Corporate Flight from Delaware

The Impact of Escalating Shareholder Litigation and Legal Uncertainty

Fighting Lawsuit Abuse
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Executive Summary

Unpredictable court rulings and a wave of lawyer-driven, profit-seeking litigation are destabilizing Delaware's historic dominance for corporate domiciling. At the same time, competition among states to attract corporate charters is heating up. Policymakers in the First State should take notice and reverse course, or companies will continue to seek less hostile jurisdictions — and Delaware's famously stable legal environment will risk transforming into a Judicial Hellhole®.

For more than one century, Delaware has been the ideal destination for incorporation, largely due to its reputation for predictable corporate law and fair settlement of disputes in the world-renowned Delaware Court of Chancery.

Delaware's historically attractive business environment has positioned the state to capture most initial U.S. public offerings and incorporations, including roughly 68% of Fortune 500 companies.[1]

However, recent trends have called into question Delaware's domination of the corporate charter. Delaware has been listed in the American Tort Reform Foundation's (ATRF) Judicial Hellholes® report as a "Dishonorable Mention,"[2] with ATRF recently declaring the state "on the verge of becoming a litigation hotbed" in 2024.[3]

Unpredictable court rulings from the Court of Chancery and Delaware Supreme Court have caused several companies to consider redomiciling in other states — a trend known as "Dexit." Tesla, Dropbox, Coinbase and TripAdvisor are some of the high-profile companies that have decided to set up shop outside of Delaware in pursuit of other jurisdictions like Texas, Nevada, Maryland, and Florida that offer lower costs and reduced litigation risk.

Delaware has become a preferred jurisdiction for opportunistic shareholder litigation. This has damaged the state's reputation, with critics arguing that the overload of "strike suits," derivative lawsuits lacking a valid legal basis, will further damage the state's corporate reputation.[4]

Despite some efforts by Delaware courts and the state legislature to mitigate the level of frivolous shareholder litigation, these lawsuits continue to increase.[5] In fact, the Delaware Court of Chancery has seen an uptick in the number of shareholder litigation claims in recent years with over 100 cases filed in 2024 — nearly double the year before.[6]

Many of these cases are steered by plaintiffs' law firms rather than the shareholders themselves. They may also be backed by third-party investors with their own financial incentives. More often than not, these lawsuits fail to generate any sort of value for shareholders and ultimately end in excessive fee awards for the plaintiffs' attorneys.

If Delaware does not diligently pursue reforms, the state's failure to protect businesses and their shareholders against value-destroying litigation places the state's core sector — the corporate franchise industry — at risk.

The Proliferation of Shareholder Litigation in Delaware

Public corporations dedicate large amounts of time, resources, and expenses to legal matters. The Delaware Chancery Court long has been able to capitalize on corporations' necessary legal filings by promising judicial predictability. This promise included a simplified process for corporate documentation, specialized judges, well-developed jurisprudence, and a speedy trial environment. However, these benefits must be weighed against the cost to businesses of increasing shareholder litigation in the state. This section outlines several ways in which shareholder litigation also is costing consumers through rising attorneys' fees, opportunistic litigation, and increasing insurance costs.

Shareholder litigation refers to lawsuits filed by shareholders against a corporation, its directors, or its officers alleging violations of fiduciary duties, inadequate disclosures, corporate mismanagement, or other actions that may harm the company or its investors. These suits typically take the form of derivative actions, class actions, or direct suits, and can challenge decisions such as mergers, executive compensation packages, or governance practices. The purpose of shareholder litigation is to hold corporate leaders accountable and protect shareholder interests—but in practice, many cases are driven by plaintiffs' lawyers and may provide little financial benefit to shareholders overall.

Causes and Effects of Prolific Shareholder Litigation

Although Delaware is the main state law venue for shareholder litigation, the scope, characteristics, and outcomes of such litigation in the state remain highly understudied. One study, published in the *Vanderbilt Law Review* by professors from Duke Law School, Vanderbilt Law School, and Cincinnati College of Law (*Shareholder Litigation in Delaware: An Empirical Investigation, 2025*) fills a major gap in existing research. The study reviews all fiduciary duty complaints filed in the Delaware Court of Chancery between 2004 and 2019, cataloguing the type of lawsuit, the circumstances preceding the lawsuit, the law firm representing the plaintiff, and the case outcome. The dataset includes cases involving one or more of the following claims: class actions, derivative claims, and individual stockholder claims. Over this sixteen-year period, the authors studied 2,058 unique shareholder complaints filed in the Delaware Court of Chancery.

The Vanderbilt Law Review study concluded that in Delaware, the top 10 law firms — or "frequent filers" — file 55% of all complaints but generate lower average settlements than other firms.[7] The study's authors write:

> *"Reflecting on our data, the most startling discovery is the difference among attorneys and firms garnering significant fees and the tables setting forth attorneys and firms that are the most frequent filers of complaints."*

This reveals a two-tiered system in Delaware courts, where a small cohort of prolific filers drive up the sheer volume of shareholder litigation while obtaining much lower settlements for their clients, and a smaller group of filers is responsible for substantive settlements. In fact, the top ten most frequently appearing law firms filed 55% of all complaints —

or 1,131 lawsuits — in the study's sample. The article's authors also found that the average settlement earned by frequent-filing attorneys is $1.43 million; less than half of the average settlement earned by non-frequent-filing attorneys.[8]

Moreover, lawsuits brought by frequent filers make up "42.0% of [the] study's voluntary dismissals and 48.6% of involuntary dismissals," suggesting that lawsuits brought by frequent filers are frequently meritless or easily remedied with disclosure settlements. It stands to reason that these lawsuits provide virtually no benefit to shareholders; however, lawyers may still be rewarded with attorneys' fees.

The sheer volume of shareholder suits in Delaware and the willingness of the Delaware Chancery Court to grant large, headline-grabbing settlements has been noticed by corporations. Famously, Tesla shareholders passed a proposal to move the company's headquarters from Delaware to Texas after a de minimis shareholder successfully challenged Elon Musk's shareholder-approved compensation package.[9] The Court of Chancery initially granted $345 million in plaintiffs' attorney fees in this case, although that fee award was later reversed and Musk's pay package reinstated.[10] But by that time, the company had already moved its legal homebase to Texas.

In AMC Entertainment Holdings' (AMC) 2025 proxy, the company noted that moving its state of incorporation to Nevada from Delaware "reduces the risk of opportunistic litigation against the Company, and its Directors and Officers, which can be time consuming, burdensome and expensive."[11] Similarly, Sphere Entertainment, which owns the Sphere event venue in Nevada and MSG networks in New York, noted in its 2025 preliminary proxy filing that the Board discussed the company's potential redomestication and found that Nevada, as opposed to Delaware, offered "more predictability and certainty in decision-making." This change came after the Company was subject to "lengthy and costly litigation from our stockholders…[which] was settled for a payment to the Company of approximately $85 million."[12]

Do Shareholder Lawsuits Create Value?

