

**DELAWARE’S BUSINESS COURTS:  
THE COMPLEMENTARY NATURE OF THE COURT OF CHANCERY  
and the SUPERIOR COURT’S COMPLEX COMMERCIAL  
LITIGATION DIVISION<sup>1</sup>**

**I. Introduction**

As the home of so many of the nation’s business entities, Delaware sees a corresponding share of their disputes in its courts. And given the United States Supreme Court’s recent decision in *Daimler AG v. Bauman*, Delaware companies are now “at home” (for jurisdictional purposes) in fewer places, further underscoring the national importance of Delaware’s business courts.<sup>2</sup>

Over the years, the Delaware Court of Chancery has established itself as a premier forum for the litigation of business disputes, including primarily those in which equitable relief is sought. The Delaware Superior Court also has established its Complex Commercial Litigation Division (“CCLD”) as the complementary business court “at law.” As described by one of its members (soon after its formation) CCLD was intended as an “accent” to the Court of Chancery, thus ensuring that Delaware’s historic split between law and equity would not operate to the disadvantage of its corporate and other business constituents.<sup>3</sup>

In the years since CCLD was established, however, the two courts have functioned more as partners, working in tandem where their jurisdiction overlaps and also where it does not. For example, cases arising under asset purchase agreements are typically brought in CCLD. Controversies involving stock purchase agreements are more often resolved in Chancery.<sup>4</sup> Directors and officers’ insurance coverage disputes are now (apparently) the exclusive province of CCLD, while the underlying fiduciary duty claims are at the center of the equitable jurisdiction of Delaware’s Chancery Court.

The statutes and cases that define their jurisdiction suggest additional, potential “synergies” between these two, judicial siblings.

---

<sup>1</sup> By C. Malcolm Cochran, Jason J. Rawnsley, and Katharine C. Lester. Mr. Cochran is a director of Richards, Layton & Finger, P.A., in Wilmington Delaware. His practice is focused on the trial of complex civil cases in the Delaware courts. Mr. Cochran may be reached at [cochran@rlf.com](mailto:cochran@rlf.com). Mr. Rawnsley and Ms. Lester are associates in Richards, Layton & Finger’s Litigation Department. The views expressed herein are those of the authors and do not necessarily represent views of the Firm or its clients.

<sup>2</sup> *Daimler AG v. Bauman*, 134 S.Ct. 746 (2013).

<sup>3</sup> See Hon. Fred S. Silverman, *et al.*, The Superior Court Complex Commercial Litigation Division (May 20, 2011) (slides accompanying presentation at the spring meeting of the United States Law Firm Group’s Litigation Practice Committee).

<sup>4</sup> See, e.g., *Osram Sylvania Inc. v. Townsend Ventures, LLC*, 2013 WL 6199554 (Del. Ch. Nov. 19, 2013); *Transdigm Inc. v. Alcoa Global Fasteners, Inc.*, 2013 WL 2326881 (Del. Ch. May 29, 2013).

This article reviews the ways in which the two courts complement one another, by (i) comparing their jurisdictional underpinnings, (ii) reviewing their procedures, and (iii) discussing selected cases in which the interdependent approach now being applied by the courts has been highlighted. The article concludes with a brief consideration of other areas in which the two courts might serve to augment one another, in the service of Delaware's corporate (and other business) citizens.

## II. Jurisdiction of the Delaware Court of Chancery

The Court of Chancery's jurisdiction primarily embraces cases in which equitable claims are asserted and equitable remedies sought.<sup>5</sup> Absent special statutory authorization, the Court of Chancery lacks jurisdiction "to determine any matter wherein sufficient remedy may be had by common law, or statute, before any other court or jurisdiction of this State."<sup>6</sup> Unlike Superior Court, the Court of Chancery has statutory authority to grant injunctive relief.<sup>7</sup>

