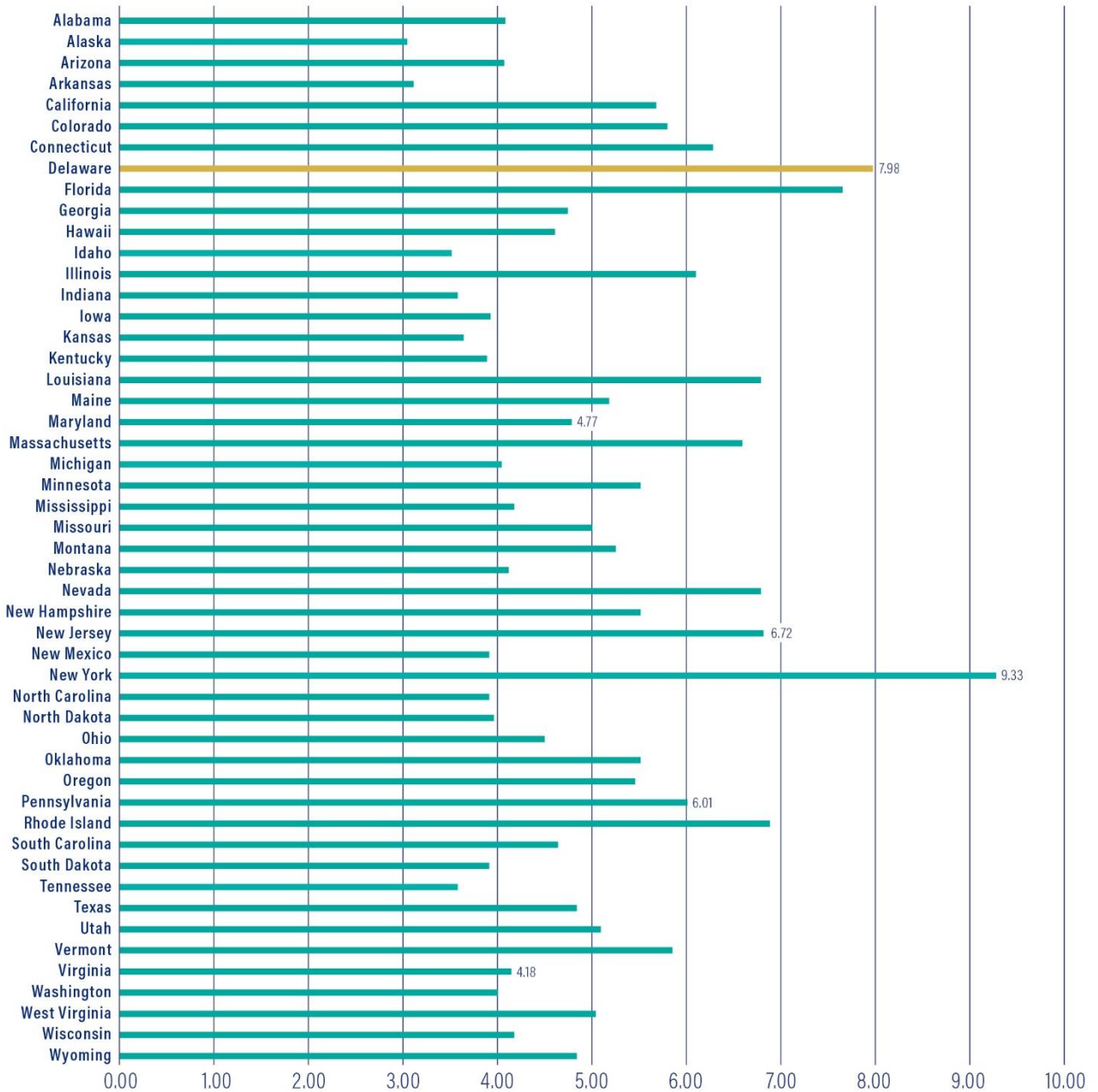
II. The Delaware Legal Industry: Key Economic Metrics

By any conventional metric, Delaware's legal industry is an economic pillar of the state. Whether measured directly (by legal-sector employment, wages, benefits) or indirectly (by "multiplier effect"⁶ of jobs and spending, and back-office industries), the economic contributions of the legal industry to the state of Delaware are considerable.

A. Employing Thousands of Delawareans

Many Delawareans are employed in the legal services industry. As Chart 1 below illustrates, Delaware ranks second nationally—behind only New York—in the percentage of total state population employed by the legal industry.

Chart 1. Legal Services Employment Per 1,000 Residents, All States*



*The Legal Services Sector (NAICS #5541) includes all establishments primarily engaged in providing legal services.

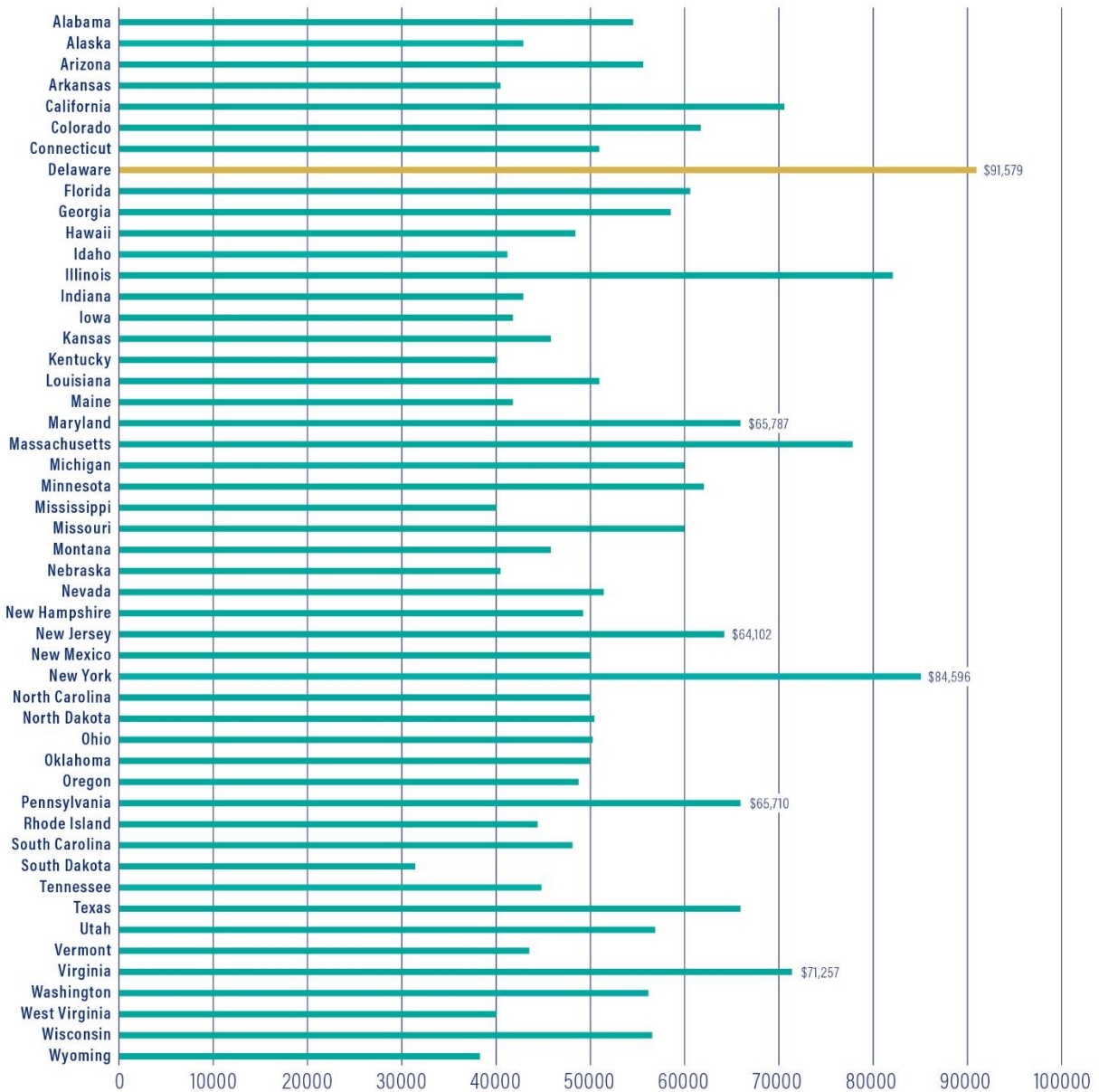
Based upon surveys conducted by the study’s authors and the DSBA, the 12 largest Delaware law firms (ranked by total expenditures on employees, materials, and support services) alone provided 1,498 full-time jobs in 2018.

B. Creating High-Quality Jobs

According to the Delaware Department of Labor’s most recent comprehensive study on Delaware wages, the annual mean wage among Delawareans employed in the “legal” occupational group was \$119,131—the fourth highest level in the country and more than double the statewide average of \$52,203.⁷ Although attorney salaries influence this industry-wide average, a deeper breakdown of the numbers reveals that the success of the Delaware legal industry is felt by all legal industry employees. Indeed, the mean annual wage of the employees within each individual “legal occupation” for which such data exist—including paralegals and legal assistants (\$55,120), court reporters (\$59,730), and miscellaneous “legal support workers” (\$54,720)—exceeds the statewide average annual wage.⁸

While Delaware’s salaries within the legal occupation rank as the fourth highest in the country, Delaware ranks first in average salaries within the legal services industry due to comparatively high salaries of individuals in non-legal occupations, such as IT, within the legal industry.

Chart 2. Total Employee Compensation per Legal Services Employee, All States*



*The Legal Services Sector (NAICS #5541) includes all establishments primarily engaged in providing legal services.

The foregoing chart shows the aggregate compensation (including wages, salaries, benefits, profit shares, etc.) of all employees in the Delaware legal sector. The benefits of the quality jobs provided by Delaware’s legal sector are shared among associates, paralegals, IT specialists, firm librarians, and secretaries, not just partners.

The high compensation levels of the non-attorneys associated with Delaware’s largest law firms are enjoyed not just in Wilmington but throughout the state, as shown in the table below.⁹

Job Titles	Delaware		Kent County		New Castle County		Sussex County	
	Average Compensation per Person	Median Compensation per Person	Average Compensation per Person	Median Compensation per Person	Average Compensation per Person	Median Compensation per Person	Average Compensation per Person	Median Compensation per Person
Paralegals	\$72,777	\$80,000	\$36,700	\$38,000	\$95,254	\$96,667	\$52,945	\$55,000
IT and Tech	\$120,172	\$113,000	\$68,333	\$68,333	\$122,109	\$123,566		
Secretarial	\$81,447	\$80,979	\$60,527	\$50,000	\$86,374	\$82,000	\$39,532	\$42,500
Other	\$105,927	\$96,180	\$73,833	\$45,000	\$109,921	\$112,141	\$32,882	\$44,504

C. Providing Charitable Donations and Pro Bono Legal Services

Contrary to some popular portrayals of attorneys, Delaware’s legal professionals are generous with both their money and time. Surveys revealed that in 2018, Delaware’s 35 largest law firms contributed over \$1.4 million—approximately \$1,000 per worker—in donations to local and national charities. In that same spirit, those firms volunteered an average of 204 hours of pro bono—a Latin phrase meaning “for good”—legal assistance per attorney to indigent or otherwise underserved clients.

D. Generating a Flourishing Legal Support Market¹⁰

The economic footprint of Delaware’s legal industry does not stop at the law firm or courthouse door. In addition to employing attorneys, paralegals, and legal assistants, Delaware’s firms and courts require general services, such as office equipment and supplies, as well as specialized legal services, which has spawned a thriving back-office industry of registered agents and e-discovery vendors throughout Delaware.

Delaware law offices spend millions of dollars every year on operational expenses. Like any office-based business, Delaware law firms incur expenses for office equipment and supplies, printing, copying, postage, mailings, banking and financing fees, food and beverage services, outside accounting and auditing, cleaning, maintenance, security, and utilities.