Shareholder litigation is, on principle, an important tool for oversight and accountability. However, it remains an open question as to whether shareholder lawsuits actually create value for companies and shareholders who are not party to the suit. Since the 1940s, a common theme echoed among academics was that most shareholder lawsuits were "frivolous and motivated primarily by settlement fees."[13] A study by the U.S. Chamber Institute for Legal Reform found that "shareholders experience a stock price drop associated with filing of securities fraud class action lawsuits" which results in the affected class losing more money overall than they gain in subsequent settlement amounts.[14] The authors estimated that, on average, shareholders incrementally lost more than six times the settlement amount they received.[15]

Additionally, data suggests that when a shareholder's right to sue is expanded, corporation management often reduces both the quantity and quality of disclosure, likely due to the concern that additional disclosure will lead to further shareholder litigation. This reduction in information can lead to a loss in equity value as management may be more inclined to hoard bad news, leading to negative stock price crash risk.[16]

This loss of value is particularly problematic given the rise in shareholder lawsuits filed, with almost 1-in-30 publicly listed U.S. firms experiencing the initiation of a shareholder lawsuit in 2024 alone.[17] Despite a peak in the number of federal- and state-law shareholder suits leading up to 2019, the number of filings has remained relatively stable from 2011 through 2025.[18] However, there is an upward trend in the size of securities class action filings.

The rise of "mega filings" — or cases with extremely large alleged losses or potential settlement amounts — means that companies increasingly are on the hook for higher costs from shareholder litigation. In 2025, the Disclosure Dollar Loss (DDL) — the measurement of total decline in a defendant's market capitalization as a result of litigation — was the highest on record. This was driven by the increase in "mega filings," with total DDL increasing from $429 billion in 2024 to $694 billion in 2025.[19] The sheer costs incurred from litigation further increases the incentive for management to hoard negative information to avoid value-destroying lawsuits.

Not only does litigation entanglement distract corporate resources and pull executive management into extensive proceedings, it also costs shareholders money. As legal scholars and law professors Adam C. Pritchard and Jessica M. Erikson assert:

> *"We start with a simple premise: fee awards come directly out of settlements or judgments, so every dollar for the lawyers means one less dollar for stockholders. Basic economic theory therefore suggests that judges making fee awards on behalf of stockholders should be aiming for awards that are not a dollar more than it takes to incentivize plaintiffs' attorneys to bring meritorious cases."*[20]

Third-Party Litigation Financing

Taking advantage of the Delaware shareholder litigation environment, third-party funders also have started to invest in certain cases. Third-party litigation funding is when an outside party provides financial backing, usually to the plaintiffs' attorneys, to finance a lawsuit in exchange for a share of any eventual settlement. Beyond the fact that these agreements are often undisclosed to the court, plaintiffs can lose control over litigation, face conflicts of interest, and experience reductions of settlement awards once the attorney's fees are taken out.[21]

In 2022, the Chief Judge of the federal district court in Delaware adopted an order requiring the disclosure of third-party litigation funding in his court.[22] However, because disclosure of third-party litigation funding is not required in the Delaware Chancery Court — it currently is not possible to know the extent to which shareholder litigation in Delaware is supported by outside money. Nonetheless, securities class action cases are becoming ripe for third-party backing.

For the last decade, third-party litigation agreements in the Chancery Court largely have been shielded from disclosure. In *Carlyle Investment Management v. Moonmouth Company* (2015), a judge ruled that, overall, litigation funding agreements are protected by the work product doctrine when prepared in anticipation of litigation and reflect litigation strategy.[23] Delaware courts have, in several instances, ordered the production of redacted versions of funding agreements.[24] A more recent case offers hope that some Chancery Court judges are open to disclosure. In *Burkhart v. Genworth Financial* (2024), the court rejected a plaintiff's assertion that "litigation funding agreements ... are not discoverable."[25] The court ordered the plaintiffs to produce the complete, unredacted litigation funding agreement in a

class action, finding that the funding arrangement was relevant to class certification.[26]

Eight states enacted legislation from 2023 to 2025 that requires disclosure of litigation funding to promote greater transparency,[27] and more are poised to do so. In fact, in 2026, Delaware's neighboring state, Pennsylvania, issued a proposed change to its rules of civil procedure that would require production of litigation funding agreements in discovery.[28] While these developments offer encouragement, third-party litigation funding remains a key concern. External financing inherently means less risk — yet another incentive for plaintiffs' lawyers to play the volume game and file ever-increasing numbers of lawsuits in pursuit of settlements.

The Cost of Shareholder Litigation

A review of individual, derivative, and class action lawsuits filed in the Delaware Chancery Court over the last fifteen years shows that filing activity in the Delaware Court of Chancery has remained relatively stable in volume, but with notable peaks and valleys (see Figure 1). Over this fifteen-year period, the court saw a total of 2,001 complaints involving individual stockholder claims, derivative claims, class action claims, and other fiduciary duty claims.[29]

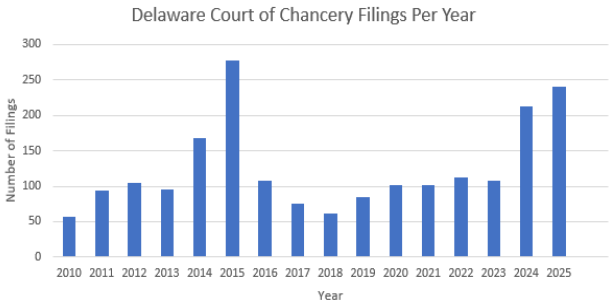


Figure 1: Data sourced from LexisNexis

In a typical year, the Delaware Chancery Court may receive approximately 100 new fiduciary claims. But the outlier years should be viewed in light of shifting judicial precedent. The ramp-up in 2014 and 2015, for example, could be attributed to the large volume of acquisition-related claims seeking disclosure-only settlements. Once that "racket" was shut down in the 2016 *Trulia* ruling, there was a profound drop-off of acquisition-related filings, as discussed in the section below (Disclosure-Only Settlements and Mootness Fees).

Similarly, the spike in new filings in 2024 and 2025 can be explained by an unpredictable Chancery Court and an entrepreneurial plaintiffs' bar. Plaintiffs' attorneys were likely emboldened to file derivative claims following the Chancery Court's 2024 ruling in *Musk v. Tornetta* and its astronomical plaintiffs' fee award – at least, until the Delaware Supreme Court overturned the ruling in 2025 and substantially trimmed down the attorneys' fee award.

This combination of judicial discretion and an entrepreneurial plaintiffs' bar — and the legal unpredictability it creates for Delaware companies — has driven many companies to consider legally incorporating outside of Delaware.

Attorneys' Fees

Attorneys' fees have risen disproportionately in Delaware courts in comparison to federal courts. Record-setting fee awards in *Dell Technologies* and *Tornetta v. Musk* of $266.7 and $345 million respectively, confirm this trend.[30] Although the Delaware Supreme Court reduced the plaintiff attorneys' fee award in *Tornetta v. Musk* to approximately $54.4 million in December 2025, this number remains significant.[31]

Fee awards are particularly high for derivative suits. According to the *Vanderbilt Law Review* study, attorneys who bring shareholder derivative lawsuits are paid higher fee awards than attorneys representing both class action and individual suits, receiving a sum of $3 million on average.[32]

While Delaware's court system follows the "American rule" for payment of attorneys' fees, which requires litigants to bear their own litigation-related costs, there are several exceptions that allow for "fee shifting," an arrangement in which one party of a dispute is required to pay the attorneys' fees of another party. Exceptions to the American rule include contractual exceptions and the "corporate benefit exception," where a party is determined to have obtained a substantial benefit for the corporation or its stockholders through pursuing litigation — a relevant exception in the realm of shareholder litigation.[33]