The Court of Chancery also has special statutory jurisdiction over certain kinds of disputes. For instance, Section 111 of Delaware's General Corporation Law ("GCL") vests jurisdiction in the Court of Chancery "to interpret, apply, enforce or determine the validity of" various corporate instruments, including certificates of incorporation, by laws, stock purchase agreements, proxies, and merger agreements (among others). The statute is not exclusive, however (such actions "may" be brought in the Court of Chancery), thus leaving open the potential for these cases to be brought in CCLD.<sup>8</sup> The Court of Chancery likewise has non-exclusive jurisdiction over actions to "interpret, apply or enforce the provisions of" partnership agreements and limited liability company agreements, again leaving open the potential for such actions to be filed in CCLD, when equitable remedies are not sought.<sup>9</sup> The Court of Chancery has exclusive jurisdiction, however, over "all actions for advancement . . . or indemnification" brought against a Delaware corporation by or on behalf of its officers and directors, yet (as will be seen) has been found to lack the authority to determine coverage issues in the context of D&O insurance disputes.<sup>10</sup> Chancery also has sole jurisdiction over guardianship, trust, and estate matters, because the fiduciary rights and duties that arise in those contexts are considered equitable rights.<sup>11</sup>

---

<sup>5</sup> 10 *Del. C.* § 341.

<sup>6</sup> 10 *Del. C.* § 342.

<sup>7</sup> 10 *Del. C.* § 343.

<sup>8</sup> 8 *Del. C.* § 111(a).

<sup>9</sup> See 6 *Del. C.* §§ 17-111, 18-111.

<sup>10</sup> See, e.g., *Desai v. RSUI Indemnity Co.*, C.A. No. 9199-VCG, p. 24 (Del. Ch. Feb. 24, 2014) (TRANSCRIPT).

<sup>11</sup> See, e.g., *Christiana Town Ctr., LLC v. New Castle Cnty.*, 2003 WL 21314499, at \*3 (Del. Ch. June 6, 2003); *Cummings v. Estate of Lewis*, 2013 WL 979417, at \*3-4 (Del. Ch. Mar. 14, 2013).

Importantly, while Delaware’s Declaratory Judgment Act vests the Delaware courts with the power, “within their respective jurisdictions . . . to declare rights, status and other legal relations whether or not further relief is or could be claimed,”<sup>12</sup> it is well established that the Court of Chancery does not have subject matter jurisdiction over claims for declaratory relief, in the absence of equitable jurisdiction—which typically requires the presence of a claim for equitable relief.<sup>13</sup>

It is also important to note that juries are generally not permitted in the Court of Chancery<sup>14</sup> and that Chancery is generally without jurisdiction to enter punitive damage awards, except “exemplary” damages where expressly permitted by statute, such as in cases arising under the Delaware Uniform Trade Secrets Act.<sup>15</sup>

#### A. *Procedural Considerations in the Court of Chancery*

Cases in the Court of Chancery are assigned to one of the five members of the Court, until conclusion. An experienced Chancery Court practitioner has been heard to remark that (assuming a viable claim) the Court will move as fast or as slow as the litigants and the controversy may require. Thus, and while there is an extensive set of written “guidelines,” generally parties in the Court of Chancery are expected to negotiate and agree (subject to Court approval) on matters including case schedule, expert discovery protocols, e-discovery protocols, the production of confidential information and others.<sup>16</sup> Assuming the appropriate showing (generally requiring the presence of imminent, irreparable harm), expedited proceedings are available; indeed, the Court will

---

<sup>12</sup> 10 *Del. C.* § 6501.

<sup>13</sup> *See Reader v. Wagner*, 2007 WL 3301026, at \*1 (Del. Ch. Nov. 1, 2007) (“It is well settled that the Declaratory Judgment Act does not independently confer jurisdiction on this court. As Chancellor Quillen said . . . , this court will not exercise jurisdiction in a declaratory judgment action unless the complaint reflects ‘some special, traditional basis for equity jurisdiction.’”).