In addition, each Delaware corporation and most non-corporate entities (or “alternative entities”) are required to have a registered or “resident” agent in the State of Delaware. To serve as a registered agent in Delaware, an individual or a company must maintain a street address and office located in Delaware, and be open during normal business hours for the purpose of accepting service of process on behalf of the corporation or entity.¹¹ Currently, there are 116 registered agents listed on the website of the Delaware Division of Corporations.¹² Those registered agents serve more than 1,000,000 Delaware business entities.

Two of the oldest registered agent companies in Delaware are CSC and the Corporation Trust Company (“CT Corporation”).



CSC. For more than 120 years, CSC has provided business solutions to the world’s largest corporations, law firms, and financial institutions for every stage of the business life cycle. Headquartered in Wilmington, CSC works with 90% of the Fortune 500

companies, more than half of the Best Global Brands (Interbrand), nearly 10,000 law firms, and more than 3,000 financial organizations.

CSC has approximately 1150 employees in Delaware. As Rod Ward, CEO of CSC, explains, CSC’s success is a function of its role within and dependence upon the “broader Delaware legal ecosystem”:



“Having been a part of the broader Delaware legal ecosystem for over 100 years, our business is inextricably connected to Delaware’s legal sector. Delaware’s highly respected judicial system has made Delaware a jurisdiction of choice for public and private companies around the world. The importance of the continued health and growth of this critical sector of our state economy to CSC’s overall success cannot be overstated.”

CT Corporation. CT Corporation opened its first Delaware office in 1907 and currently has two Delaware offices (one on Orange Street in downtown Wilmington and one in suburban Wilmington). Alan Stachura, CT Corporation’s Senior Manager for Government Relations in Wilmington, outlines the mission of CT and its reliance on the legal industry:



“The Corporation Trust Company was created to assist lawyers and the legal community in 1892. We exist to serve the broader Delaware legal industry. Every day, for the last 127 years, we have met the needs of that industry and helped it to thrive. And that relationship has been mutual. Were it not for the Delaware legal industry, we would not exist either.”

Approximately 70% of CT's business in Delaware comes from the legal community (the balance is small businesses). The downtown office has 85 full-time employees, and the suburban office has 12 full-time employees.

Just as the success of the legal industry has fueled the strong growth of long-standing businesses like CT and CSC, technological innovations over the last 25 years have created new industries in Delaware that support the ever-growing technology, communications, and records- and document-management needs of law firms, legal departments, and companies.¹³ Most courts in Delaware require electronic filings of pleadings, and the state is moving toward its goal of across-the-board e-filing. Document review and production have been digitized. Courtroom technologies allow for sophisticated audio-visual presentations at hearings and trials.

Numerous Delaware businesses have been formed to meet these evolving technology and service needs of the legal industry, such as e-discovery and data analytics, hosted document review, data collection, trial support, and document technology and printing.



Parcels, Inc. One of the earliest companies to provide these services was Parcels, Inc., which was founded in 1980. Parcels began as a courier delivery service. Today, it supports 88 full-time employees. The legal industry comprises 90% of its business. Vito DiMaio, Executive Vice President of Parcels, explains the company's dependence upon and contribution to Delaware's legal industry:



“Without the legal industry, there would likely be no Parcels. Although many of our services apply to other industries, such as medical or finance, our sweet spot is within the legal industry. In addition, we’ve witnessed many other types of service providers that benefit tremendously from the legal industry. Examples include: office supply companies, copier/printer dealers,

hotels, restaurants/caterers, IT support businesses, commercial real-estate firms, interior design/office furniture groups, staffing agencies, court reporting firms, registered agents, insurance companies, healthcare providers, and the list goes on and on. With this in mind, and taking pride in the fact that we are a family-oriented business, it’s important to acknowledge the extraordinary number of families that survive by supporting the legal industry. Parcels alone supports at least 88 families who contribute to society in being good citizens who pay taxes, boost the economy by purchasing goods and services, volunteer their time to help various non-profits and charities, and again, the list goes on and on.”



DLS and PTC. Founded in 2001, Digital Legal Services (“DLS”) began its venture with 25-30 employees. Today, DLS employs 50 full-time employees in Wilmington. In 2013, as e-discovery launched in Delaware, DLS rebranded as “DLS Discovery.” “DLS primarily started out as a legal copy, print, and courier company,” observed DLS President Ed Carp. “Through our work with local counsel, DLS has matured into a technology company now supporting e-discovery and hosting, managed attorney review, trial suite rentals and marketing, along with our core litigation support services.” In addition to its location in Wilmington, DLS manages a document review center in Greenville, with the capacity for providing up to 25 reviewers.



Prevail Trial Consultants (“PTC”), a sister company to DLS, owes its origin to the growing number of trials in the federal and state courts in Delaware. PTC provides technical assistance to trial teams using contract attorneys to review documents. “Our business is 100% due to the legal industry,” says Andrew McClary, ESI and Discovery Manager at DLS. Ed Carp adds, “We wouldn’t be able to invest in new business if not for the continued growth of the legal industry in Delaware.”

E. Sharing the Benefits of the Legal Industry Throughout the Delaware Economy

The large number of well-paying legal services jobs in Delaware creates a high concentration of middle- and upper-income professionals—particularly in cities where legal activity is most prominent, such as Wilmington and Dover. This concentration of income gives rise to a broader “multiplier effect”¹⁴ throughout the Delaware economy. Jobs create more jobs, and spending creates more spending, as initial legal industry employment and expenditures ripple throughout the Delaware economy. Delaware’s international reputation as a leading center for sophisticated business law makes it recognizable to professionals in other business sectors, and establishes Delaware as a place associated with high-level commerce and cutting-edge involvement in the global economy.

Total Economic Contributions of Delaware’s Entire Legal Sector and Courts on the Delaware Economy		
IMPACT TYPE	EMPLOYMENT	STATE GDP
Direct Effects	7665.50	\$1,745,168,376
Impact of Spending at All Related Firms	1839.00	\$197,413,235
Impact of Spending by All Affected Households	5005.90	\$465,916,588
Total Effect	7665.50	\$2,408,498,202

The total economic impact of the legal industry upon Delaware’s economy is more than \$2.4 billion. While the legal industry contributed \$1.74 billion directly through the industry itself, the multiplier effect of the industry provided an additional \$731 million to the state’s GDP, as firms and employees made purchases in Delaware. This total contribution of \$2.4 billion amounted to 3.2% of Delaware’s total GDP in 2018.

A breakdown of these totals reveals that every legal industry job translates into 1.89 Delaware jobs and contributes (both directly and indirectly) over \$314,000 to the state’s economy.

Economic Contributions of Delaware's Entire Legal Sector and Courts Per Legal Sector Job

IMPACT TYPE	EMPLOYMENT	STATE GDP
Direct Effect of Legal Sector	1.00	\$227,665
Impact of Spending by All Firms	0.24	\$25,753
Impact of Spending by All Affected Households	0.65	\$60,781
Total Effect	1.89	\$314,200

Among Delaware's largest law firms, the multiplier effect is even greater: each legal sector job translates into 2.12 jobs and contributes \$355,574 to the Delaware economy.

Economic Contributions of Large Delaware Law Firms Per Legal Sector Job

IMPACT TYPE	EMPLOYMENT	STATE GDP
Direct Effect of Legal Sector	1.00	\$251,108
Impact of Spending by All Firms	0.16	\$15,751
Impact of Spending by All Affected Households	0.96	\$86,715
Total Effect	2.12	\$353,574

On average, individuals employed in Delaware's legal sector contribute \$228,000 per year to the state's GDP. As the chart below indicates, that number is two to three times that of other leading Delaware industries and approximately 83% higher than the average of all Delaware service industries:

Contributions to State GDP Per Worker

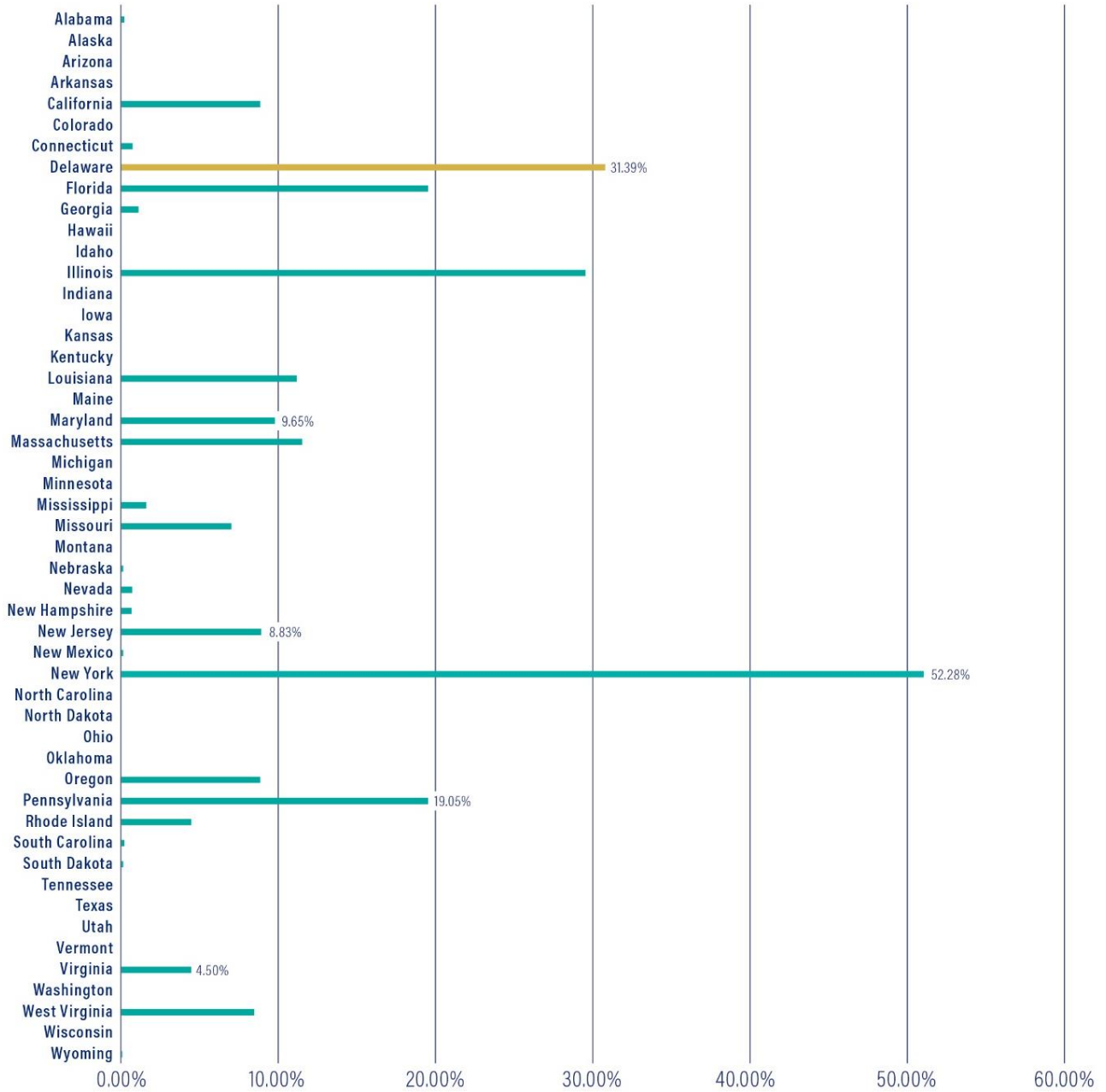
Delaware Legal Sector	\$228,000
All Delaware Service Industries (Includes Legal)	\$141,400
Delaware Agriculture	\$89,100
Delaware Manufacturing	\$133,600
Delaware Construction Industries	\$86,900

III. The Delaware Legal Industry: Attracting Out-of-State Business

A. Surpassing Its Comparably Sized Peers¹⁵

The role the legal industry plays in making Delaware a hub for national commerce is exemplified by the extent to which the leading national law firms both locate and appear in Delaware. As a leading venue for corporate, commercial, patent, and bankruptcy law,¹⁶ Delaware attracts law firms and individual attorneys from across the country. Indeed, Delaware attracts more out-of-state legal business than any comparably sized state. As Chart 3 below illustrates, Delaware is only surpassed by New York as a provider of out-of-state legal services.¹⁷

Chart 3. Percentage of Legal Services Supplied to Out-of-State Clients, All States*



*The Legal Services Sector (NAICS #5541) includes all establishments primarily engaged in providing legal services.