In general, attorneys' fees are determined at the conclusion of the case by judges in the Delaware Court of Chancery. Judges are given incredible flexibility to determine fees.[34] The Supreme Court of Delaware allows judges to determine fees based on a variety of factors, including the percentage of the recovery, shareholder value creation, and time invested.[35]

A 2025 study, which analyzed every shareholder case filed in Delaware since 2000 in which lawyers won fee "multipliers" of 7 times ("septuples") and 10 times ("decuples") their normal hourly rate, found that Delaware courts had produced 20 septuples, including 14 decuples. Federal courts deciding shareholder litigation, by comparison, generated 23 septuples, including 5 decuples. In short, Delaware courts have generated almost triple the number of decuples of the entire federal system.[36]

In one particularly shocking case, a payout for a lawyer practicing before the Delaware Court worked out to a $35,000 per hour rate (adjusted for inflation, this 2012 fee award would be more than $48,000 per hour today). In comparison, the maximum hourly rate in a federal court for a septuple is $11,290.[37]

Fee Awards with Lodestar Multipliers of 7 or More in the Delaware Court of Chancery (2020-2024)

Case	Year	Class Recovery (in $M)	Attorney's Fees (in $M)	Inflation Adjusted Attorney's Fees	Percentage	Lodestar multiplier
Tornetta	2024	2,300	345	347.4	15	25.3
Moelis	2024		6	6		15.2
Foley	2022	20	4.4	4.7	22	14
dMY Tech.	2022		0.795	0.858		12.3
Tesla Dir. Comp	2025	734	176.16	176.16	24	11.62
Boxed Inc. Requested Awarded	2022		2 0.85	2.2 0.92		24.08
Malone	2020	110	31.35	38.3	19.6	12.78
CM Life Sciences Requested Awarded	2022		0.95 0.795	1.03 0.858		10.04
Umbright Requested Awarded	2022		1.25 0.85	1.35 0.92		9.29
HC2 Holdings	2020		1.6	2.0		8.81
Knott Partners	2022		0.3	0.32		8.24
Pilgrim's Pride	2020	42.5	7.95	9.7	18.45	7.17
Gusinsky	2020		2.4	2.9		7.2

Figure 2. Data based on Joseph A. Grundfest and Gal Dor, "Lodestar Multipliers in Delaware and Federal Attorney Fee Award."

Additionally, a Harvard Law study on shareholder litigation in Delaware noted that high fee awards in Delaware often do not correspond with a riskier litigation environment. In fact, Delaware's average multiplier is 2.61, compared to the average federal multiplier of 1.44. This data confirms that Delaware plaintiffs' lawyers are paid, on average, premiums of more than 2.5 times — and sometimes 6.5 times for larger settlement cases — their baseline fees.[38] This means that plaintiffs' attorneys in Delaware tend to earn more in fees than lawyers in federal securities cases, but not because they are delivering more value or investing more time in the case.

Attorneys' fee awards are intended to reflect shareholder value creation and relative risk, but that is not the case in Delaware. Fee awards instead have evolved into financial incentives that encourage attorneys to cherry-pick cases in pursuit of larger payouts, reflecting a clear misalignment between the level of attorney investment and the actual shareholder value created.

Disclosure-Only Settlements and Mootness Fees

Per the *Vanderbilt Law Review* study, parties voluntarily dismiss 47.6% of the shareholder litigation filed in the Delaware Court of Chancery. More than 5% of these cases result in the defendant paying mootness fees — a sum of money paid to the plaintiff's lawyer in addition to their baseline fees.[39] The *Vanderbilt Law Review* analysis of Delaware shareholder litigation identified this pattern as evidence of "potential abuse," writing:

> *"Two categories raise concern about potential abuses, however: 47.6% of cases are voluntarily dismissed, and within this group, 5.5% involve defendants agreeing to pay a sum to the plaintiff's lawyer to dismiss the suit because actions taken by the defendant have mooted the need to seek further relief."*[40]

Mootness fees are sought by counsel for plaintiff stockholders of a company. Counsel typically will argue that the company's proxy statement omits certain information that should be disclosed. The company then has an incentive to "moot" plaintiffs' claims by voluntarily making the demanded disclosures.

Plaintiffs' counsel then can collect fees from the company, often in the range of $50,000 to $300,000, on the theory that they provided a common benefit to the stockholders by prompting the additional disclosures. This has created a misaligned incentive where Delaware plaintiffs' attorneys benefit when compensation is inverse to the effort or time invested in a case.

The number of cases dismissed with mootness fees rose from 2% to 10% of lawsuits between 2004 and 2019.[41] Many of these cases challenged mergers or acquisitions. Attorneys with Seyfarth Shaw LLP reviewed the upward trajectory of class actions challenging mergers since 2009, noting the high volume of class actions that were resolved through early disclosure-only settlements.[42]

By 2015, approximately **95%** of merger case filings valued at more than $100 million were challenged, with more than half filing in Delaware courts, and usually in the Chancery Court.[43] But very few of these lawsuits resulted in settlements or judgements. Over the 16-year period evaluated in the *Vanderbilt Law Review* study, the authors found that 94% of acquisition-based cases resulted in a settlement award of zero, showing that knee-jerk class action lawsuits seeking "disclosure" following a merger or acquisition announcement had become the norm. The researchers note:

> "Regardless of whether the entity is public or private, we find that about one-half of shareholder fiduciary claims are acquisition based. Among all suits, we observe that in our dataset of 4,741 cases, a large number (4,443) had settlements coded as zero, 94% of the total. This is unsettling: such a *consumption* of effort and resources with a truly high percentage of cases delivering no financial benefits." [44]

Judge Richard A. Posner, former chief judge of the U.S. Court of Appeals for the Seventh Circuit referred to this practice as "no better than a racket."[45]

> ***"The type of class action illustrated by this case — the class action that yields fees for class counsel and nothing for the class — is no better than a racket. It must end."***
>
> *-- Richard A. Posner, former chief judge of the U.S. Court of Appeals for the Seventh Circuit, in In re Walgreen Co. Stockholder Litig.*

After more than a decade of this "racket," the Delaware Chancery Court reined in mootness fees in its *Trulia* (2016) decision, finding they provided little to no value or recovery for shareholders.[46] Following the court's scrutiny of such settlements, the Delaware Court of Chancery experienced a significant decline in merger challenges, potentially contributing to the decline in all new filings illustrated in Figure 2.[47]

Still, over this period, Delaware companies bore significant costs litigating cases that resulted in no value for shareholders. The fact that the Chancery Court allowed this practice to persist for so long undoubtedly frustrated boards and shareholders, providing early momentum to the "Dexit" wave.

The mootness fees saga is not all resolved, though. Following *Trulia*, the plaintiffs' bar shifted their strategy to federal courts: by 2018, more than **90%** of federal merger cases were resolved through voluntary dismissals with payment of mootness fees.[48]

D&O Insurance

Overly litigious environments lead to higher insurance costs for companies that purchase Director & Officer (D&O) insurance to indemnify their executives and board directors. Robust D&O insurance coverage is a key tool companies use to recruit high-quality executives and officers, since derivative lawsuits will often target directors in a personal capacity, alleging breaches of fiduciary duty or duty of loyalty. If successful, plaintiffs can win extraordinarily large settlements.

