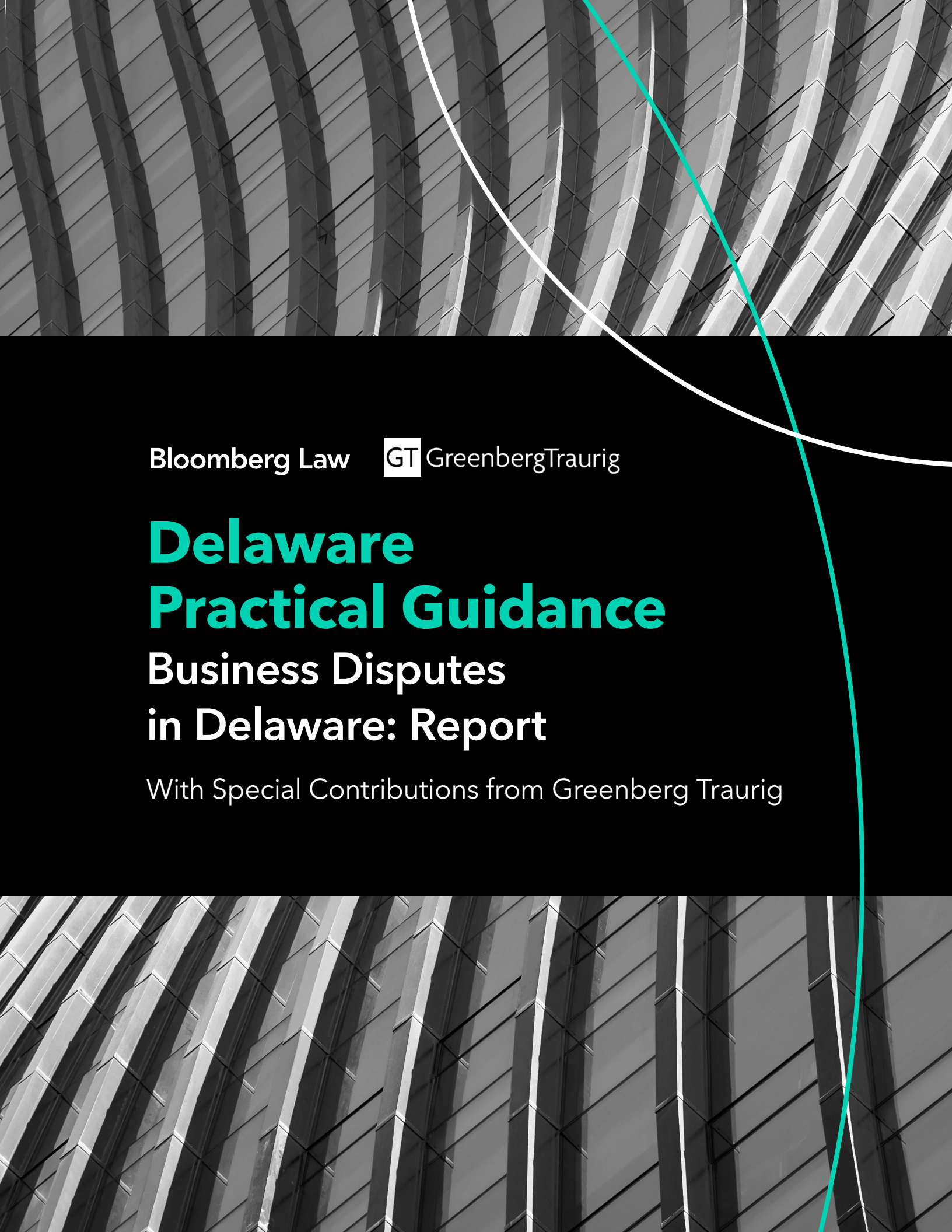




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Delaware Practical Guidance

Business Disputes in Delaware: Report

With Special Contributions from Greenberg Traurig

Introduction

Bloomberg Law's Delaware Practical Guidance – Business Disputes in Delaware, comprising nearly 50 new guidance documents, provides nuanced support for attorneys handling business cases in Delaware courts, including insights from a corporate perspective. Topics include foundational elements of Delaware practice and unique aspects of the Court of Chancery and the Complex Commercial Litigation Division. The new resource also includes guidance on arbitration and mediation options, experts, damages, and more.

The guidance features Overviews, Checklists, Sample Documents, and curated research tools such as Points of Law, advanced docket searches, and Smart Code searches. These tools allow attorneys to filter for relevant Delaware courts, types of lawsuits, judges, and more, ensuring they find the answers they need. To provide a sample of our task-based guidance, this report highlights key resources designed to assist lawyers in navigating the complexities of Delaware's legal system.

We would like to thank the following contributors from the Delaware office of Greenberg Traurig for partnering with Bloomberg Law on the content for this report: Shareholders Nate Emeritz, Justin Mann, and Sarah Martin and Associate Bryan Reed. Their contributions have been invaluable in creating a resource that addresses the unique challenges of Delaware's legal landscape.

To learn more about Bloomberg Law's Business Disputes in Delaware Practical Guidance and other litigation resources, content, and tools, please [request a demo](#).

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OVERVIEW

Delaware Forums for Corporate and Commercial Law Dispute Resolution

By [Nate Emeritz](#), [Justin Mann](#), [Sarah Martin](#),
and [Bryan Reed](#)*
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Editor's Note: This overview provides guidance on the available forums for corporate and commercial law dispute resolution in Delaware under the Delaware Code and Delaware case law. When reviewing rules and statutes, launch Smart Code® for Court Opinions. For further relevant resources, see [Business Disputes in Delaware](#). For general litigation guidance, see [Litigation Practical Guidance](#).

Delaware provides several forums for resolution of business law disputes, including the Court of Chancery, the Complex Commercial Litigation Division of Superior Court (CCLD), the United States District Court for the District of Delaware, Rapid Arbitration, and mediation. In a current dispute or negotiation over a transaction, knowledge of these forums is important for appropriately charting a path through any dispute and provisions for dispute

resolution. Key issues to consider include jurisdiction, timing, confidentiality, and the expertise of the presiding officer. These issues are addressed in this overview.

Court of Chancery

The Court of Chancery was established in 1792 by the Delaware constitution as a court with general equitable jurisdiction similar to that of Great Britain's Court of Chancery and earlier courts of equity in Delaware. During the 20th century, the Court of Chancery developed a reputation as a preeminent forum for corporate law dispute resolution in the world.

Proceedings in the Court of Chancery are always non-jury bench trials that are presided over by one of the chancellor, six vice chancellors, or five magistrates in Chancery located in the three counties of the State of Delaware (New Castle, Kent, and Sussex).

Unique Characteristics of the Court of Chancery

These judicial officers are generally experienced corporate litigators who are familiar with the Delaware legal issues that arise in significant corporate transactions and other matters litigated in the Court of Chancery. The evidentiary rules also tend to be more relaxed than in courts of law and courts involving jury trials. The effect of these factors is that the parties can focus their briefs on developing the factual context and application of Delaware's extensive body of corporate law, instead of getting a judge up to speed on the corporate mechanics and applicable legal principles. These factors combine to facilitate speed and reliability to a degree not generally possible in other jurisdictions.

Typical Corporate and Commercial Actions

For practical purposes, the Court of Chancery's jurisdiction generally covers fiduciary duty litigation, statutory proceedings, and contractual disputes regarding significant transactions such as stock sales and purchases. The Court of Chancery routinely interprets both Delaware and non-Delaware law in corporate and commercial disputes and has applied the doctrine of internal affairs consistent with United States Supreme Court jurisprudence. See *Rogers v. Guaranty Trust Co. of New York*, 288 U.S. 123 (1933); *Edgar v. Mite Corp.*, 457 U.S. 624 (1982) ("The internal affairs doctrine is a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation's internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands."). The effect of adherence to the internal affairs doctrine sometimes results in the application of non-Delaware law, as in *McDermott Inc. v. Lewis*, 531 A.2d 206 (Del. 1987), and other times results in the exclusive application of Delaware law, as in *JUUL Labs, Inc. v. Grove*, 238 A.3d 904 (Del. Ch. 2020). **Point of Law (POL)**.

Typical actions include:

M&A and transformative transactions: These transactions may include mergers, tender offers, substantial asset sales, and significant equity issuances. Remedies sought in these actions may include injunctive relief to prevent a deal or to facilitate an alternative transaction.

Breach of fiduciary duty: Such claims may apply to governance or M&A actions in which corporate fiduciaries exercise discretion. Remedies sought in these actions may include monetary awards for damages resulting from the challenged actions.

Post-closing disputes: Such disputes may involve earn-out or indemnity structures or restrictive covenants. Remedies sought in these actions may include declaratory judgment or damages.