To meet their clients’ needs, national law firms establish offices in Delaware. In addition, out-of-state attorneys regularly frequent Delaware’s state and federal courts or travel to Wilmington to meet with co-counsel. Along with Delaware’s indigenous firms, these national branch offices and visiting attorneys provide jobs and revenue not only for

the legal sector but also for commercial real estate, hotels, restaurants, and general service providers.

B. Growing AmLaw 100 and Indigenous Firms in Delaware¹⁸

Nineteen of the American Lawyer’s 100 (the “AmLaw 100”) law firms have offices in Wilmington. The AmLaw 100 provides industry rankings based on the number of attorneys, profits per partner, and overall revenue of law firms. Generally speaking, law firms on the AmLaw 100 are full-service firms with sophisticated practices. Most have their offices in major cities, such as New York, Chicago, Washington D.C., Los Angeles, and Philadelphia. Rarely are smaller cities, especially with populations under 100,000, home to firms of this size and caliber. Wilmington, with a population of approximately 71,000, is the exception.

In comparison to Wilmington, neighboring cities of comparable size such as Reading, Pennsylvania (88,000), Frederick, Maryland (71,000), and Cherry Hill, New Jersey (71,000) attract few, if any, AmLaw 100 firms. In Delaware’s neighboring states, the only city with more AmLaw 100 firms is Philadelphia, with a population of 1,580,000. Despite this disparity in size, Philadelphia has only two more AmLaw firms than Wilmington. Baltimore has eleven of the AmLaw 100 firms, despite having a population over eight times that of Wilmington. Newark, New Jersey has only seven AmLaw firms despite being four times the size of Wilmington. As the following chart shows, no other comparable city approaches Wilmington’s appeal among AmLaw 100 firms:

Number of AmLaw100 Firm Offices Per City									
Wilmington, DE (71,000)	Philadelphia, PA (1,581,000)	Reading, PA (88,000)	Scranton, PA (77,000)	Baltimore, MD (611,000)	Frederick, MD (71,000)	Rockville, MD (68,000)	Newark, NJ (285,000)	Camden, NJ (74,000)	Cherry Hill, NJ (71,000)
19	21	0	0	11	0	0	7	0	3

The reason for this unique concentration of top-tier law firms in Wilmington is clear: Delaware’s renowned courts and body of corporate and commercial law. A scan of

some of the websites for these firms confirms this conclusion. DLA Piper, which is ranked 5 on the AmLaw 100 and is one of the largest law firms in the world, explains on its Wilmington office website: “Delaware is the corporate capital of the world because of its sophisticated business laws and highly respected judicial system.”¹⁹ Duane Morris, ranked 71 on the AmLaw 100, with its headquarters in Philadelphia, explains its presence in Delaware: “The state’s preeminence in business law has developed primarily through the work of the Delaware Court of Chancery—nationally, the forum of choice for resolving corporate disputes.”²⁰ Skadden Arps, ranked 4, has 22 offices on four continents, but its Wilmington office is the only one (with the exception of Palo Alto, California) located in a city with less than a million people. According to its website, “Skadden’s Wilmington office handles corporate transactions, litigations, reorganizations and restructurings for Fortune 500 companies and corporate clients.”²¹ In short, nearly every AmLaw 100 firm with an office in Delaware touts Delaware’s prominence in business law and/or the sophistication of Delaware’s state and federal courts when describing its practice in the state.



Similarly, Delaware’s home-grown law firms headquartered in Wilmington are larger than local law firms in similarly sized jurisdictions. Richards, Layton & Finger has 165 lawyers, Potter Anderson Corroon has 97, and Morris Nichols Arsht & Tunnell has 95. Comparatively, the largest headquartered firm in Reading, Stevens & Lee, has 38 lawyers. In Cherry Hill, Flaster Greenberg has 26 lawyers, and in Rockville, Maryland, the Stein Sperling firm has 50 lawyers. Wilmington’s large local law firms are three to five times the size of the typical largest firm in comparable neighboring cities and resemble those located in cities with far larger populations.

C. Drawing Out-of-State Lawyers Who Provide Direct and Indirect Revenue to Delaware

Each year, approximately 4,500 attorneys who are not active members of the Delaware Bar are admitted temporarily for the purpose of participating in particular

cases. Many of the cases in which they appear are directly related to Delaware’s Corporate Franchise. The vast majority of these pro hac vice—a Latin phrase meaning “for this occasion or particular purpose”—admittees are from out-of-state, and their combined admission assessments contribute approximately \$1.7 million annually to the overall operating costs of the Supreme Court and its regulatory agencies, which are known as the Arms of Court. Even more importantly, these out-of-state attorneys—along with their staffs, consultants, and other team members—generate revenue for the Delaware real estate, hospitality, and restaurant industries.

D. Supporting Commercial Real Estate, Hotels, and Restaurants²²

Delaware’s success in fostering home-grown firms and attracting national firms and prominent co-counsel provides benefits that go beyond the legal sector and back-office industries. Businesses throughout the state provide general goods and services—such as commercial office space, restaurants, hotels, transportation, and parking facilities—to this broader legal industry, which in turn provides employment and tax revenue for the citizens of Delaware.

Delaware law offices—both home-grown and national branches—occupy substantial amounts of commercial space within the state, thus supporting an important sector for economic development. Surveys of some of Delaware’s most prominent real estate and general services companies, also conducted by the study’s authors and the DSBA, witness to the importance of the legal industry to the life of these businesses:

BPG. The Buccini/Pollin Group, Inc. (“BPG”) is a privately held, full-service real estate acquisition, development, and management company with offices in Washington D.C., Wilmington, and Philadelphia. Formed in 1993, BPG develops and acquires hotel, office, residential, retail, and parking properties. Since its inception, BPG has acquired or developed significant real estate assets in Delaware, including hotels, office and retail space, major residential communities, and multiple entertainment venues, including the Sixers Fieldhouse.

Through a group of affiliated companies, the principals of BPG oversee all aspects of project acquisition, finance, development, construction, leasing, operations, and disposition for its portfolio properties. Regarding the relationship between BPG and the legal industry, BPG Co-President Chris Buccini observes:



“The legal industry perhaps has the largest impact on the economy of the state of Delaware, and the city of Wilmington. Its presence is felt in everything BPG does, whether office space for the law firms and businesses that support them, the lodging industry and the large amount of meeting space that is utilized, the growing residential apartment inventory that houses the employees, as well as those that come for shorter stays for trials, and the impact on the dining and entertainment industry. It would be difficult to fully estimate the impact that the legal industry has on Delaware’s economy.”

McConnell Johnson Real Estate. Founded in 1989, McConnell Johnson Real Estate owns and leases 1313 North Market Street (formerly the Hercules Building) and 1201 North Market Street. Partner Scott Johnson estimates that approximately 85% of the company’s tenants are law firms. Johnson states:

“The backbone of the Central Business District in Wilmington is supported by the legal community economically. The buildings they occupy support many vendors for building support services like security, cleaning, leasing, and management, along with many other small businesses in and around Wilmington that support the legal industry.”



Sheraton Suites. The Sheraton Suites in Wilmington, which was founded in 1979, has 60 employees. According to a company representative, the annual revenue impact of the legal industry on the Sheraton is roughly \$465,000. As noted above, out-of-state counsel frequently come to Wilmington for trials, hearings, depositions, mediations, and arbitrations. On average, the legal industry accounts for between 2,500 and 3,000 room nights per year at the Sheraton. Those guests also frequent local restaurants and bars, and utilize the services of legal support companies.

Tonic Bar and Grille. Founded in December 2015, Tonic Bar and Grille currently has 50 employees. According to Tonic's management, over 50% of Tonic's revenue is attributable to attorneys and judges. Counting law-related employees such as legal assistants, paralegals, DLS employees, Parcels employees, etc., that figure jumps to 60-65% of Tonic's business.



Colonial Parking. Founded in 1956 by Richard G. Hatfield and headquartered in Wilmington, Colonial Parking provides monthly and daily parking services in Wilmington, at the Philadelphia International Airport, and in West Chester, Pennsylvania. Many of its monthly and daily parking customers work in Delaware’s legal industry. John E. (“Jed”) Hatfield, the president of Colonial Parking, estimates that approximately 34% of its total volume of parking is attributable to the legal industry. “The legal industry is a substantial portion of the activity in Wilmington, second only to the financial services industry. Therefore, they represent a sizeable portion of the customers Colonial Parking serves.”

IV. The Delaware Legal Industry: The High Benefit-to-Cost Ratio

The legal industry’s substantial contributions to the economy come at comparatively little cost to the state of Delaware. Unlike many industries, which take a heavy toll on Delaware’s resources, the legal industry generates revenue and creates high-quality jobs at minimal expense to the environment, infrastructure, and healthcare system.

A. Minimally Impacting the Environment

The Delaware legal industry is environmentally sound. Compared to other major Delaware industries (manufacturing, chemicals, and agriculture), the legal industry has

virtually no detrimental impact on the state’s environment. Three factors explain why the legal industry is green:

First, while many industries rely on costly, industry-specific significant physical infrastructure—water and sewer, spray irrigation, smokestacks, etc.—Delaware’s legal industry is located primarily in urban centers where transportation and office space already exist. In addition, manufacturing, agricultural, and other similar industries generate air emissions and pollutant discharges from point and non-point sources, and/or create waste and hazardous substances—all of which trigger state permitting and monitoring requirements. Investments and job creation in the legal industry are unlikely to trigger these environmental permitting and monitoring issues. A growing legal industry utilizes existing infrastructure and has comparatively little impact on Delaware’s environmental landscape. By fostering growth in commercial real estate, tax revenue, and population, Delaware’s legal industry leaves a positive mark on the communities in which it operates. As discussed below, state policy encourages development in our existing downtown communities. The legal services industry meets both objectives and helps the state encourage other business sectors to do so.



Second, the legal industry poses almost no latent environmental danger. Housed in offices and courthouses, attorneys, judges, and their staffs pose no environmental risk unique to their profession. By contrast, hazardous chemicals,²³ animal waste,²⁴ and other environmentally sensitive materials are part and parcel of some of Delaware’s other leading industries.²⁵

Third, compared to certain of Delaware’s other major industries,²⁶ the legal industry is carbon-friendly and non-resource-intensive. To be sure, every individual working in Delaware’s legal industry makes a carbon and environmental footprint. But with its tight concentration in newer (and thus more energy-efficient) buildings, the legal industry is viewed by many as a leader in conservation and environmental sustainability.²⁷ As important, the legal industry consumes less natural resources in its daily operations than more resource-intensive industries like agriculture and manufacturing.

B. Creating Jobs Where Delaware Wants Jobs²⁸

Future investments and growth in the legal industry are likely to occur in areas the state of Delaware has identified as high priorities for investment and growth. As a result, expansion of the legal industry should only minimally burden the state’s infrastructure.