In 2020 amid the COVID-19 pandemic, D&O insurance saw a sharp uptick in pricing, driven by the rise in shareholder litigation and the willingness of judges and juries to award larger settlements.[49] Like other types of insurance, the very act of making a claim — regardless of whether a party is ultimately found liable — puts upward pressure on premiums.

In 2020, Tesla CEO Elon Musk decided not to renew his company's D&O insurance policies due to rising premiums and instead promised to personally cover any expenses arising from litigation.[50] But unless executives or board members opt to purchase their own insurance policies, shareholders bear the cost for rising D&O insurance premiums. As companies are forced to attribute resources to rising D&O insurance costs, this detracts from their ability to boost company profits, further reducing monetary benefits for shareholders.

Precedent and the Road to "Dexit"

Evolution of the Corporate Franchise Industry

Delaware has been the prime place for businesses to incorporate for more than 100 years. Incorporation refers to the process of creating a corporation as a legal entity, established by their articles of incorporation.[51] In the U.S., incorporation falls under the purview of state law and requires filing information at a given state's regulatory agencies. Which state a company is incorporated in subsequently has a great impact on a company's operations, as it sets the parameters within which a company establishes the relationship between management and the board, as well as between the company and its shareholders. It also determines jurisdiction, as plaintiffs may primarily file certain state-law claims against a company in either its incorporation jurisdiction or its headquarter jurisdiction.[52]

How Delaware Became Dominant

Although Delaware is the home of very few corporate assets and headquarters, as of 2026, the state hosts the majority of U.S. incorporations. 68.2% of Fortune 500 companies and 65% of S&P 500 companies are incorporated in the state.[53] Delaware's "corporate franchise industry" drives state revenue, with fees and taxes associated with the industry contributing approximately one-third of the state's annual budget.[54] Today, Delaware is known across the country and around the world as the prime destination to incorporate a U.S.-based business. But this was not always the case.

At the start of the 20th century, New Jersey was the preferred place to incorporate. At that time, New Jersey offered a modern and pioneering corporate law framework that facilitated interstate mergers and enabled the swift resolution of disputes.[55] However, then-Governor Woodrow Wilson pursued a series of reforms that increased liability for companies and directors. The results were immediate: between 1912 and 1914, the number of incorporations in New Jersey fell by one-third.[56] Although New Jersey repealed its reforms shortly after, the state's corporate franchise industry never recovered.

New Jersey's loss was Delaware's gain. Delaware's emergence as the nation's home for corporate incorporations was partially due to timing and partially due to lawmaking. The state had established a specialized Court of Chancery to address commercial disputes as early as 1792, but it was the state's elimination of the requirement of a legislative act to make a corporation in 1897 that set the stage for Delaware's modern-day corporate law.[57] The adoption of the Delaware General Corporation Law (DGCL) in 1899 also had a major effect. Since the 1900s, the DGCL and the Delaware Court of Chancery attracted incorporations by providing flexibility in corporate governance and stability in the resolution of corporate lawsuits.[58]

What's Driving "Dexit"?

In recent Securities and Exchange Commission filings proposing or announcing plans to redomicile from Delaware to a different jurisdiction, companies tend to cite several key reasons, including:

- Aligning assets and capital investments with legal domicile;
- Reducing risk, volume, and uncertainty of shareholder litigation; and,
- Reducing costs associated with incorporation fees.

Two related trends in Delaware's Chancery Court explain companies' justification for leaving Delaware. The first is the pure volume and associated cost of shareholder litigation in the state, as described in the first section of this paper.

The second is the risk and relative likelihood of opportunistic lawsuits that cause precedent-setting legal judgments and make litigation outcomes less predictable.

Opportunistic Litigation

Delaware's evolving legal environment has encouraged a rise in opportunistic litigation. The state relies heavily on case law to apply certain standards like the business judgment rule or fiduciary duties of corporate officers and directors.[59] The Delaware business judgment rule refers to the presumption that as long as a company's board of directors has no conflicting interest, a board's ability to make business decisions for a corporation will be assumed by the court to be made with due care and in good faith. Under Delaware law, fiduciary duties of directors include care to the corporation and its stockholders.[60]

Relying on case law to interpret this standard instead of a statute means that judges have a high degree of discretion when issuing opinions on how to interpret the business judgment rule. A jurisdiction that relies on case law provides less protection than a jurisdiction where the business judgment rule is codified in a statute. Relying on case law as the underpinning of corporate legal responsibility creates opportunity for entrepreneurially minded law firms to test new theories of liability and attempt to change the scrutiny for reviewing corporate transactions in court.

Additionally, corporate officers in Delaware have less liability protection than some other jurisdictions, like Nevada or Texas. For example, Nevada law presumes that an officer or director acted in good faith, on an informed basis, and with a view to the interests of the company, requiring a plaintiff to overcome that presumption to obtain damages. In contrast, Delaware does not presume an officer or director acted in good faith.[61]

Another aspect of Delaware corporate law that creates legal risk and unpredictability for companies and shareholders is the concept of "heightened scrutiny." In certain circumstances, Delaware courts may apply heightened levels of scrutiny exceeding typical interpretations of the business judgment rule, particularly in the case of conflicted transactions or change of control transactions. In these cases, the court can apply the "entire fairness" standard which shifts the burden of proof from the plaintiff to the defendant. In these cases, the company is asked to prove both fair dealing and fair price in a transaction. This standard

makes it easier for a case to survive a motion to dismiss, allowing frivolous cases to advance to trial.

These differences create a ripe environment for lawyers to push the boundaries of Delaware corporate law — with some hope of winning. This is a crucial consideration as shareholder litigation "relies on the entrepreneurial energy of plaintiffs' lawyers."[62] Shareholders are known to be difficult to mobilize because they are scattered and often do not follow corporate activities closely. Attorneys bring litigation on their behalf, investigating allegations and identifying possible claims. Activist lawyers can thus take advantage of gaps in legal frameworks, like in Delaware, to put forth opportunistic shareholder litigation.

Precedent-Setting Suits

Several pivotal cases have set the stage for businesses to flee Delaware domiciliation. Landmark decisions in *West Palm Beach Firefighters' Pension Fund v. Moelis & Company*, *Tornetta v. Musk*, and *Maffei v. Palkon* demonstrate how the Delaware Chancery Court has betrayed its mandate for legal jurisprudence that allows businesses to thrive. The Delaware Chancery Court decided each of these cases in 2024, showing how the state's downfall as a business hub has accelerated in recent years. Cumulatively, these cases create a new reality in Delaware: one that includes a dangerous litigation environment that is forcing corporations to look elsewhere for domiciliation.