Common Statutory Proceedings

Statutory proceedings under the **Delaware General Corporation Law** (DGCL) and other entity statutes, such as the **Delaware Limited Liability Company Act** (DLLCA) and **Delaware Limited Liability Partnership Act** (DLLPA), establish judicial pathways for resolving specific corporate law disputes, some of which are statutorily required to be summary in nature. These typical corporate and commercial actions and statutory proceedings include the following:

General Corporation Law

Statutory proceedings under the DGCL heard in the Court of Chancery include the following:

- **8 Del. C. § 145** - Indemnification and advancement. See **Smart Code**.
- **8 Del. C. § 205** - Validation of defective corporate acts. See **Smart Code**.
- **8 Del. C. § 211** - Stockholder annual meeting. See **Smart Code**.
- **8 Del. C. § 220** - Director and stockholder inspection of books and records. See **Smart Code**.
- **8 Del. C. § 225** - Contested elections, removals, and resignations of directors and officers; and stockholder voting results. See **Smart Code**.
- **8 Del. C. § 262** - Appraisal of fair value of shares of stock. See **Smart Code**.
- **8 Del. C. § 273** - Dissolution of joint venture. See **Smart Code**.
- **8 Del. C. § 280, 281(a)** - Winding up of dissolved corporation. See **Smart Code** (§ 280); **Smart Code** (§ 281(a)).

- **8 Del. C. § 302** - Creditor compromise. See [Smart Code](#).
- **8 Del. C. § 226, 279, 291, 352, 353** - Custodians and receiverships. See [Smart Code](#) (§ 226); [Smart Code](#) (§ 279);
- **8 Del. C. § 284, 509** - Attorney General proceedings for revocation or forfeiture of charter or receivership. See [Smart Code](#) (284); [Smart Code](#) (509).

Limited Partnership Act

Statutory proceedings under the DLLPA heard in the Court of Chancery include the following:

- **17-106(e)** - Validation of void or voidable acts
- **17-305** - Limited partner inspection of books and records
- **17-110** - Contested elections, removals, and resignations of general partners and partner voting results
- **17-212** - Appraisal of fair value of interests
- **17-802** - Dissolution of limited partnership
- **17-803** - Winding up of dissolved limited partnership
- **17-805** - Trustees and receiverships

Limited Liability Company Act

Statutory proceedings under the DLLCA heard in the Court of Chancery include the following:

- **18-106** - Validation of void or voidable acts
- **18-305** - Manager and member inspection of books and records
- **18-110** - Contested elections, removals, and resignations of managers and members and member voting results
- **18-210** - Appraisal of fair value of interests
- **18-802** - Dissolution of LLC
- **18-803** - Winding up of dissolved LLC
- **18-805** - Trustees and receiverships

Complex Commercial Litigation Division

CCLD was established in 2010 by the Delaware constitution as a division of the Delaware Superior Court, which has general jurisdiction similar to most courts of law in the United States. CCLD was established to provide litigants with an alternative forum to the Delaware Court of Chancery with similarly expert judges and a specialized docket and jurisdiction to hear legal claims. The docket of cases litigated in CCLD has quickly expanded since its inception with its judges publishing more than 100 decisions in 2024.

Proceedings in CCLD are both jury and bench trials that are presided over by one of the five Superior Court [judges](#) assigned to the CCLD docket. As in the Court of Chancery, these judges are generally experienced corporate litigators who are familiar with Delaware legal issues arising in complex commercial litigation assigned to CCLD. The Delaware Supreme Court has also ordered that CCLD judges may be cross-designated as vice chancellors presiding over actions in the Court of Chancery. As in the Court of Chancery, the parties are able to focus on swiftly cutting to the legal issues and important factual context to a greater degree than in other jurisdictions. The cases assigned to CCLD generally include contractual disputes regarding significant commercial transactions such as earnouts, other post-closing matters, and post-judgment insurance disputes, subject to a threshold amount in controversy.

Delaware Federal District Court

The United States District Court for the District of Delaware is located in Wilmington, which is in New Castle County. The Delaware federal district court has federal jurisdiction, which overlaps in part with the jurisdiction of the Court of Chancery and CCLD. Although parties involved in disputes over governance and significant transactions of Delaware entities typically litigate in the Delaware state courts, the judges sitting on the Delaware federal district court also come from a similar pool of corporate and commercial attorneys accustomed to the speed and sophistication of litigation in the Delaware state courts. Accordingly, the Delaware federal district

court sometimes serves as an alternative to the Delaware state courts and it can be an appropriate choice for forum selection provisions pertaining to claims under the [Securities Act of 1933](#) and derivative claims under the [Securities Exchange Act of 1934](#).

Rapid Arbitration

The Delaware Rapid Arbitration Act (DRAA) allows parties to a contract, involving a Delaware entity and governed by Delaware law, to select arbitration under the DRAA as the means of dispute resolution. See [10 Del. C. § 5801, et. seq.](#) The DRAA rules are intended to expedite the dispute resolution process, including:

- the processes for arbitrator selection, determination by the arbitrator of substantive and procedural arbitrability, and limited discovery;
- waiver of interim appeals;
- required final award within 120 days; and
- appeals directly to the Delaware Supreme Court (unless rights of appeal are eliminated by contract).

In addition, arbitration under the DRAA may also be kept confidential to a greater degree than court proceedings, and awards under the DRAA may be deemed final and therefore enforceable without the requirement of confirmation by a court.

From a corporate planning perspective, arbitration involves numerous variables that can be prescribed in the contractual provision selecting arbitration, which must be governed by Delaware law. These factors include:

- time, place, and total duration of arbitration proceedings;
- identification or process for identification of one or more arbitrators, the amounts and structure of their fees, the scope of their powers and rulings, and the voting standard for their decisions;

- scope or elimination of discovery;
- scope and rules of parties' presentations (if any);
- confidentiality of proceedings; and
- appealability of rulings.

Mediation

Mediation is also available to parties involved in a corporate or commercial law dispute. Many Delaware lawyers offer to act as mediators, a role in which they can bring to bear their understanding of how claims and arguments may play out in litigation. In addition, Delaware courts and arbitrators occasionally direct parties to engage in mediation to resolve specific issues during litigation or to avoid litigation entirely if it may be unnecessary.

Although mediation can provide the parties with a forum to unpack their differences and potentially reach a less costly and more efficient resolution, mediation is also generally non-binding and may simply add time and cost to subsequent litigation. From a corporate planning perspective, these factors generally represent downsides for mediation as a basis for planning dispute resolution mechanisms from the outset of complex and significant transactions, though it ultimately may provide a useful forum for addressing disputes in part or in full.

** Nate Emeritz, Justin Mann, and Sarah Martin are shareholders and Bryan Reed is an associate at Greenberg Traurig, LLP in Wilmington, Delaware. The views expressed herein are those of the authors and do not necessarily reflect the views of the firm or its clients.*



OVERVIEW

Stockholder Derivative Actions

Editor's Note: This Overview provides guidance on stockholder derivative actions under the Delaware Court of Chancery Rules, the Delaware Code, and Delaware case law. When reviewing rules and statutes, launch Smart Code® for Court Opinions. For further relevant resources, see [Business Disputes in Delaware](#). For general litigation guidance, see [Litigation Practical Guidance](#).

Introduction

A stockholder derivative action is a lawsuit brought by one or more stockholders on behalf of a corporation against third parties, often officers or directors, for harm allegedly done to the corporation. It is a legal procedure that enables a stockholder to cause the corporation to commence a claim belonging to the corporation where those in control of the corporation (the board of directors) would not otherwise cause the corporation to assert the claim. [Point of Law](#) (POL). Derivative suits in Delaware are governed by [Delaware Court of Chancery Rule 23.1](#). [Smart Code](#).

A stockholder derivative lawsuit may include a claim against directors and officers for alleged breach of fiduciary duties owed to the corporation. See [Overview - Breach of Fiduciary Duties](#).

It is well-settled Delaware law that, although a derivative claim may be brought by a stockholder on behalf of a corporation, the claim is a property right belonging to the corporation and not the stockholder. Accordingly, any recovery in the action flows to the benefit of the corporation. [POL](#).

The number of stockholder derivative actions before Delaware's Court of Chancery ("Chancery") is voluminous. It is essential for practitioners engaging in stockholder litigation in Chancery to understand the complexities involved in derivative actions. See [Checklist - Pre-Stockholder Derivative Suit Requirements](#).

This Overview will discuss several unique aspects of stockholder derivative actions in Chancery, including standing requirements, the demand process, settlement approval, and post-transaction claims.