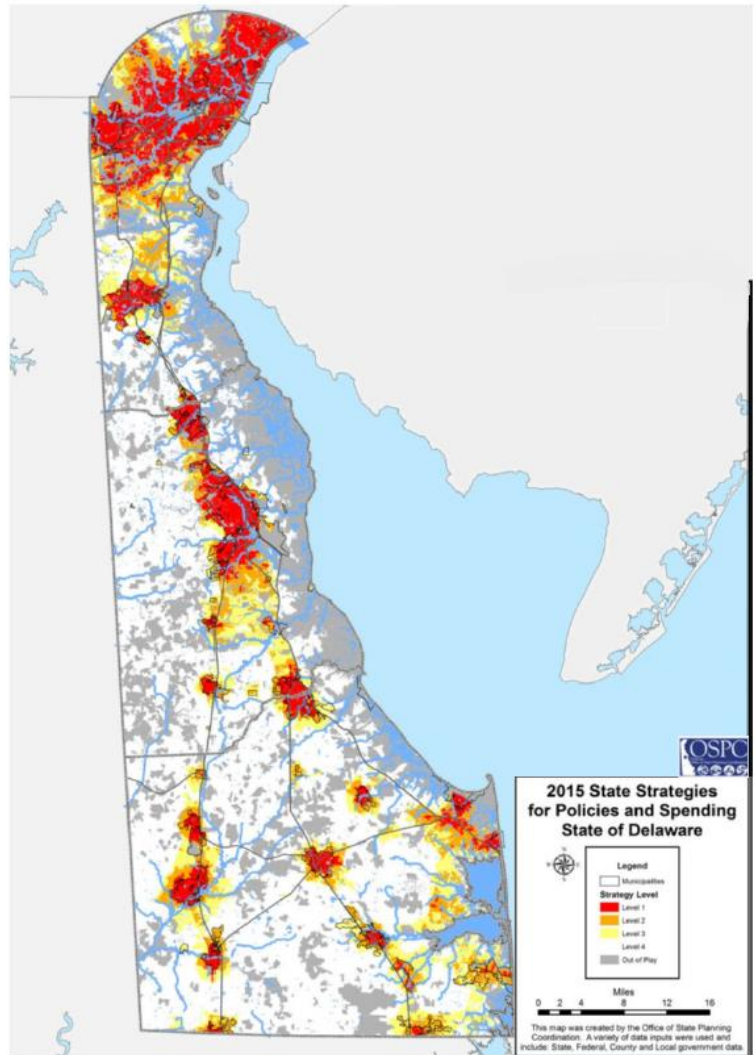
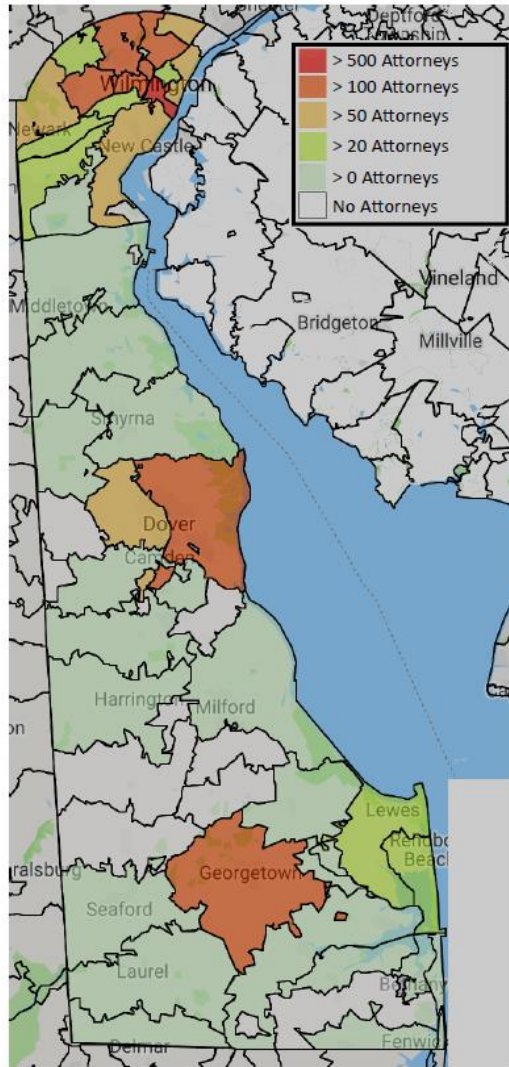
More specifically, the 2015 Delaware Strategies for State Policies and Spending document sets out the state’s policy priorities for infrastructure and development investment in an effort to make the best use of limited resources. The Policies and Spending document is intended to facilitate collaboration between state government and local jurisdictions. In furtherance of that end, the Policies and Spending document defines areas of the state as Investment Levels 1, 2, 3, 4, and “Out-of-Play” (i.e., “lands that are not available for development or for redevelopment”).²⁹

Investment Level 1 areas are typically cities and urban areas where significant investment in transportation and other infrastructure has already occurred. Thus, developments in Level 1 areas represent the most efficient use of resources due to the existing infrastructure. Not surprisingly, Level 1 areas are the targets for state agencies

to “focus [on] new and expansion projects” and/or aggressively seek development projects.³⁰

To that end, the Policies and Spending document encourages “enhanced incentives to those projects that select locations in Level 1 or Level 2 Areas.”³¹ These incentives are justified because the benefits of Level 1 developments are felt by a large number of Delawareans due to the density of Level 1 areas and the minimal additional public investment typically needed for Level 1 developments. Compared to developments in Level 1 areas, projects in less developed regions of Delaware often require substantial public investment in transportation, utilities, or public services. As the Policies and Spending document puts it, “In general, the more spread out we are, the more costly it is for taxpayers and the more of our environmental resources will be consumed.”³² Projects outside Level 1 areas generally have greater environmental impact and create negative environmental externalities for the local community.

As illustrated by the juxtaposition of the maps below, most of the investments and job creation by the legal industry are in Level 1 areas, principally Wilmington, Dover, and Georgetown:



Indeed, all the AmLaw 100 firms in Delaware are located in Level 1 areas, as are all the large indigenous law firms. Access to Delaware’s courthouses, lawyers, and clients drives the legal industry to self-select its investment in these Level 1 areas. By comparison, economic development initiatives with other industries, particularly those outside Level 1, often require expensive transportation and sewer infrastructure investments at the county and state levels.

C. Providing a Safe Workplace

The legal industry is a safe place to work—especially as compared to certain of Delaware’s other leading industries. By incidence of occupational injury, law offices and courts are among the safest workplaces in the national economy. For instance, in the

most recent year on record, the Federal Bureau of Labor Statistics found 0.8 total recordable cases of nonfatal occupational injuries and illnesses per 100 full-time workers in the “legal services” industry.³³ Delaware’s other major industries did not fare as well on the same metric, as the following table shows:

Industry	Nonfatal Occupational Injuries and Illnesses Per 100 Workers, 2017 ³⁴
Animal production and aquaculture Poultry and egg production	6.1 6.1
Agriculture, forestry, fishing, and hunting Crop production	6.1 6.1
Manufacturing Animal slaughtering and processing Chemical manufacturing	3.5 4.8 2.0
Legal Services	0.8

The policy implications and real-world impact of this data can be far-reaching. As these numbers demonstrate, as the legal industry grows to employ a greater share of Delaware’s working population, fewer Delawareans will suffer workplace injuries—and all the attendant personal and economic consequences.³⁵

In short, the legal industry provides communities with high-paying jobs, occupancy for premium office space, and significant tax revenue with minimal impact on the state’s environment, infrastructure, or healthcare system.

V. The Foundation of the Delaware Legal Industry: The Corporate Franchise

The economic success of the legal industry is tied to the state’s Corporate Franchise, i.e., Delaware’s historically outsized place in the formation of business entities, particularly publicly held corporations. But that causal relationship is not one-sided. The Corporate Franchise exists because of—and its continuation depends on—Delaware’s sophisticated bench and bar. A state with a 2018 population of approximately 967,000 people,³⁶ Delaware is home to more than 1.3 million legal entities.³⁷ Those entities

include 66.8% of all Fortune 500 companies and 80% of companies that made initial public offerings on the U.S. stock market in 2017.³⁸

Scholars and legal commentators attribute Delaware’s Corporate Franchise to the symbiotic relationship among the component parts of the state’s legal industry. The Division of Corporations, the development and maintenance of sophisticated corporate and business codes by the Delaware General Assembly and the DSBA, and the interpretation and application of those laws by Delaware’s internationally renowned expert business courts are the key reasons for entities’ decisions to organize in or migrate to Delaware.³⁹ It is not that Delaware is the low-cost place to incorporate. Business entities pay a market premium for the substantial advantages provided by Delaware’s superior business law courts and service they receive from the Division of Corporations.



A. The Delaware Division of Corporations⁴⁰

The Division of Corporations receives and processes “all filings required by law to be made with the Secretary of State and maintains the official records of all Delaware corporations and alternative entities.”⁴¹ It also collects corporate franchise taxes,

registers foreign business entities to do business in Delaware, and accepts service of process of behalf of Delaware entities (in certain cases).⁴²

The Division of Corporations is organized “with separate administrative sections to expertly handle basic customer inquiries, franchise tax matters and business entity filings.”⁴³ A “second shift” allows the Division of Corporations to remain open until midnight to “accommodate requests for expedited handling,”⁴⁴ as well as to make Delaware more accessible to West Coast and international businesses. Moreover, the Division of Corporations offers expedited services by providing “one hour, two hour, same day and 24 hour service for urgent and time-sensitive filings for an added fee.”⁴⁵

Further, the Division of Corporations is responsive to the commercial importance of avoiding bureaucratic delays. In fact, companies sometimes structure transactions “to involve Delaware business entities simply to avoid potential ministerial bottlenecks in other jurisdictions that could delay an important closing.”⁴⁶ Whereas government involvement in business affairs is traditionally regarded as a hindrance, the operations of the Delaware Division of Corporations instead entices transacting with or through Delaware entities, thus contributing to the Corporate Franchise.

B. Development and Maintenance of Corporate and Business Codes⁴⁷

Cooperation between the General Assembly and the Delaware legal community has been essential to ensuring the modernity of Delaware’s corporate and business codes as commercial conditions change.⁴⁸ For example, “in response to a 1980s’ crisis in obtaining directors’ and officers’ liability insurance on reasonable terms,⁴⁹ Delaware amended its statute to permit stockholders to limit the personal liability of directors,”⁵⁰ thus encouraging qualified individuals to assume critical directorships. Responsive revisions to the corporate and business laws have helped Delaware retain its dominance of the market for corporate charters. One study published in 1985, around the time of the aforementioned 1980s amendment, observed that, in the preceding quarter century, “[m]ore than 80 percent of the companies that have reincorporated . . . have migrated to Delaware.”⁵¹

The Delaware General Corporation Law (“DGCL”) is the “formal apex” of Delaware corporate law.⁵² Appropriately construed, the DGCL is “an enabling statute intended to permit corporations and their shareholders the maximum flexibility in ordering their affairs.”⁵³ At the same time, “[o]ne of the perceived benefits of incorporation in Delaware has been the stability of its corporation statute.”⁵⁴

Keeping the DGCL contemporaneous as commercial circumstances evolve depends on the cooperation of the General Assembly and the DSBA Section on General Corporation Law.⁵⁵ Delaware’s legislature has called upon the expertise of lawyers in this DSBA section to recommend, draft, and review amendments to the DGCL.⁵⁶ In fact, nearly every amendment to the DGCL since 1967—the last time the code was substantively modified⁵⁷—“has had its inception in the Corporation Law Section . . . of the [DSBA], whose overriding concern has been to clarify provisions [of the DGCL] in which practical experience or judicial scrutiny have exposed unnecessary ambiguity or uncertainty.”⁵⁸ Typically, the Corporation Law Committee submits a single bill each year containing all proposed amendments and commentaries to the DGCL for action by the General Assembly.⁵⁹

Under this arrangement, “the Delaware General Assembly has not perceived the content of the DGCL as an appropriate subject for partisan controversy.”⁶⁰ Furthermore, the process discourages amendments that are “the product of any legislative staff, or of any lobbyists engaged by individual businesses.”⁶¹ Instead, developments in the DGCL are driven by the Corporation Law Section’s determinations as to what promotes Delaware’s corporate law preeminence⁶² and keeps the DGCL “dynamic and flexible to corporate needs.”⁶³ Although other states have copied the DGCL⁶⁴—if not verbatim, then very closely—the uniqueness of “the process and philosophy that result in statutory law” is not so easily imitated.⁶⁵

C. Delaware’s State Judiciary⁶⁶

Delaware’s desirability as a legal forum for sophisticated business dispute resolution extends beyond its possession of “more than . . . up-to-date code[s]; Delaware also offers a comprehensive body of case law, which is not easily replicated by another

state.” In conjunction with the flexibility and reliability of the state’s corporate and business codes, the wealth of established case law written by Delaware’s expert judges affords companies “greater predictability of the legal outcomes,” thereby “facilitating planning and reducing the costs of doing business” in the state. In turn, the “large number of corporations domiciled in Delaware contributes to the development of its case law, for the sheer numbers make it more likely that a particular issue will have been litigated.”⁶⁹



Further, the success of Delaware’s state courts is a function of their reputation for integrity and fairness. Investors in Delaware companies, such as large mutual funds, trust the Delaware courts to enforce the rights of stockholders and to ensure that corporate managers do not use their power for improper purposes. For Delaware to continue to attract corporations and business entities, both the investors and the directors and officers who run those entities must feel that in the event of a dispute, the case will be resolved fairly. The Delaware courts have demonstrated that sense of balance and, most importantly, a willingness to take measures, whether by stopping an unfair corporate action or awarding sizable damages, to make sure that stockholders get the legal protections Delaware law promises them.