In *West Palm Beach Firefighters' Pension Fund v. Moelis & Company* (2024), a pension fund challenged an agreement in Moelis & Company's 2014 IPO. The agreement had changed Moelis's corporate governance framework, allowing company CEO Ken Moelis pre-approval rights over the board of directors' decisions, the ability to select the majority of the board, and the power to determine the composition of board committees. The Court of Chancery ruled in favor of the pension fund in 2024, signaling that similar corporate governance arrangements may be vulnerable to opposition.[63] While the Delaware Supreme Court reversed the decision in 2026,[64] the Chancery Court's ruling is enough to create concern among corporate leaders that corporate governance agreements face an increased litigation risk..[65]

In *Tornetta v. Musk* (2024), Elon Musk's $56 billion Tesla 2018 compensation package, which included performance-vesting stock options, was challenged and rescinded by the Delaware Court of Chancery.[66] The plaintiffs cited concerns that the pay package did not align with shareholder interests, primarily because shareholders weren't properly informed at the time of the vote.[67] Despite being approved by the board and ratified by shareholders, the court's decision to invalidate the package raised questions about shareholder democracy and their role in the decision-making process.[68] Musk's vocal response to the court's decision, including his social media post warning others to "[n]ever incorporate your company in the state of Delaware,"[69] turned a legal dispute into a national corporate governance conversation, leading many companies to question if Delaware remains the prime jurisdiction to incorporate. In 2025, the Delaware Supreme Court reversed the Chancery Court's decision,[70] although by that time, the damage already had been done.[71]

In *Maffei v. Palkon* (2024), the Delaware Chancery Court addressed whether TripAdvisor's reincorporation from Delaware to Nevada alone was subject to "entire fairness" review — the most rigorous level of judicial scrutiny in the state — due to a breach of fiduciary duties. The plaintiff argued that, as a controlling shareholder, the move undermined shareholder interests. Despite TripAdvisor's motion to dismiss the case, the court permitted the case to proceed.[72] This ruling created an uncertain judicial environment in Delaware, indicating that a company's reincorporation no longer is viewed as a routine, straightforward business decision, and that when controlling shareholders are involved, the decision could be subject to high-risk litigation. However, in 2025, the Delaware Supreme Court reversed the Chancery Court and ruled that the company's decision is subject to the deferential business judgment rule, decreasing the litigation risk associated with reincorporation.[73]

The Delaware Supreme Court also has contributed to corporate concerns about remaining in Delaware. In *In re Match Group,* the court expanded the use of the "entire fairness" doctrine.[74] In this case, the state high court decided that entire fairness is the presumptive standard for a merger transaction involving a controlling stockholder. The Chancery Court had applied the business judgment rule, which is more deferential to corporate decision making, and dismissed the case.[75] By making entire fairness the default for controller transactions, the Delaware Supreme Court increased litigation leverage for shareholder lawsuits and made it harder for companies to dismiss opportunistic litigation.[76]

Collectively, these decisions, even when ultimately reversed on appeal, represent a systematic tightening of scrutiny on controlling stockholder transactions that rewrites the risk calculus for any company, particularly founder-led or sponsor-backed companies.

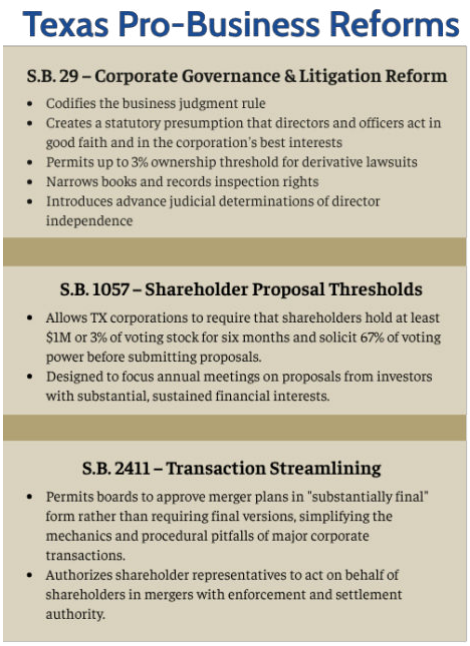
State Competition is Heating Up

There is a foundational debate in corporate law, known as the "Cary-Winter debate," about whether state competition for incorporations is good or bad. The debate — named after two legal scholars who penned competing papers in the 1970s — is a dispute over whether changes in state corporate law increase firm value, spurring a "race to the top," or weaken shareholder protections, resulting in a "race to the bottom."[77] Cary and Winter both agree, however, that state competition for incorporations is real and it always has been.

For decades, the Cary-Winter debate was mainly a theoretical one as Delaware maintained its dominance through its specialized Court of Chancery and predictable case law. But as shareholder litigation proliferated and Delaware Chancery Court judges issued a series of major rulings that strayed from decades of precedent, Texas and Nevada recognized an opportunity.

Texas Raises the Bar

Texas entered the corporate law competition not by copying Delaware, but by learning from its mistakes. The Lone Star State's approach centers on statute-based certainty rather than case-by-case judicial evolution.[78] In the last few years, Texas has enacted a series of reforms that fundamentally altered Texas's appeal to corporations, addressing shareholder proposal thresholds, statutory business judgment protection, and specialized business courts.



Requiring Meaningful Shareholder Engagement

In 2024 and 2025, Texas adopted a series of amendments to its state corporate code, aiming to create a more predictable corporate law environment. S.B. 29, which took immediate effect when it was signed on May 14, 2025, codified the business judgment rule, creating a statutory presumption that directors and officers act in good faith and in the corporation's best interests.[79] Another bill, S.B. 2411, which took effect September 1, 2025, provided procedural certainty for the mechanics of mergers, conversions, and other major corporate transactions and clarifies officer liability protections when acting lawfully as an officer of the entity.[80]

Texas's S.B. 1057, which took effect September 1, 2025, allows publicly traded corporations to require heightened thresholds for shareholder proposals: ownership of at least $1 million or 3% of voting stock, continuous ownership for six months, and solicitation of 67% of voting power. Similarly, S.B. 29 allows corporations to impose an ownership threshold of up to 3% for shareholder derivative actions. These measures ensure shareholders have genuine skin in the game, helping companies "focus annual meetings on proposals backed by investors with significant, sustained financial interests".[81]

Texas Business Courts

Perhaps Texas's most significant innovation is the Texas Business Court system, which launched in September 2024. The specialized, statewide court system — which includes a dedicated court of appeals — has jurisdiction over cases against publicly traded companies and other commercial disputes exceeding $5 million. Judges are appointed by the governor and must have at least ten years of experience either practicing commercial litigation or business transaction law, serving as a civil judge, or some combination of the three.[82]

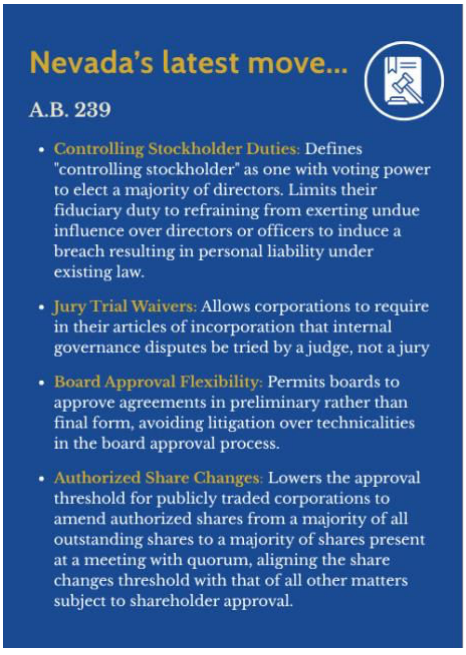
By putting this system in place, the state legislature addressed what long had been Texas's biggest disadvantage relative to Delaware: the lack of a specialized business court. Previously, judges or juries with no particular expertise in business law would decide corporate disputes. The business court negates that issue, and SB 29 allows corporations to require that internal governance disputes be tried by a judge rather than a jury.[83]

Texas also innovated beyond Delaware's model corporate code. S.B. 29 includes a novel mechanism allowing boards to seek advance judicial determination from the Texas Business Court that a board's special committee's members are independent, giving companies a way to resolve conflict-of-interest questions proactively rather than defending them in post-transaction litigation.[84] In Delaware, independence questions are litigated after the fact, as the *Match* case illustrated when the outcome turned partly on whether a single committee member was sufficiently independent.[85]

The Texas Business Court is still young, and it lacks the deep body of precedent that makes Delaware's Chancery Court so valuable. But to many observers, including the judges on the court itself, that is a feature, not a bug.[86] Texas's strategy is to build precedent on a clear statutory foundation.