Direct vs. Derivative Stockholder Claims

There is a critical and often outcome-determinative distinction between “direct” and “derivative” stockholder claims under Delaware corporate law. In contrast to derivative claims, where stockholders bring an action on behalf of the corporation, direct claims are those that stockholders bring on their own behalf to redress harms to themselves as stockholders (as opposed to the business at large). [POL](#).

In Delaware, the determination of whether a stockholder’s claim is direct or derivative does not turn on how the stockholder plaintiff has characterized their claim. That distinction is governed by the test set out by the Delaware Supreme Court in [Tooley v. Donaldson, Lufkin & Jenrette](#), and turns on two questions: 1) who suffered the alleged harm (the corporation or the stockholders, individually); and 2) who would receive the benefit of any recovery. [Court Opinions](#).

PRACTICE TIP: A stockholder of a corporation intending to file suit against individuals at a corporation should carefully consider whether it is appropriate to file a direct or a derivative claim, and what the benefits of each might be. Similarly, a corporation or directors or officers should carefully examine whether a complaint states a derivative claim, even if characterized as a direct one.

Derivative Stockholder Standing

Delaware law imposes two conditions for standing to bring a stockholder derivative suit: first, a **contemporaneous** ownership requirement under [Section 327](#) of the General Corporation Law of the State of Delaware ([DGCL](#)), and second, a **continuous** ownership requirement under Delaware common law. [Court Opinions](#).

Contemporaneous Stock Ownership

Under [DGCL 327](#), referred to as the “contemporaneous ownership requirement,” a stockholder must hold stock at the time of the alleged wrong to have standing to pursue a derivative claim. [POL](#); [Court Opinions](#); [Smart Code](#).

This requirement was designed to prevent bad actors from purchasing stock merely to bring derivative claims against the corporation and attack a corporate transaction. [POL](#).

Continuous Stock Ownership

Under the common law continuous stock ownership requirement, a stockholder plaintiff must continue to be a stockholder throughout the litigation to pursue its claims. [POL](#); [Court Opinions](#). The case law imposing this requirement does not specify a minimum ownership threshold. One share is enough.

One of the main purposes of the continuous ownership rule is to ensure that the plaintiff prosecuting a derivative action has an economic interest aligned with that of the corporation. [POL](#).

A plaintiff who ceases to be a stockholder, whether because of a stock transfer, a merger, or for any other reason, loses standing to continue a derivative suit. [POL](#); [Court Opinions](#). For more on and for exceptions to this rule, see **Post-Transaction Standing of Derivative and Direct Claims**, below.

Direct Stockholder Standing

For a stockholder to maintain a direct claim, they must be injured directly, or independently, of the corporation. [Court Opinions](#). The plaintiff stockholder must be able to show that they can prevail without showing an injury to the corporation. [POL](#).

In other words, the direct plaintiff must sufficiently allege either an injury as a result of a violation of a duty owed to the plaintiff, separate and distinct from an injury suffered by the corporation, or a wrong involving a contractual right of a stockholder, such as the right to vote, or to assert majority control, which exists independently of any right of the corporation. [POL](#).

Demand Requirement and Excusal

Because a derivative claim belongs to the corporation, the board of directors is in control of the claim in the first instance. A stockholder may only commence a derivative action if either the board of directors has rejected a demand by the stockholder to bring that claim, or the stockholder

can demonstrate that such a demand would be futile such that a court treats the demand requirement as excused. When considering a stockholder litigation demand, the board of directors has the opportunity to examine the claim and related facts and to decide whether pursuing the action is in the best interest of the corporation. **POL**. Stockholders may not bring suit unless they first satisfy this demand requirement, or unless demand is excused. **Del. Ct. Ch. R. 23.1; Smart Code**.

PRACTICE TIP: In Chancery, where a stockholder has filed a complaint alleging a derivative claim after failing to make pre-suit demand or adequately alleging particularized facts demonstrating such a demand would be futile, the derivative claim could be subject to dismissal at the early stages of litigation. See **Overview - Demand Requirements for Stockholder Derivative Actions**.

Chancery is a “Demand-Excused” Jurisdiction

In Delaware and other jurisdictions that follow the common law approach to demand excusal, stockholders may forego making a demand if it would have been futile. (Other jurisdictions have adopted a “universal demand” rule whereby stockholders are required to make a written demand in every instance before a stockholder can file a complaint.)

Under Delaware’s demand-excused system, the right of a stockholder to prosecute a derivative suit is limited to situations where either: 1) the stockholder has demanded that the directors pursue the corporate claim and they have wrongfully refused to do so; or where 2) demand is excused because the directors are incapable of making an impartial decision (lack independence) regarding such litigation (that is, demand is futile). **POL**.

Demand futility test

Demand futility is a legal doctrine by which the court determines when demand is excused.

In a 2021 **case**, the Delaware Supreme Court clarified the test for demand futility in a stockholder derivative suit, adopting a three-pronged analysis to

apply in all derivative suits where futility is pleaded. Specifically, plaintiffs must plead, on a **director-by-director** basis, particularized facts regarding:

- (i) whether the director received a material benefit from the alleged misconduct that is the subject of the litigation demand;
- (ii) whether the director faces a substantial likelihood of liability on any of the claims that would be the subject of the litigation demand; and
- (iii) whether the director lacks independence from someone who received a material personal benefit from the alleged misconduct that would be the subject of the litigation demand or who would face a substantial likelihood of liability on any of the claims that are the subject of the litigation demand.

POL; Smart Code.

Demand will be excused as futile if the answer to any of the three questions above is “yes” for at least half of the directors comprising the board upon whom the demand would have been made. **POL**. Demand futility is conducted on a claim-by-claim basis and director-by-director basis. **POL**.

The court must determine whether a plaintiff in this context has alleged particularized facts creating a reasonable doubt as to a director’s independence at the pleading stage. **POL**. If the court determines that the pleaded facts raise such a reasonable doubt that a majority of the board could have acted independently in responding to the demand, the presumption is rebutted for pleading purposes and demand will be excused as futile. **POL; Court Opinions**. For more on director independence generally, see **Overview - Director Independence**.

PRACTICE TIP: Successfully pleading demand futility in Chancery is a significant hurdle for plaintiffs in derivative litigation, because it requires detailed factual allegations to overcome the presumption that the board is capable of making independent decisions in the best interests of the corporation.

Settlement of Derivative Claims and Objectors

A derivative action may be dismissed or settled only if the court approves the terms of the proposed dismissal or settlement. [Del. Ct. Ch. R. 23.1\(d\)\(1\)](#). For examples of settlement agreements governed by Delaware law that pertain to derivative claims, see [Dockets Search](#).

Release of Claims not Asserted

A settlement can release claims that were not specifically asserted in the settled action, but only if those claims are based on the same factual predicate or the same set of operative facts as the underlying action. [POL](#).

Notice of Proposed Dismissal or Settlement

Notice of the proposed dismissal or settlement must be served on parties in a manner prescribed by the court. [Del. Ct. Ch. R. 23.1\(d\)\(3\)](#); [Smart Code](#). The exception to this general rule of providing notice is that a court may order dismissal without notice if the dismissal is without prejudice or with prejudice to the derivative plaintiff only. [Del. Ct. Ch. R. 23.1\(d\)\(3\)\(A\)](#).

The notice of a proposed dismissal or settlement, which notice is typically subject to court approval, must clearly state the following: 1) the location, date, and time of any hearing; 2) the nature of the action; 3) a summary of the claims, issues, defenses, and relief sought in the derivative action; 4) a description of the terms of the proposed dismissal or settlement; 5) any fee award sought upon approval of the dismissal or settlement; 6) instructions for objectors; 7) that additional information can be obtained by contacting the derivative counsel; 8) how to contact that counsel; and 9) not to contact

the court with questions about the terms of the proposed dismissal or settlement. [Del. Ct. Ch. R. 23.1\(d\)\(3\)\(D\)](#).

Objectors to Proposed Derivative Action Settlement

Once the parties have reached an agreement to terminate or settle the litigation, one or both parties will draft a proposed settlement agreement to be sent to the opposing party for review and signature. Stockholders are given the opportunity to object to the proposed settlement or dismissal.

Any person similarly situated to the derivative plaintiff may object to the proposed dismissal or settlement and must state with specificity the grounds for and purpose of the objection. [Del. Ct. Ch. R. 23.1\(d\)\(4\)\(A\)](#); [Smart Code](#).

PRACTICE TIP: Chancery will typically hear and consider objections at the fairness hearing (discussed below). The court will then determine the propriety of the settlement and whether it is equitable to the respective parties. See [Del. Ct. Ch. R. 23.1\(d\)\(5\)\(D\)\(iv\)](#); [Smart Code](#). A potential objector should ensure that it has not asserted any affirmative defenses or other arguments that could potentially waive its right to object to a proposed settlement.