Moreover, the corporate success of Delaware’s state courts has bred further success: they have expanded beyond the borders of corporate law to a broader field of “commercial law.” Toward the end of the twentieth century and into the twenty-first, Delaware became a preferred venue for major Delaware corporations to litigate disputes involving contracts and alternative entities. The Court of Chancery’s reputation for speed and business expertise fueled substantial growth in these areas of practice. Now, the Court of Chancery is regularly asked to adjudicate contract cases involving the world’s largest businesses, both corporate and non-corporate. In fact, the Court of Chancery is so popular that non-Delaware companies seek it out.⁷⁰

1. The Court of Chancery

Delaware’s Court of Chancery is well known for its expertise in resolving corporate and complex business disputes. As a court of equity, the Court of Chancery does not have jury trials, but instead has trials before individual judges.⁷¹ Accordingly, when redress is granted by the Court of Chancery, “the chancellor [or vice chancellor] bears the personal, nondelegable duty to shape an equitable remedy in the fairest and most just manner possible.”⁷² The equitable nature of much of the relief sought in corporate litigation has contributed to the court’s accession to its “dominant position over intracorporate matters.”⁷³ Because of Chancery’s limited jurisdiction, the court is able to focus its resources on particular areas of law and “handle corporation law cases quickly and effectively.”⁷⁴



The Delaware Court of Chancery

Over the years, cases involving corporate law issues came to be concentrated in the Court of Chancery, “where there were no juries and where judges were called upon, on a regular basis, to explain the reasons for their decisions in written opinions.”⁷⁵ “The economies of scale created by the high volume of corporate litigation in Delaware,” particularly in the Court of Chancery, “contribute to an efficient and expert court system and bar.”⁷⁶ The exceptional volume of corporate cases has also contributed to the “highly developed body of case law,” which, “more than the statute . . . is ‘the Delaware corporation law.’”⁷⁷ The development of Chancery’s case law “and the reputation for expertise in corporate matters which followed”⁷⁸ have led to the court’s international renown for its specialization in resolving corporate and sophisticated business and commercial disputes.⁷⁹

The decisions of jurists on Delaware’s Court of Chancery have garnered the respect of legal communities across the globe.⁸⁰ Delaware judges are often invited to “participate in conferences throughout the world on the subject of corporate law” to share their expertise.⁸¹ The reputation of the Court of Chancery has allowed the court “to attract some of the best lawyers in Delaware to serve as chancellors and vice chancellors.”⁸² Throughout its history, the Court of Chancery has been expanded to accommodate

increased demand as the number of entities in Delaware grew.⁸³ Most recently, in 2018, two new vice chancellors were added to the bench.⁸⁴

2. The Complex Commercial Litigation Division of the Delaware Superior Court

A natural complement to the Court of Chancery, the Complex Commercial Litigation Division of the Delaware Superior Court (the “CCLD”) provides businesses with a Delaware forum to resolve their non-equity legal disputes that cannot be heard in the Court of Chancery.⁸⁵ Created by administrative directive of then-President Judge James T. Vaughn Jr. on May 1, 2010,⁸⁶ the CCLD was formed, in part, to hear complex commercial cases that require the same level of sophistication, business acumen, expediency, and attention as those in the Court of Chancery.⁸⁷ The creation and success of a second specialized commercial court only furthers Delaware’s reputation as the first choice for business litigation.⁸⁸ Aside from Wyoming, no other state of comparable population has a court—let alone two—that specializes in corporate or commercial law.⁸⁹

3. The Delaware Supreme Court

Appeals from the Court of Chancery and the Superior Court proceed directly to the Delaware Supreme Court.⁹⁰ Although most corporate law cases decided by the Court of Chancery are not appealed, “some of the best known decisions on Delaware corporation law” come from appeals to the Supreme Court.⁹¹ The Delaware Supreme Court, like the Court of Chancery, has demonstrated “a very practical bent,” generating “predictable, efficient results that balance[] the needs of managers for flexibility and consistency with those of stockholders in policing self-dealing and managerial sloth.”⁹² The Supreme Court has also shown that it is well equipped “to act quickly in important corporate cases.”⁹³ In fact, it is not uncommon for the Supreme Court to resolve important corporate law cases overnight or even to “announce its decision shortly after hearing arguments with a more detailed opinion to follow.”



D. Delaware’s Federal Judiciary and the Corporate Franchise⁹⁶

For most of the twentieth century, Delaware’s advantage in corporate law was just that, an advantage in corporate law. This provided substantial benefits to the state, but they were far more limited than today. In the late twentieth century and continuing into the twenty-first century, Delaware’s reputation for sophistication, speed, and efficiency in business law fueled an expansion of the legal industry. Businesses and their constituents recognized that choosing Delaware as the state of incorporation allowed them to have other types of cases adjudicated in the courts of Delaware. In the 1980s and 1990s, corporations and their constituents began to make the United States Bankruptcy Court for the District of Delaware (“Delaware Bankruptcy Court”) a leading place for the largest corporate reorganizations. With that choice came a sizable increase in the presence of bankruptcy lawyers and professionals working in Delaware, which led to a growth in the Delaware Bankruptcy Court.



Likewise, as we have become a more technologically and scientifically intensive world, Delaware corporations have used the United States District Court for the District of Delaware (“District of Delaware”) as their preferred place to address key issues of intellectual property law. These changes led to an increase in legal employment as Delaware firms hired more IP lawyers to meet the demand, and as with bankruptcy, national law firms opened Delaware offices to support their regular practice in our federal court.

1. Delaware’s Bankruptcy Court

Delaware is one of the nation’s most prominent bankruptcy venues. As the table below indicates, Delaware’s Bankruptcy Court is first among its comparably sized peers, as measured by number of filings:

2018 U.S. Federal Bankruptcy Court Filings⁹⁷

STATE	CASES FILED	CASES TERMINATED	CASES PENDING
Delaware	2,979	3,240	5,412
Alaska	450	479	354
Montana	1,302	1,383	1,457
Rhode Island	2,165	2,267	1,585
South Dakota	1,084	1,110	1,113
Vermont	555	642	669
Wyoming	1,026	1,185	929

Delaware’s success in bankruptcy is attributable to at least two factors. First, over the course of a rich history of successfully reorganizing many of the world’s largest and most complex companies, the Delaware Bankruptcy Court has earned a reputation for expertise, sophistication, predictability, and efficiency.⁹⁸ Second, Delaware is the preeminent state for incorporation.⁹⁹

Delaware’s reputation as a top bankruptcy venue emerged in the late twentieth century and traces back to the famed 1990 bankruptcy of Continental Airlines.¹⁰⁰ In the years that followed, Delaware cemented itself as the nation’s leader in corporate reorganizations,¹⁰¹ and a number of prominent national law firms opened Delaware offices with bankruptcy practices—including, among others, Fox Rothschild, Drinker Biddle, Greenberg Traurig, Blank Rome, Pachulski Stang, and Womble Bond Dickinson.¹⁰²

2. The District of Delaware

As the table below shows, the District of Delaware is first among its comparably sized peers, as measured by number of filings.

2017 U.S. Federal District Court Filings ¹⁰³			
STATE	CASES FILED	CASES TERMINATED	CASES PENDING
Delaware	2,225	2,125	2,161
Alaska	630	542	736
Montana	1,337	1,235	1,074
Rhode Island	854	814	871
South Dakota	1,288	1,335	934
Vermont	504	532	571
Wyoming	634	665	728

The success of the District of Delaware is a result of its long history and reputation as a leader and innovator in patent litigation. As one article notes:

“Delaware’s experience in patent litigation reaches back to the beginning of the last century. In the 1920s, Judge Hugh Morris—then the sole federal judge in Delaware—decided many of the country’s most important patent cases. In the 1960s and 1970s, Chief Judge Caleb Wright presided over numerous patent cases (involving technologies such as the manufacture of synthetic rubber and polyurethane foam insulation, the zeolite cracking of petroleum to produce gasoline, and the manufacture of transistors), thereby helping ‘to establish on a national scale the reputation of the District of Delaware as a forum for the expeditious and knowledgeable resolution of patent disputes.’”¹⁰⁴

When combined with the court’s role in modern patent litigation, this judicial lineage has translated into “a bench with extensive practical experience and a rich collection of rulings that enhance the predictability of patent law as applied in

Delaware.”¹⁰⁵ On a per-judge basis, no district court in America matches the level of practical patent-litigation experience shared by the District of Delaware bench.¹⁰⁶ As in the corporate-litigation context, this collective expertise fosters predictability that is attractive to patent litigants, many of whom are “repeat players.”¹⁰⁷

Delaware’s intellectual property bar is active and well regarded, particularly in the area of patent litigation. With its skilled judges, extensive history, and location in America’s corporate heartland,¹⁰⁸ Delaware’s federal district court has become the busiest patent venue in the country. The District of Delaware received a remarkable 24.01% of all patent cases filed in 2018, outpacing the second-busiest patent venue (the Eastern District of Texas) by 10.20% over the same period.¹⁰⁹ In the same year, the District of Delaware received half of all new Abbreviated New Drug Application cases— as many as its 93 sister courts combined.¹¹⁰

In an increasingly tech-centric society, the degree of predictability in patent lawsuits is an increasingly important factor in the incorporation decisions of many companies. “[C]ompanies like Amazon and Facebook, which are located in California but incorporated in Delaware, face dozens of patent-infringement lawsuits every year.”¹¹¹ The growth and reputation of Delaware’s patent-litigation bar contributes to the state’s efforts to maintain its status as the preferred incorporation destination. Indeed, Delaware firms and/or offices crowd the rankings of the most active plaintiffs’ and defendants’ firms in 2018 patent-case filings.¹¹² Given the District of Delaware’s reputation as a patent-litigation center, renewed competition among state bars and courts to attract companies to facilitate patent litigation “will likely end in a familiar way: with Delaware maintaining or even furthering its appeal as the dominant state of incorporation.”¹¹³

E. Delaware’s Alternative Entity Practice¹¹⁴

Counting both corporate and non-corporate business entities, Delaware is the leading state for the formation of business entities. In 2017 alone, 198,457 entities were formed as Delaware corporate or alternative entities, with 143,996 LLCs, 11,517 LPs/LLPs,

41,553 corporations, and 1,391 statutory trusts being formed. Overall, more than 1.3 million legal entities have been formed in Delaware.

The success of Delaware's corporate and alternative entity practice becomes clear when compared to business entity formation in comparably sized states. In Montana, there were over 223,000 total businesses registered in 2018. The total number of registered entities includes 105,595 LLCs, 49,470 corporations, 13,849 non-profits, 50,929 assumed business names, and 4,070 partnerships. Of those entities, 31,400 were new entities registered in 2018. The total number of businesses registered in Montana is comparable to the number of entities formed in Delaware in just one year, and Montana's total of 233,000 entities pales in comparison to Delaware's total of 1.3 million. In South Dakota, at the end of the fourth quarter of 2017, there were 75,802 entities in good standing, a mere 38% of those formed in Delaware in 2017 alone. Similarly, in Wyoming there were 42,425 domestic entities and 1,888 foreign entities registered in the state as of 2018, less than a quarter of the number of entities registered in Delaware in a single year. As of 2018, Alaska had 73,053 registered entities, 67,250 of which were in good standing and 5,803 of which were noncompliant. Rhode Island currently has approximately 65,000 registered entities. As of March 26, 2019, Vermont had 98,479 active businesses. In other words, in 2017, more entities were formed in Delaware than the total number of existing entities in South Dakota, Alaska, Rhode Island, and Vermont. In fact, Delaware is home to approximately 1 million more businesses than exist in those four states combined.