Nevada's Decades-Long Competition

For decades, Nevada deliberately has revised its corporate law to compete with Delaware.[87] In 1987, Nevada enacted a broad exculpation statute that went well beyond what Delaware offered, with the Secretary of State noting, at the time, that the state needed to "do as much as it can to out Delaware."[88] That protection became the default for all Nevada corporations in 2001, applying automatically without requiring a shareholder vote.[89] In 1999, the legislature repealed the enhanced scrutiny standards that Delaware applies to defensive tactics, replacing them with simple business judgment deference. In 2017, Nevada directed its courts to apply the plain meaning of Nevada's own statutes rather than importing Delaware case law.[90]



Nevada's latest move in its ongoing competition with Delaware is Assembly Bill 239, signed by Governor Joe Lombardo (R) on May 30, 2025. The new law's most significant provision codifies, for the first time under Nevada law, the fiduciary duties of controlling stockholders. It defines a "controlling stockholder" narrowly — someone with the voting power to elect a majority of directors — and allows Nevada corporations to include provisions in their articles of incorporation requiring that internal governance disputes be tried before a judge rather than a jury.[91]

Lest there be any doubt about the purpose of A.B. 239, the legislation was initially proposed by the State Bar of Nevada's Executive Committee, which noted that the proposed amendments were "in light of the Delaware Legislature's recent push to codify in this area" and designed to "maintain Nevada's competitive advantage as a leader in stable, predictable and common-sense corporate law."[92]

Delaware's Response

On the heels of several high-profile redomiciling proposals and facing direct competition from multiple states, Delaware took action.[93] On March 25, 2025, the state enacted S.B. 21, the most significant rewriting of Delaware's corporate law, the DGCL, in more than half of a century.[94] S.B. 21 takes several steps to align Delaware law with recent reforms in Texas and Nevada, including narrowing the definition of "controlling stakeholder" and increasing liability protections.[95] Notably, however, S.B. 21 overrules the *Match* decision, and in doing so makes clear that Delaware's intent is to regain some of the statutory predictability it has lost in recent years.[96]

However, S.B. 21 became subject to litigation itself. On November 5, 2025, the Delaware Supreme Court heard oral arguments in *Rutledge v. Clearway Energy Group* challenging whether S.B. 21 impermissibly limits the Court of Chancery's equitable jurisdiction and whether its retroactive application provision violates due process.[97] A group of corporate law professors even filed an amicus brief in support of the challenge, warning that S.B. 21 "prioritizes rigid statutory formalism over judicial flexibility."[98]

The Delaware Supreme Court eventually rejected both arguments in February 2026.The court ruled that the legislation merely provided a framework for how claims for damages and equitable relief may be considered. It also found that the General Assembly showed its clear intent for the DGCL amendments to apply retroactively. The decision also resolved an ambiguity in the DGCL amendments regarding *In re Match Group*: outside the going-private context, a conflicted controller transaction need satisfy only one of the two cleansing mechanisms recognized in that case, not both.[99]

While the outcome of the challenge to the S.B. 21 ultimately provided clarity for corporate litigants in the state, it also showcases Delaware's litigious environment and reliance on judicial interpretation. While Delaware continues to address corporate disputes through case law and patchwork legislative reform, other states are reforming their corporate law and judicial infrastructure from the ground up.

States Compete, Shareholders Win

Competition, especially in a federalist system, is healthy. It forces Delaware to improve or lose market share. It strengthens business codes in states across the country. It gives corporations and their shareholders genuine choice. Most importantly, it drives innovation in corporate law itself. States must continually evaluate which rules truly serve shareholders and companies.

History offers a cautionary parallel to Delaware's recent attempt to regain pole position. When New Jersey lost its corporate dominance to Delaware in 1913, the state tried to reverse course in 1917 by repealing most of the legislative reforms that had promoted a corporate flight to Delaware. These actions proved highly unsuccessful, permanently altering New Jersey's business-friendly reputation and showing that once trust in a legal environment erodes, it is difficult to restore.[100] SEC Chairman Paul Atkins observed in 2025, "the pressure on and alternatives to Delaware are growing."[101]

Improving a state's shareholder litigation environment — by raising the bar for frivolous suits, providing statutory clarity for directors and officers, and building specialized courts to handle complex disputes — attracts companies, drives economic growth, and ultimately creates more value for the investors these laws are meant to protect.

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[1] "Forming a Delaware Corporation," Delaware.gov.

[2] "2018-2019 Judicial Hellholes," ATR Foundation.

[3] Judicial Hellholes, "Delaware On Verge of Becoming Litigation Hotbed, Supreme Court Has Opportunity to Step In to Avoid This in Zantac Litigation," ATR Foundation, 6/20/24.

[4] McKinley, David "Federal Courts Turn Away Delaware's Redirected Merger Suits," Columbia Business Law Review, 01/07/20.

[5] Ibid.

[6] Data sourced from LexisNexis. 2/10/26.

[7] Cox, James D., Thomas, Randall S. and Bai, Lynn, "Shareholder Litigation in Delaware: An Empirical Investigation," Vanderbilt Law Review 78, 2025, Pg. 441.

[8] Id. at 486

[9] Kalia, Shubham, Ponnezhath, Maria and Arunasalam, Samrhitha, "Musk Seeks Tesla Shareholder Vote on Moving Incorporation to Texas," Reuters, 2/1/24.

[10] Davis, C., Fortney, J., Loseman, M., Sampas, G., Szteinbok, M., Mixon, M. H., Jr., & Weidner, C. (2025, December 23). *Delaware reinstates Musk's pay package, slashes $345 million fee award*. Gibson Dunn.

[11] AMC Networks Inc., "Definitive Proxy Statement (Schedule 14A)," U.S. Securities and Exchange Commission, 4/25/25, Pg. 39.

[12] Sphere Entertainment Co., "Preliminary Proxy Statement (Schedule 14A)," U.S. Securities and Exchange Commission, 4/3/25, Pg. 103.

[13] Ferris, S. P., T. Jandik, R. M. and Lawless, A. Makhija, et al. "Derivative Lawsuits as a Corporate Governance Mechanism: Empirical Evidence on Board Changes Surrounding Filings," Journal of Financial and Quantitative Analysis, Cambridge University Press, 3/2009, Pg. 143–65.

[14] U.S. Chamber of Commerce Institute for Legal Reform, "Economic Consequences: The Real Costs of U.S. Securities Class Action Litigation," 2/28/14, Pg. 2.

[15] Ibid. Pg. 19.

[16] Cassella S. and Rizzo, A.E., "Do Shareholders Gain from Their Right to Sue? Evidence from Federal Judge Turnover," 1/14/19, revised 1/25/22, Pg. 32.

[17] Cornerstone Research, "Overall Size of Securities Class Action Filings Reached New Heights in 2025," 1/28/26, Pg. 3.

[18] Ibid. Pg. 13.