Fairness Hearing

Courts may approve a settlement of a derivative action only after a hearing to assess the fairness of the proposal. [Del. Ct. Ch. R. 23.1\(d\)\(5\)](#); [Smart Code](#); [Court Opinions](#). For the court to approve a settlement, it must find that: 1) the derivative plaintiff and derivative counsel adequately represented the entity; 2) adequate notice of the hearing was provided; 3) the proposed settlement was negotiated at arm's length; and 4) the relief falls within a range of reasonable results. [Del. Ct. Ch. R. 23.1\(d\)\(5\)](#).

Any Chancery decision regarding the fairness of a proposed settlement is within the discretion of the court. [POL](#). When determining whether a settlement of derivative claims is reasonable, the court's function is to consider the nature of the plaintiff's

claim, the possible defenses thereto, the legal and factual circumstances of the case, and then to apply its own business judgment in deciding whether the settlement is reasonable in light of these factors. **POL**.

Post-Transaction Standing for Derivative and Direct Claims

In Delaware corporate law, the standing inquiry has assumed special significance, especially in the post-merger context. The question of standing becomes particularly vital when a derivative plaintiff no longer owns stock in the corporation due to a merger or other corporate action.

Loss of Derivative Standing

Following the acquisition of an entity through a cash-out or stock-for-stock merger, equity holders generally lose standing to continue pursuing derivative claims in the name of the acquired entity unless certain limited exceptions apply. **POL**. Instead, the claim passes to the acquiring entity. **POL**.

Thus, with limited exceptions described below, a stockholder's failure to maintain their stock ownership due to a corporate transaction violates the continuous stock ownership rule, and thus the plaintiff loses standing to continue litigating its derivative claims.

Post-Merger Exception to Continuous Stock Ownership Rule

Delaware law allows for two exceptions to the continuous stock ownership rule for stockholders to bring and maintain standing to assert claims that **predate** the transaction (in other words, to revive extinguished pre-merger claims):

- (i) when a plaintiff stockholder loses standing based on a merger that was consummated merely to deprive the stockholder of the standing to bring or maintain a derivative action (considered a fraudulent action); or
- (ii) when the transaction, which would otherwise deprive the plaintiffs of standing, is essentially a reorganization that does not affect the plaintiff's relative ownership in the post-merger enterprise.

POL.

Primedia Test for Post-Merger Standing on Direct Valuation Claims

Even though a plaintiff may lose standing to pursue *derivative* claims post-merger, in certain circumstances, these stockholder plaintiffs may be able to directly challenge the merger when the corporate officers or directors fail to secure the value of material derivative claims as part of the merger consideration. **Court Opinions**.

In order to plead such a direct claim challenging a merger, a plaintiff/former stockholder may allege that the directors breached their fiduciary duties resulting in an unfair merger. **POL**. A plaintiff can attain overall post-merger standing on a claim for failure to secure value for derivative claims in Delaware courts if they satisfy a three-part framework (called the *Primedia* test) set forth in Delaware case law. **POL**. Specifically:

- (i) The plaintiff must plead an underlying viable derivative claim that could withstand a motion to dismiss;
- (ii) The value of the derivative claim must be material to the overall value of the transaction in the context of the merger; **POL**; and
- (iii) The complaint challenging the merger must support an inference that the claim will not be pursued by the acquiring entity and is not reflected in the merger consideration. **POL**; **Court Opinions**.

PRACTICE TIP: The value of a corporation in a sale or merger may include the value and potential consideration for derivative claims that would generally pass to the acquiror in the transaction. **POL**; **Court Opinions**. Delaware case law describes the obligations of corporate fiduciaries with respect to the valuation and treatment of such litigation assets in the context of a sale or merger.



OVERVIEW

Assignments for the Benefit of Creditors

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Editor's Note: This Overview provides guidance on assignments for the benefit of creditors in Delaware under the Delaware Code and Delaware case law. When reviewing rules and statutes, launch Smart Code® for Court Opinions. For further relevant resources, see [Business Disputes in Delaware](#). For general litigation guidance, see [Litigation Practical Guidance](#).

The statutory provisions for an assignment for the benefit of creditors (an “ABC”) under Delaware law ([10 Del. C. §§ 7381-7387](#)), the “ABC Statute”) are relatively dated and have not been extensively used, which creates questions about how they should be interpreted and applied. This article provides an overview of the ABC Statute, recent Delaware case law addressing those questions, and related considerations.

Overview of an ABC

An ABC is a liquidation proceeding in the Delaware Court of Chancery, contemplated by the ABC Statute, in which a debtor assigns its estate and assets to an assignee and the assignee seeks judicial oversight and independent valuations by appraisers with respect to the liquidation of assets and repayment of creditors. [Court Opinions](#). The assignee must execute the assignment, file a petition commencing the ABC, give notice to interested parties, and post a surety bond. The appraisers must affirm their faithful performance, conduct a disinterested appraisal, and file the appraisal in the Register of Chancery. The Court of Chancery has jurisdiction to appoint, cite, and remove the assignee and appraisers, dismiss an ABC that fails to comply with the ABC Statute, direct notices and distributions, and otherwise oversee the ABC process.

To compare certain aspects of an ABC in Delaware with those in other states, see [Assignment for the Benefit of Creditors Chart Builder](#).

Commencing an ABC

Assignor and Assignee

The first step in an ABC is an assignment. The ABC Statute allows a debtor to assign its “estate, real or personal, or of any part thereof to any other person in trust for his or her creditors or some of them.” ABC Statute [§ 7381](#); [Smart Code](#); [Dockets Search](#). The assignor must be a party over which the Court of Chancery can exercise subject matter jurisdiction, which may not be satisfied by the court’s jurisdiction over the assignee. *In re Vernon Hills Service Co.*, C.A. No. 2021-0783-PAF (Del. Ch. Feb. 29, 2024) (lacking subject matter jurisdiction over an ABC by an Illinois entity without assets located in Delaware to a Delaware entity assignee). The assignee is expected to be a competent, unconflicted third party that acts as a fiduciary of the assignor’s creditors, which generally includes the obligation to maximize the value of the estate for the creditors. *In re WindMIL Therapeutics, Inc.*, C.A. No. 2023-1294-PAF (Del. Ch. Mar. 13, 2024). The assignee may be removed for cause and replaced by the court. ABC Statute [§ 7386](#); [Court Opinions](#). As in other contexts of Delaware corporate law, the Court of Chancery may consider whether the assignee’s incentives are structured to align with the creditors’ best interests and will remove an assignee that is incentivized to (and is found to) act contrary to the creditors’ best interests such as by incurring greater expenses to increase its commission. *In re: Wack Jills, Inc.*, C.A. No. 2019-0650-PAF (Del. Ch. Aug. 29, 2024).

Petition, Inventory, and Affidavit

The assignee commences the ABC proceeding by filing a petition with the Court of Chancery, which typically includes a copy of the assignment agreement. The ABC neither constitutes nor automatically causes a dissolution of the assignor, nor extinguishes unsatisfied obligations. *Dodge v. Wilmington Trust Co.*, C.A. No. 1257-K (Feb. 3, 1995). The assignee may also file at that time a motion to appoint two appraisers identified by the assignee (as further described below). For example motions to appoint appraisers, see this [Dockets Search](#). Within 30 days after the execution of the assignment, the

assignee must file an inventory or schedule of the assigned estate and assets and an affidavit that to its knowledge the inventory represents the full and complete inventory of all of the estate and effects assigned by the assignor. ABC Statute [§ 7381](#).

As the petitioner in what is typically an *ex parte* proceeding, where there is a heightened obligation to provide information to the court, the petition is expected to provide the court with information about the assignor’s business, corporate and capital structures, the assignee, the history and events related to the assignor leading to the ABC, the appraisers, and the potentially affected parties, similar to the information provided in a first-day declaration in a bankruptcy proceeding. *In re Global Safety Labs, Inc.*, C.A. No. 2022-0309-JTL (Del. Ch. 2022); *In re: Theonys, Inc.*, C.A. No. 2023-0195 (Del. Ch. May 22, 2023) (ORDER); *In re: Strong Arm Technologies, Inc.*, C.A. No. 2023-0218-JTL (Del. Ch. Apr. 13, 2023) (ORDER); *In re: Boston Security Token Exchange LLC*, C.A. No. 2023-0494-PAF (Del. Ch. May 22, 2023) (ORDER); *In re: Secure Transfusion Solutions, Inc.*, C.A. No. 2023-0463-CDW (Del. Ch. May 22, 2023) (ORDER). In particular, the Court of Chancery has explained that the petition should be based on information from the assignee and the assignor’s management, books, and records, which is intended to provide the court with the information it needs to understand and evaluate the petition.