As these numbers indicate, Delaware is a national leader and innovator in the creation and growth of alternative entities: partnerships, limited liability companies, and statutory trusts.

1. Partnerships

In 1999, Delaware enacted the Delaware Revised Uniform Partnership Act, which governs general and limited liability partnerships, and in 1983, the Delaware Revised Limited Partnership Act, which governs limited partnerships. Delaware general partnerships ("DGP"), limited liability partnerships ("DLLPs"), and limited partnerships

(“DLP”) are forms of “pass through” entities, which enable a business owner or investor to avoid double taxation of income. Unlike a corporation, a partnership itself is not taxed; rather, the partners are taxed on their share of the partnership income. Partnerships also give the partners broad contractual discretion to structure their business to meet their particular needs. With the exception of certain banking activities, any type of lawful business—from a professional sports franchise or apartment complex to a manufacturing company or investment advisory service—can be formed as a partnership. As of 2018, there were 101,652 active Delaware partnerships.¹¹⁵

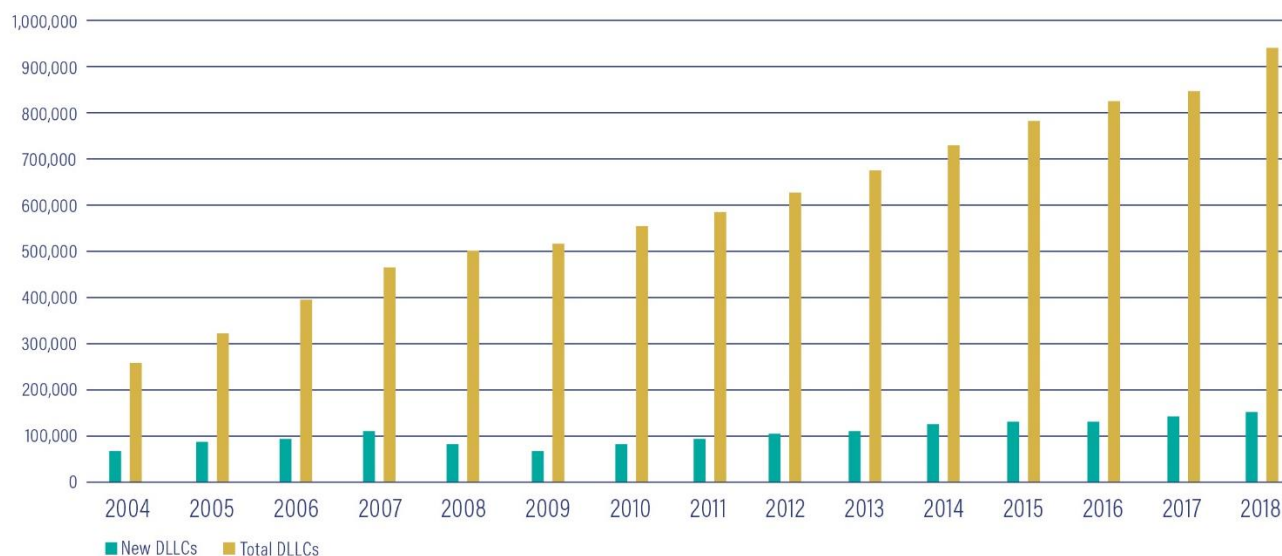
Delaware limited partnerships (and limited liability companies, discussed below) are the entity of choice for domestic private equity funds and play an important role when fund sponsors desire to have a U.S.-domiciled fund.¹¹⁶ Delaware is the leading U.S. jurisdiction for the formation of domestic private equity funds.

2. Limited Liability Companies

Following a 1988 IRS ruling that limited liability companies could qualify as pass-through entities for federal tax purposes, Delaware enacted the Delaware Limited Liability Company Act (“DLLCA”) in 1992. Delaware limited liability companies (“DLLCs”) are a flexible form of business entity that combines the limited liability of corporations and the pass-through benefit of partnerships with the flexibility and certainty of a contractual arrangement. As with partnerships, DLLCs can be used for any type of lawful business, with the exception of certain banking activities.

Since the enactment of the DLLCA, the DLLC has become an increasingly popular form of business organization. As illustrated in the chart below, in 2004 there were 273,252 active DLLCs, and 68,641 new DLLCs were formed in that year.¹¹⁷ By 2010, there were 550,238 active DLLCs, with 82,027 new DLLCs being formed in that year.¹¹⁸ By 2018, the total number of active DLLCs was 930,290¹¹⁹—i.e., approximately one DLLC for every resident in Delaware—and 157,142 new DLLCs were formed in that year.

Chart 4. New and Total Number of DLLCs — 2004 - 2018



3. Statutory Trusts

In 1988, Delaware enacted the Delaware Statutory Trust Act, becoming the first state to provide for the creation of legally separate “business trusts.” In 2000, the total number of Delaware statutory trusts (“DSTs”) was 6,692. By 2018, that number had climbed to 21,605.¹²⁰

DSTs are the preferred entity for use in structured finance transactions, including asset-backed securitizations or secured transactions.¹²¹ DSTs are also “the most favored form of mutual fund organization” in the United States.¹²² According to data provided by Investment Company Institute,¹²³ in 2017 DSTs accounted for approximately 40% of the total number of mutual funds. In addition, DSTs have grown in popularity among real estate investors as vehicles for facilitating “like-kind” exchanges under Section 1031 of the Internal Revenue Code, i.e., exchanges of one business or investment property for another that does not trigger immediate tax liability.¹²⁴

Further, each DST that is not an investment company under certain federal law is required to engage a trustee who, if a natural person, is a resident of Delaware or, if a business entity, has its principal place of business in Delaware. Local banks, such as Wilmington Trust and Wilmington Savings Society Fund, and national banks with

Delaware offices, such as U.S. Bank and Citibank, provide these trustee services to DSTs. Moreover, DSTs that are investment companies under certain federal law, DLPs, DLLPs, DGPs, and DLLCs must have and maintain a registered office and a registered agent in Delaware.

In brief, from its Division of Corporations and corporate code to its judiciary and alternative entity practice, the Corporate Franchise fuels the Delaware economy by providing employment and income to thousands of Delawareans—both directly through the legal sector, and secondarily through the legal support and general services industries.

VI. The Corporate Franchise: Providing Significant Revenue for Delaware ¹²⁵

The Corporate Franchise, of which the legal industry is an integral and dependent part, not only fuels the private economy; it funds state and local government, as well. The Corporate Franchise generates considerable tax revenue for the state, both directly and indirectly. Directly, the Franchise Tax and associated taxes and fees accounted for approximately one-third of all state revenue in 2018. The following chart illustrates the breadth of the Delaware Corporate Franchise's contributions to the state budget and reflects the importance of attracting corporations and other entities to the state.

Revenues Associated with Delaware's Corporate/Business Environment
(\$ in millions)
Preliminary

	FY 16	FY 17	FY 18	FY 19 (Est)
Corporate Franchise Tax (net)	694.2	702.5	846.8	886.5
Escheat (net GF)	450.3	449.2	506.2	444.0
LLC	268.8	284.3	305.1	324.5
Entity Fees	104.8	110.8	119.0	123.6
Escheat ASF	44.6	44.6	44.6	45.1
Expedited Services	33.2	33.6	39.0	30.6*
UCC	19.3	19.5	23.4	25.8
Tech Infrastructure Fund (SOS)	7.5	8.1	8.1	8.1
SOS Sec Office Admin	3.5	4.0	4.0	3.2
Chancery ASF	1.7	1.7	1.7	1.8
Gov't Information Center (SOS)	0.6	0.6	0.6	0.6
Supreme Court ASF	0.1	0.2	0.2	0.2
Total	1,628.8	1,659.2	1,898.8	1,894.1

* Year-to-date through March 2019
Department of Finance, May 3, 2019

Over and above these revenues, in 2018, the Division of Corporations collected approximately \$17.6 million in Corporate Franchise-related revenues, which provided funds for local governments. In particular, the Division of Corporations collected \$4.2 million in county recording fees (shared among Delaware's three counties), \$6.3 million in courthouse municipality fees (shared among Delaware's three county seats—Wilmington, Dover, and Georgetown), \$6.1 million in UCC filing fees (Wilmington), and \$1.0 million in statutory trust/captive insurance fees (Wilmington).

Further, Delaware law firms and the industries that support them pay a substantial amount of taxes in their own right. Based upon a Delaware Department of Finance (Revenue Division) review of tax filings, employees (W-2s: \$420.2 million), partners (Schedule Ks: \$319.7 million), and independent contractors (1099s: \$48.3 million) in 99 Delaware law firms and registered agents involved in corporate law claimed taxable

income of approximately \$788.4 million. Delaware collected approximately \$44.7 million in taxes from these wage earners and partners.¹²⁶

Much of the taxable income from law firms and industries occurred in Wilmington and therefore also is subject to the city wage tax, currently a flat rate of 1.25%.

Yet, the full impact of the Corporate Franchise on the state budget is even broader. Taking into account the multiplier effects due to the spending of income from both the legal sector and supporting sectors, Delaware collects approximately \$300 million in additional taxes each fiscal year. Delaware's Corporate Franchise fuels the state's economy by further supporting Delaware's important role in American litigation¹²⁷—which provides all the attendant economic benefits referenced throughout this report. These economic benefits contribute to a growing state economy in the form of increased wages, consumer spending, tax revenue from the legal sector (as shown above), additional business taxes, and critically, property taxes. This economic activity, in turn, produces further indirect revenue growth.¹²⁸ Like the mutually reinforcing cycles examined previously in this report,¹²⁹ this revenue growth produces fruits of its own, enabling Delaware to fund schools, infrastructure, programs, and services. This funding, then, further fuels the state economy and generates additional revenue. Delaware's legal industry is a vital factor in this cycle.

By cultivating Delaware's reputation as a premier forum for corporate, bankruptcy, patent, and other types of complex legal practice, Delaware's legal industry can continue to play a substantial role in furthering the state's efforts to attract both national and international companies—and the revenue that comes with them. This revenue results in a number of positive effects¹³⁰ and contributes to the general welfare of Delaware.

VII. Conclusion: A Sustained Commitment Going Forward

The economic success of Delaware's unique legal industry is demonstrated by the foregoing data and is recognized nationally and internationally. This data bring to light the "Delaware Difference," the unique attributes of the legal industry that make a small state with fewer than one million people the name brand in business law for the world

economy and provide our state with positive name recognition among the globe's business leaders.

This study, with its review of the history of the Corporate Franchise, demonstrates that a continued commitment by the private legal sector, judiciary, and executive and legislative branches is required for Delaware to maintain its current prominence and continue to deliver the substantial benefits Delaware enjoys as a result.

The need for this commitment is not always evident and may be easily forgotten. Many industries have geographic-specific anchors that tether them to a particular location. Investments in brick and mortar, and integration of company leadership and workforce in the community keep some industries anchored to a certain state. In other industries, the particular location provides important access to markets and infrastructure like ports, railways, and major highways, mooring those industries to a given location.

In contrast, the economic drivers of the unique Delaware legal industry are the decisions made by thousands of executives on a daily basis as to where they want their businesses to reside. Such decisions are not haphazard; they are based on a cost-benefit analysis affected by the collective efforts of Delaware's public officials, the judiciary, and legal community. These efforts have resulted in the balance tilting toward Delaware for many years, but that balance can shift quickly. Business executives have choices, and there are always states urging them to choose differently.

Acknowledgments

This report grew from a perceived need by the Delaware legal community, including the DSBA, the judiciary, and government and private practice attorneys, to document the critical role the legal industry plays in the economic development of the state.