[19] Ibid. Pg. 2.

[20] Pritchard, Adam C. and Erickson, Jessica M., "Opening Delaware's Black Box of Attorneys' Fees," Harvard Law School Forum on Corporate Governance, 3/19/25.

[21] U.S. Chamber Staff, "Setting the record straight on third-party litigation funding," U.S. Chamber of Commerce, 10/15/24.

[22] Standing Order Regarding Third-Party Litigation Funding Arrangements (D. Del. Apr. 18, 2022); *see also* Institute for Legal Reform, "Delaware Wants to Take a Closer Look at the TPLF Industry," U.S. Chamber of Commerce Institute for Legal Reform, 07/21/22.

[23] *Carlyle Inv. Mgmt., LLC v. Moonmouth Co*., 2015 WL 778846, at *8-9 (Del. Ch. Feb. 24, 2015); *see also* Pileggi, Francis, "The National Law Review's Delaware Corporate and Commercial Law Monitor [Volume 2, Edition 1]," The National Law Review, 01/17/26.

[24] See *Burkhart v. Genworth Financial, Inc*., 2024 WL 3888109, at *6 (Del. Ch. Aug. 21, 2024).

[25] Ibid. at *6.

[26] Ibid. *1, *7.

[27] Colo. Rev. Stat. § 13-16-126(7); Ga. Code Ann. § 9-11-26(b)(2.1)(A); Ind. Code § 24-12-11; Kan. Stat. Ann. § 60-226(b); La. Rev. Stat. § 9:3580.12(B); Mont. Code Ann. § 31-4-108; 12 Okla. Stat. § 3226(B)(1)(c); W. Va. Code Ann. § 46A-6N-6. Wisconsin required disclosure of litigation funding agreements in 2018. *See* Wis. Code § 804.01(2)(bg).

[28] Supreme Court of Pennsylvania, Civil Procedural Rules Committee, Notice of Proposed Rulemaking, Proposed Amendment of Pa.R.Civ.P. 4003.2 (Feb. 10, 2026).

[29] Data sourced from LexisNexis. 3/19/26.

[30] Choi, S. J., Erickson, J. M., and Pritchard, A. C., "Is Delaware different? New empirical evidence on attorneys' fees in stockholder litigation," Harvard Law School Forum on Corporate Governance, 11/25/25; *see also* Tom Hals & Jonathan Stemple, "Court Upholds Blockbuster $267 Million Legal Fee Award in Dell Lawsuit, Reuters, 8/14/24.In December 2025, the Delaware Supreme Court reversed the Court of Chancery's ruling in the derivative lawsuit challenging Elon Musk's equity compensation plan, finding plaintiffs' were entitled to only $1 in nominal damages, vacating the $345 million fee award, and returning the matter to Court of Chancery to determine a new fee award. *See In re Tesla, Inc. Deriv. Litig.*, 2025 WL 3689114 (Del. Dec. 19, 2025).

[31] Bruce, G. V., Eichenberger, S., & Rodriguez, D. L. (2026, January 9). *Delaware corporate law at an inflection point—Delaware Supreme Court restores Tesla's 2018 performance-based equity award to Elon Musk*. The National Law Review.

[32] Cox, James D., Thomas, Randall S. and Bai, Lynn, "Shareholder Litigation in Delaware: An Empirical Investigation," Vanderbilt Law Review 78, 2025.

[33] Grzaslewicz, Barnaby and O'Connell, Tyler K., "Plaintiffs' Attorneys Awarded Fees and Costs in Section 225 Action for Obtaining a Substantial Benefit for the Corporation and its Stockholders," Morris James LLP, 2/1/23.

[34] Choi, S. J., Erickson, J. M., and Pritchard, A. C., "Is Delaware different? New empirical evidence on attorneys' fees in stockholder litigation," Harvard Law School Forum on Corporate Governance, 11/25/25, Pg. 4.

[35] Prestipino, Gilda Sophie and Klausner, Michael, "Attorneys' Fee Awards in Delaware: Some Much-Needed Data to Calm the Waters," Harvard Law School Forum on Corporate Governance, 11/20/25.

[36] Grundfest, Joseph A. and Dor, Gal, "Lodestar Multipliers in Delaware and Federal Attorney Fee Awards," Rock Center for Corporate Governance at Stanford University, 5/1/25 revised 6/6/25, Pg. 1.

[37] Ibid. Pg. 4.

[38] Choi, S. J., Erickson, J. M., and Pritchard, A. C., "Is Delaware different? New empirical evidence on attorneys' fees in stockholder litigation," Harvard Law School Forum on Corporate Governance, 11/25/25.

[39] Cox, James D., Thomas, Randall S. and Bai, Lynn, "Shareholder Litigation in Delaware: An Empirical Investigation," Vanderbilt Law Review 78, 2025, Pg. 438.
[40] Id at Pg. 438.

[41] Id at Pg. 476.

[42] Markel, G., Fedner, S., Ferrari, G., Escobar, A., Morduchowitz, D., and Hulteng, M, "Judge Posner Called It a "Racket"," Seyfarth Shaw LLP, 06/17/22.

[43] Ibid.

[44] Cox, James D., Thomas, Randall S. and Bai, Lynn, "Shareholder Litigation in Delaware: An Empirical Investigation," Vanderbilt Law Review 78, 2025, Pg. 491.
[45] Ibid. (quoting *In re Walgreen Co. Stockholder Litig.*, 832 F.3d 718, 724 (7th Cir. 2016)).

[46] *In re Trulia, Inc. Stockholder Litig.*, 129 A.3d 884 (Del. Ch. 2016); *see also* Walsh, P. J., Jr., and Sims, A. R, "Trulia and the Demise of "Disclosure Only" Settlements in Delaware," Potter Anderson & Corroon LLP, 02/2016.

[47] Markel, G., Fedner, S., Ferrari, G., Escobar, A., Morduchowitz, D., and Hulteng, M, "Judge Posner Called It a "Racket"," Seyfarth Shaw LLP, 06/17/22.

[48] Ibid.

[49] Uribe, Alice and Scism, Leslie, "Companies Are Paying a Lot More to Insure Their Directors and Officers," The Wall Street Journal, 6/21/20.

[50] Uribe, Alice and Scism, Leslie, "Companies Are Paying a Lot More to Insure Their Directors and Officers," The Wall Street Journal, 6/21/20.

[51] Thomson Reuters, "What are articles of incorporation? What should be included?", 5/14/24.

[52] Simmerman, Amy et. al, "Delaware's Status as the Favored Corporate Home: Reflections and Considerations," Harvard Law School Forum on Corporate Governance, 5/08/24.

[53] Ibid.

[54] Hals, Tom, "In Tesla's wake, more big companies propose 'Dexit' to depart Delaware," Reuters, 5/14/25.

[55] Laster, Travis J., "An Eras Tour of Delaware Corporate Law," 5/9/25, Pg. 3

[56] Ibid. pg. 4

[57] Quillen, William T and Hanrahan, Michael, "A Short History of the Court of Chancery," Delaware Courts, 1993.

[58] Casarino, Marc S., and Nelson, Matthew C., "Why Delaware Remains the 'First State' for Business Incorporation," Kennedys Law, 1/28/25.

[59] Sphere Entertainment Co., "Preliminary Proxy Statement (Schedule 14A)," U.S. Securities and Exchange Commission, 4/3/25, Pg. 101-102.