- **Assignor Information.** The information about the assignor should include a description of the assignor’s business; its corporate and capital structure; relevant financial and operational details regarding relationships with and descriptions of other entities in its corporate structure; relevant financial and operational details regarding relationships with entities outside the corporate structure; creditors, respective obligations, and relative priorities; developments and changes in the business over time; significant corporate and commercial events (e.g., expansions into new territories, mergers and acquisitions, new services, products, or business lines, etc.); and operations and financial metrics and performance of segments of the business. The level of detail is expected to be context-specific.
- **Assignee Information.** The information about the assignee should include all positions currently held by the assignee; the duration of the

assignee's association with the assignor and all past positions held during that period; experience before the period of association with the assignor; roles and responsibilities related to the assignor and its business; and education and degrees held by the assignee.

- **Event Information.** The information about the events leading to the ABC should include key legal and business events; financial performance; a description of the relevant industry and market; any other factors; and alternatives to the ABC that may have been explored.
- **Appraiser Information.** The information about the appraisers should include information about the appraiser's compensation structure, the appraiser's previous ABC engagements, and the appraiser's previous engagements by the assignee and its affiliates.

Conducting an ABC

Appointment of Appraisers and Disinterested Appraisal

Once the ABC has been properly commenced, the Court of Chancery appoints two disinterested and competent appraisers. ABC Statute [§ 7382](#); [Smart Code](#). The assignee may not appoint the appraisers without a court order. *In re WindMIL Therapeutics, Inc.* The appraisers affirm that they will faithfully conduct their duties and then conduct an appraisal of the assigned estate. *In re: Summit Naturals, Inc.*, C.A. No. 2024-0199-PAF (Del. Ch. June 3, 2024) (ORDER). The appraisers may be compensated as appraisers of a decedent's estate. ABC Statute [§ 7382](#). The value of the assigned estate is appraised as of the date the ABC petition was filed and the appraisal must be filed with the Register in Chancery. ABC Statute [§ 7382](#); *Summit Naturals, Inc.*

See this [Dockets Search](#) for example orders appointing appraisers.

Surety Bond

After the appraisal is filed with the Register in Chancery, the assignee gives a bond with sufficient surety and amount approved by the Court of Chancery, not less than the appraised value of the estate. ABC Statute [§ 7383\(a\)](#); [Smart Code](#).

The ABC Statute provides that the bond shall be "taken in the name of the State" with a prescribed condition thereof. ABC Statute [§ 7383\(a\)](#) (providing that "The condition of this obligation is such, that if the above bounden assignee of shall in all things comply with the provisions of this chapter, and shall faithfully execute the trust confided to him or her, then the above obligation to be void, otherwise to remain in full force and virtue."); *In re Friday Health Plans, Inc.*, C.A. No. 2023-0751-PAF (Del. Ch. June 3, 2025) (holding that this bond condition is a clear and mandatory requirement). Any person with an interest in the assigned property may petition the Court of Chancery for an order to proceed on the bond if necessary and proper for the protection of that petitioner. ABC Statute [§ 7384](#); [Smart Code](#); *In re Innovari (ABC), Inc.*, C.A. No. 2018-0182-JTL (Del. Ch. Oct. 3, 2018) (TRANSCRIPT).

Judicial Waiver of Appraisers, Appraisal, and Bond

The ABC Statute requirements for appointment of appraisers, an appraisal, and a surety bond may, however, be relaxed or waived by the court. The court may waive those requirements upon the showing of good cause, such as when the estate inventory is of known value, consists of cash, cash equivalents, limited accounts receivable or unliquidated stock, and not personal property. *In re: Techsmart.com Inc.*, C.A. No. 264-VCN (Del. Ch. Apr. 16, 2004) (ORDER); *In re: T S H S LLC*, C.A. No. 6288-VCN (Del. Ch. Oct. 18, 2011); see *In re: Weaver Holding Co.*, C.A. No. 6199-VCG (Del. Ch. Nov. 28, 2011). The court may also find sufficient comfort from an effective sale process or market check to relax or waive the appraisal requirement. The appraiser, appraisal, and bond requirements are unlikely to be waived, however, when the estate includes appreciable amounts of physical assets or real property, such as an operational plant, laboratory, equipment, and intellectual property worth several million dollars. *In re Prenexus Health, Inc.*, C.A. No. 2022-1071-PAF (Del. Ch. Feb. 22, 2023). The court may also entertain a request for an unsecured bond, particularly where creditors are amenable. *Weaver Holding Co.*

Annual Accounting

The assignee must also file an annual accounting of the trust during the ABC in the Register in Chancery. ABC Statute [§ 7385\(a\)](#); [Smart Code](#). The Register

in Chancery is authorized to issue a citation if the assignee fails in this obligation and may require the assignee to appear and provide an accounting under oath or affirmation. ABC Statute § 7385(a).

Notice and Distribution

Following each annual accounting (and typically after the initial petition), the Court of Chancery will order the assignee to give notice to “all persons in interest.” ABC Statute § 7385(b); *In re WindMIL Therapeutics, Inc*; [Dockets Search](#). The notice should provide the time when interested persons may file exceptions to the accounting in the Register in Chancery. That time may be determined by the court and any such exceptions may be heard by the court. Although the ABC Statute does not expressly address distributions, it does provide that distributions to creditors that are disproportionate to their debt will be “deemed fraudulent and absolutely void.” ABC Statute § 7387; [Smart Code](#). In addition, such estate or effects may be taken or attached by other creditors of the assignor, and the assignee or other person who made the fraudulent distribution “shall forever be deprived of the benefit of any insolvent law” of Delaware. ABC Statute § 7387.

Concluding an ABC

Final Accounting, Discharge, and Closure

Once the assets and cash have been distributed, the assignee files a motion to approve a final accounting, discharge the assignee, and close the ABC. *In re: Theonys, Inc*; see [Dockets Search](#). The Court of Chancery may expect that motion to include the fees and expenses incurred by the assignee and counsel. *In Re Old CPF LLC*, C.A. No. 2019-0881-JTL (July 15, 2022). The Court of Chancery, taking into account the final accounting and other activities involved in the ABC, may then issue an order granting the motion and releasing the bond. For examples, see this [Dockets Search](#). When the ABC fails to comply with the ABC Statute, the court may deny a motion for final accounting and discharge and may even dismiss the ABC. *In Re Aeolus Pharmaceuticals, Inc.*, C.A. No. 2018-0212-PAF (Del. Ch. Oct. 20, 2023) (TRANSCRIPT).

Other Considerations Related to an ABC

Fiduciary Duties in Insolvency

Corporate fiduciaries always owe duties of care and loyalty to the corporation and its residual claimants. *Quadrant Structured Products Co. v. Vertin*, C.A. No. 6990-VCL (Del. Ch. May 4, 2015). Those duties and context-specific obligations apply to a decision to pursue an ABC or any other significant strategic transaction. The residual claimants of a solvent corporation are the stockholders, and unsatisfied creditors entitled to a distribution of the corporation’s remaining assets in liquidation are residual claimants in that capacity (not in their capacity as creditors). *McRitchie v. Zuckerberg*, C.A. No. 2022-0890-JTL (Del. Ch. Apr. 30, 2024); *GB-SP Holdings, LLC v. Walker*, C.A. No. 9413-VCF (Del. Ch. Nov. 15, 2024).

While the corporation is solvent, only stockholders have standing to assert breach of fiduciary duty claims, but creditors of an insolvent corporation also have standing to bring derivative (not direct) claims for breach of fiduciary duty. *Broadscale OC Investors, LP v. Clayton*, C.A. No. 2020-0262-PAF (Del. Ch. May 8, 2023) (TRANSCRIPT). [Point of Law](#) (POL). Delaware courts have acknowledged that the “line is often fuzzy and dim” in a solvency analysis but also explained that there is no “zone of insolvency” concept with respect to fiduciary duties under Delaware law. *Quadrant Structured Products Co. v. Vertin*; *N. American Catholic Educ. Programming Found., Inc. v. Gheewalla*, No. 521, 2006 (Del. May 18, 2007). To the extent that a corporation is determined to be insolvent, directors are not required to shut down the insolvent corporation and marshal its assets for distribution to creditors, although they may make a business judgment that this is indeed the best route to maximize the firm’s value. [POL](#).