In producing this report, we received a high level of cooperation and support from many individuals and agencies within the state. We are grateful to Chief Justice Leo Strine for his guidance in structuring this project and providing valuable comments to previous drafts of this report. We are also indebted to the personnel in the Administrative Office of the Courts, in particular Bill Montgomery and Tanya Whittle, who devoted many hours to make this project a success. Similarly, we received excellent support from the DSBA and its executive director, Mark Vavala, as well as the current President, David Ferry. The project would not have been possible without the leadership and guidance of the past president of the DSBA, Mike Houghton of Morris, Nichols, Arsht & Tunnell LLP, and Tom McGonigle of Drinker Biddle & Reath LLP, who co-chaired this effort on behalf of the DSBA. Mike and Tom worked closely with Arthur (Chip) Connolly from Connolly Gallagher, LLP; Lauren Neal Bennett and Barnaby Grzaslewicz from Morris, Nichols, Arsht & Tunnell LLP; and Greg Williams and Andrew Peach from Richards, Layton, & Finger, P.A., whose expertise regarding the legal industry and its development in Delaware were essential. The sections of the report dealing with these issues are mostly, if not completely, their work, and we are most appreciative for their contributions to the project. Similarly, we are indebted to personnel from the state Department of Finance for their analysis of the tax contributions of members of the legal industry.

Endnotes

¹Dr. Larson is a recent University of Delaware Ph.D. who has taught economics at the United States Naval Academy and Anne Arundel Community College.

²Dr. Latham retired from the Economics Department of the University of Delaware in 2018.

³Dr. Lewis is a Professor of Economics at the University of Delaware.

⁴Lawrence A. Hamermesh, *The Policy Foundations of Delaware Corporate Law*, 106 COLUM. L. REV. 1749, 1749 (2006).

⁵David Mace Roberts & Rob Pivnick, *Tale of the Corporate Tape: Delaware, Nevada and Texas*, 52 BAYLOR L. REV. 45, 46 (2000).

⁶A “multiplier effect” refers to the numerical relationship between an original change in economic activity and the ultimate change in activity that results as the money is spent and re-spent through various sectors of the economy. Here, the multiplier effect is the ratio between the total impact of a legal industry activity and its initial direct impact.

⁷DEL. DEP’T OF LABOR, OFFICE OF OCCUPATIONAL & LABOR MKT. INFO., DELAWARE WAGES 2017: OCCUPATIONAL EMPLOYMENT STATISTICS, at 3, <https://lmi.delawareworks.com/Content/Publications/Documents/Delaware%20Wages%202017.pdf>.

⁸*Id.* at 8; *see also* BUREAU OF LABOR STATISTICS, OCCUPATIONAL EMPLOYMENT STATISTICS: MAY 2017 STATE OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES, DELAWARE, https://www.bls.gov/oes/2017/may/oes_de.htm#23-0000_

⁹Information regarding “IT and Tech” compensation for Sussex County was not available.

¹⁰We are grateful to the entities and individuals named in the Acknowledgments section of this report for their collaboration with us in developing the material in this section.

¹¹*See* 6 *Del. C.* § 17-104; 6 *Del. C.* § 18-104; 8 *Del. C.* § 132; and 12 *Del. C.* § 3807.

¹²<https://corp.delaware.gov/agents/>.

¹³An example of this technological expansion: In 1991, before smartphones became available and during the infancy of email use by businesses, there were 1,626 active attorneys registered in Delaware. Today, there are 3,746 registered attorneys in Delaware, most of whom are electronically connected to their offices.

¹⁴This report utilizes output multipliers, employment multipliers, and income multipliers to evaluate the extent of the legal industry’s impact on Delaware’s economy. The multiplier effect measured in this report reflects both the indirect and induced impacts of the legal industry. Indirect impacts are those that result from the additional jobs, payrolls, and output created when a legal industry entity purchases goods and services from the diverse businesses that support it. These businesses include equipment suppliers, construction services, transportation services, management services, food services, and many other types of support businesses. Induced impacts are those that result when the employees of a direct or indirect employer spend their personal incomes (wages and salaries, profit shares, etc.) on consumer goods, property, services, and taxes. Local firms purchase input supplies that they need for their businesses from other local firms. They pay their employees, who then also make local purchases. Thus, a dollar increase in local direct activity at a law firm, for example, results in expansion of total economic activity of more than one dollar throughout the rest of the state.

¹⁵Throughout this study, states described as “comparable” to Delaware are those with similar populations. Those states are Alaska, Montana, Rhode Island, South Dakota, Vermont, and Wyoming.

¹⁶*See* Section V below.

¹⁷This percentage is calculated by adding the legal services required by all businesses (industry by industry), households, and agencies in Delaware, and subtracting those services from the total amount of

legal services provided. Within the economics profession, this difference is considered the best available estimate of the services provided to out-of-state clients.

¹⁸ We are grateful to the entities and individuals named in the Acknowledgments section of this report for contributing the material in this section.

¹⁹ <https://www.dlapiper.com/en/us/locations/wilmington/>.

²⁰ <https://www.duanemorris.com/offices/wilmington.html>.

²¹ <https://www.skadden.com/locations/americas/wilmington>.

²² We are grateful to the entities and individuals named in the Acknowledgments section of this report for their collaboration with us in developing the material in this section.

²³ See, e.g., Vince Lattanzio, *Potentially “Catastrophic” Chemical Leak Shuts Down Delaware Memorial Bridge Amid Thanksgiving Travel Rush*, NBC PHILA. (Nov. 25, 2018) (“The leak of a highly flammable chemical from a plant next to the Delaware Memorial Bridge forced an emergency shutdown of the dual-span suspension bridge.”).

²⁴ See, e.g., SIERRA CLUB, WHY ARE CAFOS BAD?, <https://www1.eere.energy.gov/manufacturing/states/pdfs/delawareindustrialresourcefactsheet.pdf> (observing that the waste produced by a typical concentrated animal feeding operation can include “antibiotic-resistant bacteria, hormones, chemicals used in livestock care, milkhouse wastes, cleaning agents, ammonia and heavy metals, silage leachate, and millions of gallons of water contaminated by all of the above,” in addition, of course, to large amounts of animal urine and feces).

²⁵ Many other industries pose significant environmental challenges to the state. See, e.g., Maddy Lauria, *Report: Mountaire Has Contaminated Water Near Its Millsboro-Area Plant for Years*, DEL. NEWS J. (Apr. 9, 2018) (“Data show that Mountaire, which is permitted to spray 2.6 million gallons of treated wastewater on hundreds of acres of farm fields north of the Indian River each day, has contributed large amounts of nutrients that . . . could potentially threaten the Inland Bays’ contribution to the state’s \$7 billion coastal tourism economy.”); Molly Murray, *Pollution Gains Prove Elusive in Delaware*, DEL. NEWS J. (Apr. 21, 2016) (detailing environmental harms caused primarily by industrial polluters and noting, for example, that “[i]n some places in Delaware, such as the nontidal Brandywine and Shellpot Creek, it’s unsafe to eat any fish [because these] areas have problems with PCBs . . . pesticides, mercury, [and/or] dioxins”).

²⁶ The Delaware legal industry consumes less resources than several peer industries, such as the industrial and manufacturing sectors. See U.S. DEP’T OF ENERGY, INDUSTRIAL TECHNOLOGIES PROGRAM (“[Delaware’s] largest consumer of energy is the industrial sector, in part because Delaware contains several energy-intensive industries, including petroleum refining, chemical production, and other manufacturing.”).

²⁷ Indeed, many of the nation’s top law firms have made conservation a point of emphasis, particularly as they cater to corporate clients who increasingly deem conservation a key element of corporate social responsibility. See Marialuisa Taddia, *Environmental Considerations Are Rising up the Law Firm Management Agenda*, LAW SOC’Y GAZETTE (Sept. 15, 2011).

²⁸ We are grateful to the entities and individuals named in the Acknowledgments section of this report for contributing the material in this section.

²⁹ 2015 DELAWARE STRATEGIES FOR STATE POLICIES AND SPENDING, DELAWARE OFFICE OF STATE PLANNING COORDINATION, (Apr. 14, 2015), <https://stateplanning.delaware.gov/strategies/documents/2015-state-strategies.pdf>. at 19.

³⁰ *Id.* at 20.

³¹ *Id.*

³² *Id.* at 3.

³³ BUREAU OF LABOR STATISTICS, INJURIES, ILLNESSES, AND FATALITIES, TABLE 1: INCIDENCE RATES OF NONFATAL OCCUPATIONAL INJURIES AND ILLNESSES BY INDUSTRY AND CASE TYPES, 2017, https://www.bls.gov/iif/oshwc/osh/os/summ1_00_2017.htm. The Delaware-specific numbers for the

industries for which such data exist track these numbers closely. For example, nonfatal manufacturing injuries occurred at a rate of 3.5 times per 100 workers nationally and 2.6 times per 100 workers in Delaware. See BUREAU OF LABOR STATISTICS, INJURIES, ILLNESSES, AND FATALITIES, STATE OCCUPATIONAL INJURIES, ILLNESSES, AND FATALITIES, <https://www.bls.gov/iif/oshstate.htm>.

³⁴ *Id.* The nature of the modern legal industry is likely the primary driver of this positive outcome. For better or worse, the vast majority of today’s attorneys and judges—and the staffs who serve them—spend most of their working hours behind computers in climate-controlled office buildings.

³⁵ Including, among other things, missed work days, lost wages, diminished skills, and weakened career prospects.

³⁶ NATIONAL POPULATION TOTALS AND COMPONENTS OF CHANGE: 2010-2018, UNITED STATES CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/popest/2010s-national-total.html> (data provided in linked Excel file entitled: *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2018 (NST-EST2018-01)*).

³⁷ ANNUAL REPORT STATISTICS, DELAWARE DIVISION OF CORPORATIONS, <https://corp.delaware.gov/stats/>.

³⁸ *Id.*

³⁹ See generally Lewis S. Black, Jr., *Why Corporations Choose Delaware*, DELAWARE DEPARTMENT OF STATE, DIVISION OF CORPORATIONS (2007); Hamermesh, at 1749; Roberta Romano, *Law as a Product: Some Pieces of the Incorporation Puzzle*, Vol 1 Issue 2 J.L., ECON. & ORG., 225 (1985).

⁴⁰ We are grateful to the entities and individuals named in the Acknowledgments section of this report for contributing the material in this section.

⁴¹ Black, Jr., at 8.

⁴² *Id.* at 8-9.

⁴³ *Id.* at 9.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ We are grateful to the entities and individuals named in the Acknowledgments section of this report for contributing the material in this section.

⁴⁸ 1 R. Franklin Balotti & Jesse A. Finkelstein, *THE DELAWARE LAW OF CORPORATIONS. & BUSINESS. ORGANIZATIONS*, History, at H-13 (3d ed. Supp. 1999).

⁴⁹ This “crisis” resulted largely from the controversial Delaware Supreme Court decision in *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985), which “greatly increased the risk that directors would be held liable for breaches of their duty of care.” Marcel Kahan, Edward Rock, *Symbiotic Federalism and the Structure of Corporate Law*, 58 VAND. L. REV. 1596, 1600 (2005).

⁵⁰ Balotti & Finkelstein, Foreword, at F-6 (3d ed. Supp. 2001) (citing 8 *Del. C.* § 102(b)(7)).

⁵¹ Balotti & Finkelstein, Foreword, at F-1 (3d ed. Supp. 2008) (citing Roberta Romano, at 265-73).

⁵² Hamermesh, at 1752.

⁵³ Black, Jr., at 2.

⁵⁴ 1 David A. Drexler et al., *DELAWARE CORPORATE LAW AND PRACTICE* § 1.02 at 1-4 (Matthew Bender).

⁵⁵ *Id.*, at H-13.

⁵⁶ Black, Jr., at 2.

⁵⁷ Drexler et al., at 1-4.

⁵⁸ *Id.*

⁵⁹ Balotti & Finkelstein, History, at H-14.

⁶⁰ Hamermesh, at 1753.

⁶¹ *Id.*, at 1754.

⁶² Kahan, at 1600.

⁶³ Roberts, at 46.

⁶⁴ William L. Cary, *Federalism and Corporate Law: Reflections upon Delaware*, 83 YALE L.J. 663, 665 (1974) (noting that “Nevada has attempted to become the western Delaware but not with comparable success”); *see also* Balotti & Finkelstein, Foreword, at F-15 (3d ed. Supp. 2008) (“Nevada, for example, has adopted a liberal corporate statute very similar to the Delaware General Corporation Law.”).

⁶⁵ Black, Jr., at 2.