[60] State of Delaware, "The Delaware Way: Deference to the Business Judgment of Directors Who Act Loyally and Carefully," Delaware Division of Corporations.

[61] Sphere Entertainment Co., "Preliminary Proxy Statement (Schedule 14A)," U.S. Securities and Exchange Commission, 4/3/25, Pg. 101-102.
[62] Choi, S. J., Erickson, J. M., and Pritchard, A. C., "Is Delaware different? New empirical evidence on attorneys' fees in stockholder litigation," Harvard Law School Forum on Corporate Governance, 11/25/25, Pg. 3.

[63] *West Palm Beach Firefighters' Pension Fund v. Moelis & Co.*, 311 A.3d 809 (Del. Ct. Ch. 2024).https://law.justia.com/cases/delaware/court-of-chancery/2024/c-a-no-2023-0309-jtl-0.html

[64] *Moelis & Co. v. West Palm Beach Firefighters' Pension Fund*, 2026 WL 184868 (Del. Jan. 20, 2026).
[65] Prestipino, Gilda Sophie, "Delaware Supreme Court Reverses Invalidation of Stockholder Agreement, Finding Belated Facial Challenge Was Barred by Laches," Harvard Law School Forum on Corporate Governance, 2/24/26.

[66] Tornetta v. Musk, 310 A.3d 430 (Del. Ch. 2024) ("Tornetta I"); *Tornetta v. Musk*, 326 A.3d 1203 (Del. Ch. 2024) ("Tortnetta II").

[67] Weinstein, G., Richter, P., and Epstein, S., "Implications of Tornetta v. Musk II for executive compensation and for stockholder ratification," Harvard Law School Forum on Corporate Governance, 02/15/25.

[68] Hirsch, D. R., and Lieberman, S., "No backsies: Tornetta v. Musk holds that fiduciary duty breaches in a conflicted controlling stockholder transaction are not "fixed" by a shareholder vote," Sadis & Goldberg LLP, 01/10/25.

[69] Matthew Korfhage & Hannah Edelman, "Tesla to Move from Delaware to Texas, Reinstate Musk's Pay Deal Voided by Judge," Delaware News Journal, 6/13/24.

[70] *In re Tesla, Inc. Deriv. Litig.*, 2025 WL 3689114 (Del. Dec. 19, 2025).

[71] Davis, C., Fortney, J., Loseman, M., Sampas, G., Szteinbok, M., Mixon, M. H., Jr., & Weidner, C. (2025, December 23). *Delaware reinstates Musk's pay package, slashes $345 million fee award*. Gibson Dunn.

[72] *Palkon v. Maffei*, 311 A.3d 255 (Del. Ch. 2024); *see also* Wuertz, A. M., Teti, J., MacDonald, S., and Fouad, M., "Palkon v. Maffei: Court permits suit challenging conversion to Nevada corporation," Hogan Lovells, 06/18/24.

[73] *Maffei v. Palkon*, 339 A.3d 705 (Del. 2025); *see also* Weinstein, G., Richter, P., & Epstein, S., "Delaware Supreme Court overturns Tripadvisor decision, providing a clearer path for reincorporation," Harvard Law School Forum on Corporate Governance, 02/27/25.

[74] *In re Match Group, Inc. Derivative Litig*., 315 A.3d 446 (Del. 2024).

[75] *In re Match Grp., Inc. Deriv. Litig*., 2022 WL 3970159 (Del. Ch. Sept. 1, 2022), *affirmed in part, reversed in part and remanded by In re Match Group, Inc. Derivative Litig*. 315 A.3d 446 (Del. 2024).

[76] Mayer Brown, "*In re* Match Group, Inc.: Delaware Supreme Court Clarifies Standard of Review for Controlling Stockholder Transactions," Mayer Brown Publications, 5/24/24

[77] See Robert Anderson IV, "The Delaware Trap: An Empirical Study of Incorporation Decisions," Harvard Law School Forum on Corporate Governance, 3/11/2017. See also William L. Cary, Federalism and Corporate Law: Reflections upon Delaware, 83 Yale L.J. 663,663-68 (1974) and Ralph K. Winter, Jr., State Law, Shareholder Protection, and the Theory of the Corporation, 6 J. Legal Stud. 251, 254- 66 (1977).

[78] Barnard et. al, "Texas Enacts New Pro-Business Law to Expand Its Appeal as a Hub for Business Incorporations," Akin Gump, 5/23/2025.

[79] Latham Watkins, "A New Era of Corporate Law in Texas," 9/23/25.

[80] See ibid. See also Holmes et. Al, "Lone Star Governance: Recent Amendments to the Texas Corporate Statute," 6/17/25.

[81] See supra note 67. See also Baker Botts, "Texas Raises the Bar on Shareholder Proposals," 9/22/25.

[82] Andrew Zeve, Andrew and Shuchart, Stephen "Texas Business Courts: What You Need to Know," White & Case, 9/9/24.

[83] Latham Watkins, "A New Era of Corporate Law in Texas," 9/23/25.

[84] Ibid.

[85] Annunziata et. al, "In re Match Group, Inc.: Delaware Supreme Court Clarifies Standard of Review for Controlling Stockholder Transactions," Mayer Brown, 5/10/24.

[86] See Kamal, Sameea, "Texas Business Court Grows Up, Prepares for Its First Jury Trial," Bloomberg Law, 2/6/26.

[87] See Michal Barzuza, Michal, "Nevada v. Delaware: The New Market for Corporate Law, ECGI Working Paper No. 677/2251," 2024, Pg. 16–18.

[88] Ibid, Pg. 16.

[89] Ibid, Pg. 17.

[90] Ibid, Pg. 18.

[91] Gabriel, Andrew S., "AB 239: Notable Changes to Title 7 of Nevada Revised Statutes Governing Business Entities," McDonald Carano.

[92] See Executive Committee for the State Bar of Nevada, Business Law Section, "Re: 2025 Assembly Bill 239, as Amended by Amendment No. 289," 05/14/25. See also Bell et. al, "Nevada Amends Corporate Law to Attract Incorporations," Harvard Law School Forum on Corporate Governance, 6/4/25.

[93] See Jetley, Guarav and Mulford, Nick, "DExit: Reincorporation Data Seem to Support the Hype," Harvard Law School Forum on Corporate Governance, 9/23/25.

[94] Orr, John, "Changes in Delaware Corporate Law: A D&O Liability and Insurance Perspective," Harvard Law School Forum on Corporate Governance, 5/1/25.

[95] Ibid.

[96] Meltzer et. al, "DExit ramp: A guide to Delaware's corporate law overhaul," Norton Rose Fulbright, April 2025.

[97] Lindemuth et. al, “Delaware Supreme Court Hears Constitutional Challenge to SB 21: What Boards and Counsel Need to Know,” Akin Gump, 11/10/25

[98] Ibid.

[99] Sherman, Scott and Neely, Edgar, “Del. Justices' Upholding of SB 21 Gives Cos. Needed Clarity,” Law360, March 6, 2026.

[100] See Supra note 61. The writing has also been on the wall for some time. See JDSupra,“SB 75 May Prove To Be Delaware’s Seven Sisters,” 5/14/15.

[101] Atkins, Paul S., “Keynote Address at the John L. Weinberg Center for Corporate Governance’s 25th Anniversary Gala,” U.S. Securities and Exchange Commission, 10/9/25.