Asset Sale or Foreclosure

Provisions of the [Delaware General Corporation Law](#) (the “DGCL”) regarding substantial asset sales and secured asset foreclosures are important to bear in mind when considering an ABC. A sale, lease, or exchange of all or substantially all of the corporation’s assets under [Section 271](#) of the DGCL, or a strict foreclosure on assets collateralized under debt and credit agreements and a sale, lease, or

exchange of collateralized assets in lieu of strict foreclosure under [Section 272](#) of the DGCL may overlap with or offer alternatives to an ABC. [Section 271](#) of the DGCL requires board and stockholder approval of such a substantial asset sale, lease, or exchange. [Smart Code](#).

Although [Section 272](#) of the DGCL offers an exception from the stockholder approval otherwise required by [Section 271](#) of the DGCL, that exception would not apply and stockholder approval would be required for a transaction in lieu of foreclosure (as contemplated by [Section 272](#) of the DGCL) if the transaction does not satisfy the conditions set by [Section 272](#) of the DGCL. [Smart Code](#).

In addition, a provision in a certificate of incorporation adopted after August 1, 2023, which requires stockholder approval of an asset sale, lease, or exchange, will only apply to a transaction permitted by [Section 272](#) of the DGCL if expressly required.

Dissolution and Winding Up

A Delaware corporation considering an ABC might also consider dissolution and winding up under the DGCL. DGCL §§ [273-282](#). Dissolution under Delaware law does not mark the end of a corporation's existence but instead continues its existence for three years (or longer if ordered by the Court of Chancery) and limits the corporation to winding up its affairs, discharging its liabilities, and distributing its assets. DGCL § [278](#); [Smart Code](#). A typical dissolution must be approved by the board of directors and stockholders (or stockholders unanimously), and then the corporation must file a certificate of dissolution with the Delaware Secretary of State. DGCL § [275](#); [Smart Code](#).

Following dissolution, the dissolved corporation may opt for in-court or out-of-court winding up. In-court winding up is more prescriptive and requires filings with the Court of Chancery but also provides greater certainty with respect to amounts available for distribution and greater protection of stockholders from personal liability for claims against the dissolved corporation. [POL](#). DGCL §§ [280-282](#). Out-of-court winding up requires the dissolved corporation to adopt a plan of distribution, pursuant to which it must pay or provide for claims and potential claims, including claims that are

contingent, conditional, unmatured, subject to a pending action, suit, or proceeding, or likely to arise or become known within ten years, and after which it may make distributions to stockholders. DGCL § [281\(b\)](#); [Smart Code](#).

Custodian, Trusteeship or Receivership

Under Sections [226](#), [279](#), and [291](#) of the DGCL, the Court of Chancery, when petitioned by an appropriate creditor, stockholder, director, or person with good cause, may appoint one or more custodians, trustees, or receivers of a dissolved, deadlocked, or insolvent corporation to take charge of the corporation's assets, business, and affairs. Trustees and receivers have great power under the DGCL, including to settle the business of a dissolved corporation or liquidate the assets of an insolvent corporation, but also must notify the county recorder of their appointment; file an inventory of assets and account of debts with the Register in Chancery; review and make determinations regarding asserted and disputed claims; make appropriate reports to the court; sell perishable property or discontinue liquidation proceedings as directed by the court; and continue their powers for as long as the court deems necessary. DGCL §§ [279](#), [291](#), [292\(b\)](#), [294](#), [297](#), [301](#).

The DGCL also provides creditors and stockholders with rights to notice and to appeal a disallowed claim to the Court of Chancery. DGCL §§ [293](#), [296\(b\)](#). Under certain circumstances, such as where a public company is repeatedly unable to hold a meeting with holders of sufficient outstanding shares to approve a dissolution, a custodian or receiver may include the power to dissolve and wind up a corporation without stockholder approval. [McAvoy v. Fresh Tracks Therapeutics, Inc.](#), C.A. No. 2024-0525-MTZ (Del. Ch. Jan. 15, 2025) (ORDER).

Liquidation or Reorganization in Bankruptcy

Federal law provides for the liquidation or bankruptcy of a corporation, including an [automatic stay](#) against creditor actions upon filing of the petition. Section [303](#) of the DGCL authorizes a corporation to effect actions ordered by the court in a federal [Chapter 11 bankruptcy](#) proceeding. [Smart Code](#). Bankruptcy may implicate reputational concerns

for the directors, such as future director questionnaires and disclosures related to the director's service on a board of a corporation that filed for bankruptcy.

Compromise or Arrangement with Creditors or Stockholders

Section 102(b)(2) of the DGCL permits a corporation's certificate of incorporation to include a provision that, at a meeting of creditors or stockholders ordered by the Court of Chancery, three-fourths of the creditors or stockholders (as applicable) may approve a compromise or arrangement between the corporation and its creditors or stockholders. **Smart Code**. The corporation or a creditor, stockholder, trustee, or receiver may petition the Court of Chancery to order such a meeting. Sections 102(b)(2) and 302 of the DGCL provide that an approved compromise or arrangement would be binding on persons that became creditors and stockholders of the corporation after that provision was included in the certificate of incorporation and that the court or a court-appointed temporary receiver may enforce such a compromise or arrangement.

** Nate Emeritz, Justin Mann, and Sarah Martin are shareholders and Bryan Reed is an associate at Greenberg Traurig, LLP in Wilmington, Delaware. The views expressed herein are those of the authors and do not necessarily reflect the views of the firm or its clients.*





OVERVIEW

Contested Elections, Votes, and Matters Relating to Directors, Officers, Managers, and General Partners

By [Nate Emeritz](#), [Justin Mann](#), [Sarah Martin](#),
and [Bryan Reed*](#)
Greenberg Traurig, LLP

Editor's Note: This Overview provides guidance on contested corporate elections and matters relating to directors, officers, managers, and general partners in Delaware under the Delaware Code and Delaware case law. When reviewing rules and statutes, launch Smart Code® for Court Opinions. For further relevant resources, see [Business Disputes in Delaware](#). For general litigation guidance, see [Litigation Practical Guidance](#).

Introduction

Delaware statutory law provides for proceedings in the Court of Chancery regarding the validity of elections, appointments, removals, admissions, resignations, or withdrawals of directors, officers, managers, and general partners and other votes of stockholders, members, managers, and partners. These proceedings, which, for a corporation, are governed by [8 Del. C. § 225](#), for a limited liability company, are governed by [6 Del. C. § 18-110](#), and for a limited partnership, are governed by [6 Del. C. § 17-110](#), are typically expedited proceedings designed to afford a company near-term certainty regarding its governance. This Overview generally refers to proceedings under the foregoing statutes as “Contested Election Proceedings.”

Proceedings

Directors, officers, managers, general partners, and entities often face issues relating to control that turn on which individuals form the proper composition of the board, officers, managers, or general partners. Recognizing that these disputes frequently require judicial intervention, Delaware law provides the Court of Chancery with original jurisdiction to hear and determine such matters. [Point of Law \(POL\)](#).

Who May File a Contested Election Proceeding

For corporations, “any stockholder or director, or any officer whose title to office is contested,” may file an application to determine the validity of the election, appointment, removal or resignation of any director or officer of any corporation, and the right of any person to hold or continue to hold such office. [8 Del. C. § 225\(a\)](#); [Smart Code](#). Additionally, any stockholder or the corporation itself may also petition the Court of Chancery to “determine the result of any vote of stockholders upon matters other than the election of directors or officers.” [8 Del. C. § 225\(b\)](#); [Smart Code](#).

For LLCs, “any member or manager,” may file an application for the Court of Chancery to hear and determine “the validity of any admission, election, appointment, removal or resignation of a manager of a limited liability company, and the right of any person to become or continue to be a manager of a limited liability company.” [6 Del. C. § 18-110\(a\)](#); [Smart Code](#); [POL](#). Additionally, any member or manager may also petition the Court of Chancery to “determine the result of any vote of members or managers upon matters as to which the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the limited liability company agreement or other agreement or [the [Delaware LLC Act](#)] (other than the admission, election, appointment, removal or resignation of managers).” [6 Del. C. § 18-110\(b\)](#); [Smart Code](#).

In the case of limited partnerships, “any partner” may apply to the Court of Chancery to hear and determine “the validity of any admission, election, appointment or removal or other withdrawal of a general partner of a limited partnership, and the right of any person to become or continue to be

a general partner of a limited partnership, and, in case the right to serve as a general partner is claimed by more than 1 person, may determine the person or persons entitled to serve as general partners.” [6 Del. C. § 17-110\(a\)](#); [Smart Code](#).

Similar to corporations and limited liability companies, any partner may also petition the Court of Chancery to determine the result of any vote of partners upon matters as to which the partners of the limited partnership, or any class or group of partners, have the right to vote pursuant to the partnership agreement or other agreement or the [Delaware Revised Uniform Limited Partnership Act](#) (other than the admission, election, appointment or removal or other withdrawal of general partners). [6 Del. C. § 17-110\(a\)](#).