⁶⁶ We are grateful to the entities and individuals named in the Acknowledgments section of this report for contributing the material in this section.

⁶⁷ Romano, at 280.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ By way of example, two of the highest profile commercial cases in the last decade involved non-Delaware corporations that chose Delaware as the forum to resolve their high-stakes contractual disputes. *See Akorn, Inc. v. Fresenius Kabi AG*, 2018 WL 4719347, at *4-5 (Del. Ch. Oct. 1, 2018), *aff'd*, 2018 WL 6427137, 198 A.3d 724 (Del. 2018) (TABLE) (resolving a dispute between a Louisiana company headquartered in Illinois and a German company); *Martin Marietta Materials, Inc. v. Vulcan Materials Co.*, 56 A.3d 1072, 1076 (Del. Ch. 2012), *aff'd*, 68 A.3d 1208 (Del. 2012) (resolving a dispute between a North Carolina company headquartered in Raleigh, North Carolina and a New Jersey company headquartered in Birmingham, Alabama).

⁷¹ Drexler et al., § 2.01 at 2-2.

⁷² William H. Rehnquist, *The Prominence of the Delaware Court of Chancery in the State-Federal Joint Venture of Providing Justice*, 48 BUS. LAW. 353 (Nov. 1992).

⁷³ Drexler et al., at 2-2.

⁷⁴ Balotti & Finkelstein, Foreword, at F-6 (3d ed. Supp. 2001); *see also* Rehnquist, at 354.

⁷⁵ Black, Jr., at 5.

⁷⁶ Balotti & Finkelstein, Foreword, at F-6 (3d ed. Supp. 2001); *see generally id.* at F-16 (3d ed. Supp. 2008) (“Delaware now clearly has the economies of scale to sustain an effective system. However, large states such as California, Illinois, New York, Pennsylvania and Texas should be able to achieve similar economies of scale. . . . Surprisingly, because of the nature of their legislature, much of the difficulty in these large states appears to be with their statutes. . . . [T]hese states’ legislatures frequently turn corporation law matters into complex moral and political problems. If a state’s corporation statute is inferior, its court system and lawyers never even have a chance.”).

⁷⁷ Black, Jr., at 7.

⁷⁸ *Id.* at 5.

⁷⁹ Although best known for its contribution to Delaware’s national preeminence in the field of corporation law, the Court of Chancery has also demonstrated sound judgment in adjudicating other areas of law. Among the Court of Chancery’s recognized achievements is the 1952 decision in *Belton v. Gebhart*, 87 A.2d 862 (Del. Ch. 1952)—one of the four cases consolidated in the United States Supreme Court in *Brown v. Board of Education*, 349 U.S. 2294 (1955), and the only one of the four lower court decisions to be affirmed. In *Belton*, Chancellor Collins Seitz used the broad equitable powers of the Court of Chancery to order immediate relief to black schoolchildren who suffered from state-imposed segregation.

⁸⁰ Black, Jr., at 5, 7 (“Delaware corporations have the benefit of having their actions governed by a law that is recognized and respected everywhere.”).

⁸¹ Hamermesh, at 1759.

⁸² Black, Jr., at 5.

⁸³ Drexler et al., § 1.02 at 1-7 (noting that the Court of Chancery added additional members in 1960, 1984, and 1989).

⁸⁴ 2018 Annual Report for the Delaware Judiciary, at 19 (2018) (“In September 2018, Governor Carney nominated Morgan T. Zurn and Kathaleen St. J. McCormick to serve as our two newest Vice Chancellors.

They both were confirmed by the Delaware State Senate in October 2018, and have since taken the oath of office.”).

⁸⁵ See Joseph R. Slight III & Elizabeth A. Powers, *Delaware Courts Continue to Excel in Business Litigation with the Success of the Complex Commercial Litigation Division of the Superior Court*, 70 BUS. LAW. 1039, 1047 (2015).

⁸⁶ See Administrative Directive of the President Judge of the Superior Court of the State of Delaware, No. 2010-3: Complex Commercial Litigation Division (May 1, 2010) (“Administrative Directive No. 2010-3”), https://courts.delaware.gov/superior/pdf/Administrative_Directive_2010-3.pdf.

⁸⁷ See DELAWARE’S COMPLEX CIVIL LITIGATION COURT: ONE YEAR LATER, Morris James LLP (May 18, 2012), <https://www.morrisjames.com/newsroom-articles-72.html>.

⁸⁸ See Slight & Powers, at 1047.

⁸⁹ Earlier this year the Wyoming state legislature introduced a bill to establish a chancery court, and on March 15, 2019, the governor of Wyoming signed the bill into law. The effectiveness of this court is yet to be determined, but it is expressly modeled upon the Delaware Court of Chancery—as Nevada’s corporate statutes largely replicate the DGCL.

⁹⁰ Drexler et al., § 2.06, at 2-12.

⁹¹ Black, Jr., at 7.

⁹² Leo E. Strine, Jr., *The Delaware Way: How We Do Corporate Law and Some of the New Challenges We (and Europe) Face*, 30 DEL. J. CORP. L. 673, 682 (2005).

⁹³ Rehnquist, at 354; Black, Jr., at 7 (“The Delaware Supreme Court has become known, in particular, for the speed with which it can review significant decisions on appeal when time is of the essence.”).

⁹⁴ Balotti & Finkelstein, Foreword, at F-6 (3d ed. Supp. 2001).

⁹⁵ Black, Jr., at 7.

⁹⁶ We are grateful to the entities and individuals named in the Acknowledgments section of this report for contributing the material in this section.

⁹⁷ U.S. BANKRUPTCY COURTS, BUSINESS AND NONBUSINESS CASES COMMENCED, BY CHAPTER OF BANKRUPTCY CODE, DURING THE 12-MONTH PERIOD ENDING DECEMBER 31, 2018, TABLE F-2, https://www.uscourts.gov/sites/default/files/data_tables/bf_f2_1231.2018.pdf.

⁹⁸ See Ofer Eldar & Neel U. Sukhatme, *Will Delaware Be Different? An Empirical Study of TC Heartland and the Shift to Defendant Choice of Venue*, 104 CORNELL L. REV. 101, 131 (2018).

⁹⁹ Federal bankruptcy law provides a menu of venue options, including not only the state of incorporation but also the state(s) where a company has its principal place of business, principal assets, or legal domicile. See Eldar & Sukhatme, at 130.

¹⁰⁰ See *id.* at 130–31.

¹⁰¹ *Id.*, at 131; see also Marcus Cole, “*Delaware Is Not a State*”: Are We Witnessing Jurisdictional Competition in Bankruptcy?, 55 VAND. L. REV. 1845, 1852 (2002).

¹⁰² See, e.g., GREENBERG TRAUIG, DELAWARE, <https://www.gtlaw.com/en/locations/delaware> (“Greenberg Traurig opened its Delaware office in 1999 in response to the unique and increasing role Delaware plays in the needs of our national and international clients.”).

¹⁰³ U.S. DISTRICT COURT JUDICIAL CASELOAD PROFILE (2018), https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2018.pdf. These filings are from the period April 1, 2017 to March 31, 2018.

¹⁰⁴ Donald F. Parsons, Jr. et al., *Solving the Mystery of Patentees’ “Collective Enthusiasm” for Delaware*, 7 DEL. L. REV. 145, 145–46 (2004) (quoting Arthur G. Connolly, Sr. & Donald F. Parsons, Jr., *Senior Judge Caleb M. Wright’s Contributions to the Trial of Complex Patent Cases*, 7 DEL. LAW. 6 (Mar. 1989)).

¹⁰⁵ *Id.* at 146.

¹⁰⁶ For example, the most recent additions to the bench bring with them years of patent-litigation experience: Judge Maryellen Noreika as a long-time IP litigation partner at a prominent Delaware firm, and Magistrate Judge Jennifer Hall as a law clerk to Judge Sharon Prost of the patent-focused Federal Circuit and an associate at a nationally recognized patent litigation boutique. *See* Press Release, The White House, President Donald J. Trump Announces Ninth Wave of Judicial Nominees and Tenth Wave of United States Attorney Nominees (Dec. 20, 2017).

¹⁰⁷ *See, e.g.*, GENEVA CLARK, LEX MACHINA, PATENT LITIGATION REPORT 7 (Rachel Bailey & Jason Maples eds., 2019), at 9–14 (confirming the prevalence of “high-volume” plaintiffs and defendants in modern patent litigation).

¹⁰⁸ *See* R. Eric Hutz, *7 Reasons Delaware Is a Hot Spot for IP Litigation*, LAW360 (Aug. 20, 2014) (noting the District of Delaware’s “long history of handling complex patent cases” and “long tradition of judges who are not intimidated by patent cases [and] the related technical subject matter”).

¹⁰⁹ *See* CLARK, at 7.

¹¹⁰ *Id.* With just four congressionally authorized judgeships and three magistrates, the District of Delaware ranks among the nation’s smallest and “most overworked district courts.” Cara Bayles, *These Are the Nation’s 27 Most Overworked District Courts*, LAW360 (Mar. 18, 2019). The massive caseload handled by this relatively small group of judges recently prompted the Judicial Conference of the United States to authorize a fourth magistrate judgeship in the district. *See* Press Release, U.S. Dist. Court for the Dist. of Del., Selection of Jennifer L. Hall as U.S. Magistrate Judge (Feb. 28, 2019).

¹¹¹ Eldar & Sukhatme, at 149.

¹¹² *See* CLARK, at 16–17.

¹¹³ *Id.* at 146–47.

¹¹⁴ We are grateful to the entities and individuals named in the Acknowledgments section of this report for contributing the material in this section.

¹¹⁵ ANNUAL REPORT STATISTICS, DELAWARE DIVISION OF CORPORATIONS, <https://corp.delaware.gov/stats/>.

¹¹⁶ Scott W. Naidech, *Private Equity Fund Formation*, Practical Law Practice Note 3-509-1324 (2018).

¹¹⁷ ANNUAL REPORT STATISTICS, DELAWARE DIVISION OF CORPORATIONS, <https://corp.delaware.gov/stats/>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ “[S]ecuritization—both private and government-sponsored—represents \$8.6 trillion, or about 50% of the nation’s roughly \$17.3 trillion of loans outstanding as of Q2 2015.” Structure Finance Industry Group, *A Comprehensive Guide to U.S. Securitizations*, 3 (Apr. 7, 2016).

¹²² Investment Company Institute, 2018 INVESTMENT COMPANY FACT BOOK: A REVIEW OF TRENDS AND ACTIVITIES IN THE INVESTMENT COMPANY INDUSTRY, 281-82 (58th ed.).

¹²³ Correspondence with Judy Steenstra, Senior Director, Statistical Research, Investment Company Institute, Mar 21, 2019.

¹²⁴ Joseph J. Whitney *et al.*, *Why Delaware Statutory Trusts Are Becoming Popular*, N.J.L.J., 50 (Oct. 23, 2017).

¹²⁵ We are grateful to the entities and individuals named in the Acknowledgments section of this report for their collaboration with us in developing the material in this section.

¹²⁶ Information regarding tax revenues from independent contractors (1099 filings) was not available.

¹²⁷ And, as demonstrated above, the success of Delaware’s legal industry is perhaps the primary driver of the Delaware Corporate Franchise.

¹²⁸ *See, e.g.*, Andrew Lundeen, *Economic Growth Drives the Level of Tax Revenue*, TAX FOUND. (Oct. 15, 2014) (“[E]conomic growth is a major driver of the level of tax revenues.”), <https://taxfoundation.org/economic-growth-drives-level-tax-revenue/>.

¹²⁹ *See, e.g., supra* at V.D.1.

¹³⁰ Among these are lower taxes on Delaware residents and businesses, increased state investment in schools and other government services, and a multitude of positive downstream effects. For example, Delaware is one of just five states without a sales tax. Sandra Block, *5 States with No Sales Tax*, KIPLINGER (Feb. 28, 2019), <https://www.kiplinger.com/slideshow/taxes/T054-S001-states-without-state-sales-tax/index.html>. Tax-free shopping is helpful to Delaware's businesses and citizens, and would be less feasible fiscally and less palatable politically without the revenue produced by Delaware's robust Corporate Franchise.