Nature of Contested Election Proceedings

Contested Election Proceedings are targeted proceedings with the limited purpose of determining whether directors, officers, managers, or general partners were properly elected or removed. [Court Opinions](#). The purpose of a Contested Election Proceeding “is to provide a quick method for review of the corporate election process to prevent a Delaware corporation from being immobilized by controversies about whether a given officer or director is properly holding office.” [Box v. Box](#), 697 A.2d 395, 398 (Del. 1997).

Contested Election Proceedings are in the nature of “in rem” proceedings, which only exerts jurisdiction over the entity, and may only provide relief regarding the office at issue. [Court Opinions](#). In a Contested Election Proceeding, the court may adjudicate claims that are necessary to determine the proper holder of an office, but the court may only order relief concerning the office at issue. All other types of ultimate relief may only be obtained through a plenary action through which the court exercises jurisdiction over the affected parties.

In a Contested Election Proceeding relating to limited liability companies or limited partnerships, the limited liability company or limited partnership itself must be named as a party to the proceeding.



Expedition and Timing

Contested Election Proceedings are what are known as “summary proceedings” in the Court of Chancery. Summary proceedings are typically expedited; indeed, the Court of Chancery’s form supplemental information statement requires that a motion to expedite accompany a petition for a Contested Election Proceeding. See [Sample - Motion to Expedite Proceedings](#); [Court Opinions](#). Because Contested Election Proceedings often turn on a mix of fact and law, they frequently proceed to trial. Because of the expedited nature of the proceedings and the importance of having certainty regarding corporate governance, trial may occur in a matter of months.

Status Quo Orders

Recognizing that entities need certainty about their governance in order to operate and make decisions on behalf of the entity, even while disputes regarding the appropriate composition of the governing bodies or persons are pending, at the outset of a Contested Election Proceeding, the parties will often stipulate to, or ask the court to enter, what is known as a “status quo order.” [Court Opinions](#). Those status quo orders typically provide for the composition of the governing bodies and/or persons during the pendency of the litigation. They also frequently include limitations on the entity’s ability to take major or transformative actions (such as large expenditures, selling assets, or amending constituent documents) while the dispute is pending. [POL](#). In the event that the parties are unable to agree on a form of status quo order, they may submit competing orders to the court along with argument as to the appropriate form of order. The court may select one party’s proposed order, or craft its own status quo order.

See this [Dockets Search](#) for example motions for status quo orders, and this [Dockets Search](#) for example status quo orders in the Court of Chancery.

** Nate Emeritz, Justin Mann, and Sarah Martin are shareholders and Bryan Reed is an associate at Greenberg Traurig, LLP in Wilmington, Delaware. The views expressed herein are those of the authors and do not necessarily reflect the views of the firm or its clients.*

ANALYSIS

Chancery Digs in Against Controllers as Appeal Looms

By Michael Maugans,
Senior Legal Analyst
Jun. 16, 2025

If proponents of Delaware's recent **corporate law amendments** intended to send the Court of Chancery a **message** to back off controlling stockholders, the court remains unmoved. While the Delaware Supreme Court has wasted no time taking on the certified question of state Senate Bill 21's **constitutionality**, Chancery isn't retreating from holding corporate controllers to the most exacting standards.

In a recent **opinion**, Vice Chancellor **Travis Laster** faced the first **novel question** pertaining to controlling shareholders since SB 21's enactment: What level of judicial scrutiny applies to self-interested transactions where majority stockholders use their ordinary voting power to change the status quo? (This scenario is distinguishable from that of Elon Musk who, despite owning only roughly 22% of Tesla shares, was **deemed** a controller due to his influence and insider knowledge.)

Opponents of both SB 21 and the so-called "**market practice**" amendments passed last year have argued that these legislative overhauls are a direct response to what supporters of the bills consider to be Chancery overreach, specifically its seeming **hostility** to controlling shareholders. Over the course of a year, Chancery **invalidated** a controller's compensation package, **struck down** a stockholder agreement that provided veto rights to the controller, and **subjected** a major reincorporation proposal to the entire fairness standard, allowing shareholder litigation to proceed.

Laster's **opinion** may well be indicative of a Chancery Court that isn't backing down in the face of legislation that arguably wrests away the court's **equitable jurisdiction**. There's another signal the court is sending: We won't lower the level of scrutiny on controller-involved transactions.

The 'Market Practice' Amendments and SB 21

When Chancellor Kathaleen McCormick dismantled Elon Musk's proposed \$56 billion compensation package in early 2024, she likely couldn't fathom the chain of **events** that would soon come to pass in Delaware. After Musk's social media **plea** to not incorporate in Delaware and the subsequent series of significant Chancery decisions concerning transactions involving controlling shareholders, the state's General Assembly passed **Senate Bill 313** to restore traditional Delaware "market practices."

For example, SB 313 amended Delaware's corporate laws to codify the power of corporations to enter into valid agreements with stockholders regarding certain governance rights, a direct counterstrike to the Chancery decision in **West Palm Beach Firefighters' Pension Fund v. Moelis & Co.**

SB 21 similarly grew out of this wave of landmark rulings cracking down on controlling shareholder conflicts of interest (as well as the fear of companies reincorporating outside Delaware, coined "DExit"). Several of those decisions pertaining to controllers, including Moelis, were written by **Laster**, and they would not be his final say on the matter.

Entire Fairness Applies to Majority Voting Power

Laster's opinion in **Ban v. Manheim** in May both dissected an issue of first impression and extended the rigorous scrutiny applied to controller-involved transactions to transactions where a majority shareholder exerts influence through their ordinary voting power.

At issue in *Ban* was a majority stockholder's unilateral addition of a bylaw that allowed certain stockholders to buy out other stockholders after a "material adverse event." Delaware hadn't previously ruled on whether a transaction involving a majority stockholder using their voting power to influence an outcome should be subjected to limited or rigid scrutiny.

In holding that such a transaction is subject to the entire fairness treatment—the most difficult presumption for a controller to overcome—Laster effectively equated such transactions with those involving traditional controller self-dealing outside the voting power context (such as Musk negotiating his own compensation package).

The chancellor explains that the outcome in *Ban* is a natural outgrowth from a landmark [case](#) in 2024 that applied the intermediate "enhanced scrutiny" standard to a transaction where a majority stockholder used their voting power to amend the bylaws to remove two directors. That opinion, also authored by Laster, employed the middle-ground standard for a significant reason: The transaction at issue didn't include self-dealing and the controller believed in good faith that the deal was fair.

Ban was a different matter. According to the court, the controller there was unequivocally engaging in self-dealing when he amended the company's bylaws so that he could acquire other members' shares. Building on his own precedent, Laster's opinion may be the Chancery clarion call to resist legislative encroachment.

Laster Blasts Delaware Supreme Court

In case there was any question what standard of deference should be applied to majority shareholders in *Ban*, Laster in a footnote went out of his way to criticize a ruling by Delaware's highest court that applied the business judgment rule to [TripAdvisor, Inc.'s](#) proposed [reincorporation](#) to Nevada.

Overruling yet another Laster opinion, the Delaware Supreme Court in [Maffei v. Palkon](#) held that Chancery was wrong to conclude that TripAdvisor's reincorporation created the type of conflict of interest that calls for heightened scrutiny.

Laster lambasted the notion that a controller's voting power wasn't sufficient to warrant heightened scrutiny, writing that the high court's "intuition remains one I do not share." While the majority shareholders such as those in *Ban* and *Palkon* aren't necessarily Musk-like controllers pulling the figurative levers of their corporations, self-dealing through voting power will be evaluated under the entire fairness standard in the Court of Chancery.

Chancery Digs in as SB 21 Awaits Appeal

In early June, the Delaware Supreme Court agreed to review the constitutionality of SB 21's corporate law overhaul after several lawsuits challenged the controversial amendments. A ruling on the merits will almost certainly be consequential for the Court of Chancery, as one of the main arguments against SB 21 is that it violates the state constitution by usurping Chancery's equitable jurisdiction.

Laster's *Ban* opinion could effectively be an early-stage preemptive move to assert Chancery's independence and adherence to exacting scrutiny of controlled transactions.

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OVERVIEW

Using Bloomberg Law Delaware Dockets

Editor's Note: This Overview covers the key details for using the Bloomberg Law Dockets to access state court filings in Delaware. For further relevant Delaware guidance, see [Business Disputes in Delaware](#). For general litigation guidance, see [Litigation Practical Guidance](#).

Bloomberg Law's Dockets maintain both federal and state court records for jurisdictions throughout the United States, including for the Supreme Court of Delaware, Court of Chancery, and Superior Court. [Advanced Dockets Search](#) allows users to easily search through these court records to find docket sheets and pleadings in cases of interest, as well as set alerts on new cases or events. As outlined in this Overview, Dockets is a powerful tool that can assist with distinct types of research or drafting assignments, or with tracking matters for clients.

For more on using dockets generally to stay abreast of legal developments, see [Overview - Following News, Dockets & Court Opinions](#).

Dockets Basics

Locating the Tool

To access Delaware dockets, click on the litigation tab above the "Go" bar, and choose "Dockets Advanced Search." Then, either start typing Delaware into the "Courts" box, or select "Browse Full List" and select the exact courts you want to search over. You can also select "Dockets Home" on the litigation tab to navigate to the [Bloomberg Law Dockets](#) home page. This page allows you to find everything related to dockets, including search features and search alerts, coverage information, and analytics tools.

Dockets are also seamlessly integrated throughout the Bloomberg Law platform. For instance, you can access Dockets from the related content menu on the right in all [Litigation Practical Guidance](#) documents. If you are reviewing a court opinion, related dockets will be linked in the right-hand column under General Info. There are also links to relevant curated state and federal dockets searches throughout litigation Practical Guidance, including the guidance on [Business Disputes in Delaware](#).

Docket Sources and Coverage

In Delaware, court records are maintained in a statewide electronic record system. Bloomberg Law maintains docket coverage for the Delaware Supreme Court, the Delaware Superior Court, and the Delaware Court of Chancery. For more details on the specific coverage, see [Dockets Coverage](#).

Updating Dockets

New cases

New cases are added to Dockets regularly. Delaware state courts are updated about every hour for new cases that are filed during regular business hours. If a new pleading is filed overnight, the case will be added to Dockets the following morning.

Updating docket entries

New docket entries for cases in the Delaware Chancery Court are sent to Bloomberg Law as a matter of regular process. The date and time that a docket was last updated is shown under the "General Info" section in the right-hand column. A user can track a docket and get notified of new entries by clicking the blue "Track Docket" link that appears to the left of General Info.

Tracking can be set up on intraday, daily, weekly, or customized intervals for most courts. When a docket is tracked, users are notified of changes to the docket, if any, at the interval selected by the user.

Updating filings

In addition to docket entries being updated regularly, Delaware state court filings (other than transcripts) are also automatically sent to the dockets system and immediately viewable. Simply click the "View" indicator by the filing.

PRACTICE TIP: If searching federal or another state's dockets, be aware that not all filings are pulled into the dockets system automatically. If the filing has not been pulled into the system, it will show a "Request" next to the document. A user can choose to request the filing, and Bloomberg Law will pass along any charges for obtaining (requesting) documents. After a filing has been requested, the "Request" link will change to "View" And will be available for all Bloomberg Law users.

AI Complaint Summaries

As noted above, complaints filed in the Delaware Court of Chancery are automatically pulled into the system and available for viewing, unless the filing party has designated it as a "Confidential Filing." When a complaint is available to view, Dockets provide an AI-generated Complaint Summary, which is a brief snapshot of the complaint's key details.

To view the Complaint Summary, go to the relevant entry row for the complaint on the case docket. In the Description column, click on "View Summary" to read the Complaint Summary for the document.

How to Search Dockets

Dockets [Advanced Search](#) allows you to search by docket number, keyword, court, filing type, party names, judge, date, attorney or firm name, nature of suit, and more.

Searching in the "Dockets" tab provides more filters to sort cases.

Under the Dockets tab, if you include keywords in your search, you can choose whether to search for those keywords over documents and dockets or across dockets only. Searching across dockets only searches only the docket entries that appear on docket sheets. Searching across documents and dockets will include results with keywords in the underlying filings. Remember that in Delaware, all filings are automatically pulled in.

Dockets [Advanced Search](#) also provides the option to use Bloomberg Law's Docket Key®. Docket Key allows users to search for state court filings by filing type, such as a Complaint, Motion, Brief, or Order. This can be particularly helpful when searching dockets for outcomes, looking for specific example pleadings, or zeroing in on a particular research topic such as sanctions, use of experts, or discovery rulings.

Primary Use Cases

Legal Research

One of the primary use cases for Dockets is to quickly locate similar cases or filings that may help with legal research.

For example, if you are working on a motion to dismiss, you can search for motions to dismiss filed before the same court discussing similar issues. Reviewing similar motions can point you to helpful caselaw you may want to cite or give you ideas for how to structure your arguments. You can also find orders issued on those motions to gain insight into which arguments the judge found persuasive, and which arguments were unsuccessful.

PRACTICE TIP: When using dockets for legal research, you can narrow down the list of relevant search results at any time using the “Edit Search” option located at the top of the page. Clicking the “Edit Search” option will open an Advanced Search window where you can filter the search results using the options described in the “How to Search Dockets” section above.

You can also use Dockets to look for cases discussing novel issues. If there are only a few cases statewide regarding a specific issue, topic, or area of the law – each in various stages of litigation – tracking what is happening with each can provide a useful glimpse into arguments, potential pitfalls, and evolving precedent to cite or distinguish in your case.

Strategic Research

Dockets can help you access valuable information to guide your case strategy. For example, you can quickly ascertain where and how similar cases are pending, find cases filed by the same plaintiff, or track legal actions against a specific client. If you are researching expert witnesses, you can use Dockets to help determine if the expert has been recently excluded from a case, or whether their opinion has been limited. If so, this will help you determine whether the expert is a good fit for your case. It may also give you insight into the challenges other litigants faced when they introduced similar types of data and expert analysis.

You can also use Dockets to research a court or judge to help inform strategic decisions. A search can provide access to past motions and rulings, help you ascertain how experienced the court is in

the relevant issues, note any important patterns in rulings or scheduling, and evaluate how the judge has managed cases like yours in the past.

For example, if you are considering filing a particular type of motion, such as a sanctions motion, you can use Dockets to help determine how frequently your judge grants sanctions motions. You can also use Dockets to see how similar cases before your judge proceeded through discovery. Does the court assign discovery to a magistrate? What dates are set, and at what preliminary intervals, in the court’s standard scheduling order? Does the court grant opposed motions to extend time? Will the court allow lawyers to appear by telephone at hearings? All these questions can often be answered with a Dockets search.

Researching Opposing Counsel

You can also use Dockets to research opposing counsel, as searching an opposing counsel’s name will return dockets on which they are listed, and briefs and motions filed by opposing law firms can be searched and viewed. There are many reasons for researching opposing counsel’s past and current work: to preview strategies they use frequently and are likely to reprise in your case, to ascertain their experience with the types of claims at issue, to learn of any past sanctions reflected on other dockets, or to note past arguments in similar cases that are incompatible with those in the present case. Careful searching in Dockets provides a true wealth of information.

Tracking Cases

Dockets can also be used to track new cases filed on particular legal topics, or to track new filings in existing cases.

To set an alert on new action filings, begin in the “Dockets Search” window. Choose the parameters for your search, including any relevant courts or litigants. At the bottom of the search box, click the bell marked “create alert” to set an alert on that search and set the frequency with which you want to execute the search and receive an alert. You may set an unlimited number of alerts for new cases without charge, as new dockets are pulled into the Bloomberg Law dockets system automatically. Alerts on other filings may incur a charge if you are the first to request a document; if anyone else has already requested the filing, however, your access is free.



PRACTICE TIP: It can also be helpful to set a Dockets alert for existing clients, including for cases in federal courts. Since federal and Delaware cases are pulled in often, if you set an alert for your client as the defendant, you may even be alerted to the case before they are served with the complaint.

You can also search and save alerts for specific types of cases and particular issues. This will let you know if a plaintiff files a case like yours in the same jurisdiction. This is particularly useful if you are litigating a case involving a novel issue and want to track such cases filed throughout Delaware trial courts. For example, if you are involved in a fraud case in the Court of Chancery and want to track recent complaints where fraud allegations are an issue, you could: (1) use keyword **fraud!** (which will hit on results like fraud and fraudulent); (2) set the court filter to Delaware Court of Chancery; (3) set the "Filing Type By Docket Key" filter to "Complaint/

Petition"; and (4) click on the bell symbol to set an alert that will notify you when new complaints fitting those parameters enter the platform. The search will show you all current dockets that fit those parameters, and the alert will email you a link to every new one. Once you receive an alert, review the case and decide whether to track the docket. Once the docket track is set, each new filing in that docket will be sent to your email for review.

PRACTICE TIP: Remember, if you are reviewing the results of a dockets search and want to keep up with any new results, you can create an alert from that search by clicking "create alert" on the tool bar at the top of the search results (below the number of results, and above the results themselves). Any new dockets that fit your search will turn up as a link in your email. This feature makes updating your research much easier.

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