<sup>14</sup> *See, e.g., Paron Capital Mgmt., LLC v. Crombie*, 2012 WL 214777, at \*1 (Del. Ch. Jan. 24, 2012); *In re Del Monte Foods Co. S’holders Litig.*, 2010 WL 5550677, at \*2 (Del. Ch. Dec. 31, 2010). However, a little used provision exists that authorizes the Court of Chancery to refer matters of fact in dispute to Superior Court for trial. 10 *Del. C.* § 369; *see, e.g., Norm Gershman’s Things to Wear, Inc. v. Dayton*, 1992 WL 368587, at \*2 (Del. Ch. Dec. 11, 1992) (“I furthermore have the discretion to grant a jury trial on the liquated damages claim should I determine that it is warranted.”); *State v. Williams*, 1981 WL 96481, at \*1 (Del. Ch. Dec. 7, 1981) (referral to Superior Court for jury trial a matter of discretion). This rarely exercised option, described as a “cumbersome procedure,” *McMahon v. New Castle Assocs.*, 532 A.2d 601, 607–08 (Del. Ch. 1987), could perhaps find favor in the CCLD.

<sup>15</sup> *See, e.g., Touch of Italy Salumeria & Pasticceria, LLC v. Bascio*, 2014 WL 108895, at \*8 (Del. Ch. Jan. 13, 2014) (“[T]his Court has only that jurisdiction enjoyed by the English Court of Chancery in 1776, as supplemented by the General Assembly, and neither source permits the Court to award exemplary or punitive damages.”); *see* 6 *Del. C.* § 2003(b) (authorizing the court to award exemplary damages for willful and malicious appropriation of trade secrets).

<sup>16</sup> Guidelines to Help Lawyers Practicing in the Court of Chancery, <http://courts.delaware.gov/chancery/docs/CompleteGuidelines2014.pdf>.

err on the side of more expedited proceedings, rather than less, in the face of a colorable showing of imminent, irreparable harm.

Masters are available in Chancery to address discovery and other issues, though more often than not the members of the court address discovery and other interlocutory issues themselves. There is a robust, court-sponsored mediation program in which members of the court not assigned to a case may serve as mediators, assuming agreement to the process by the parties, or assignment by court order (in certain cases).

### **III. Jurisdiction of the Superior Court**

By contrast, the Superior Court of the State of Delaware is a court of law, with the power to award the full range of legal remedies (inclusive of punitive and other damages) and to hold jury trials, where properly requested.<sup>17</sup> The Superior Court has “jurisdiction of all causes of a civil nature, real, personal and mixed, at common law,” as well as over criminal matters.<sup>18</sup> Further, under the Declaratory Judgment Act, the Superior Court is empowered to “declare rights . . . and other legal relations whether or not further relief is or could be claimed.”<sup>19</sup> But traditional forms of equitable relief are not available. Thus, as with the Court of Chancery, the Superior Court is sometimes called upon to evaluate the adequacy of a remedy “at law” in determining where jurisdiction properly lies.<sup>20</sup>

In the Superior Court, special procedures govern the assignment of complex commercial and business cases to CCLD.

#### *A. Procedural Considerations in CCLD*

Three kinds of cases may be filed in the CCLD: (i) those involving a claim of \$1 million or more, (ii) those where an exclusive choice of court agreement exists, and (iii) those that the President Judge of the Superior Court designates for the CCLD.<sup>21</sup> This third prong allows for flexibility regarding cases eligible for the CCLD (*e.g.*, where the plaintiff fails to designate the case for the CCLD and the amount in controversy is unclear). As its name implies, the CCLD exists for the resolution of business disputes: claims for personal, physical or mental injury, mortgage foreclosure actions, mechanics’ lien actions, and condemnation proceedings are ineligible.<sup>22</sup>

---

<sup>17</sup> Super. Ct. Civ. R. 38, 39.

<sup>18</sup> Del. Const. art. IV, § 7.

<sup>19</sup> 10 Del. C. § 6501.

<sup>20</sup> See *Cartanza v. Cartanza*, 2012 WL 1415486, at \*5 n.67 (Del. Super. Ct. Apr. 16, 2012).

<sup>21</sup> See Admin. Directive No. 2010-3 (Del. Super. Ct. Apr. 26, 2010), available at [http://courts.delaware.gov/Superior/pdf/Administrative\\_Directive\\_2010-3.pdf](http://courts.delaware.gov/Superior/pdf/Administrative_Directive_2010-3.pdf) (last visited Apr. 2, 2014).

<sup>22</sup> See *id.*

At least initially, either party can designate a case for the CCLD by marking it on the case information sheet. A party may oppose by motion filed before the Rule 16 scheduling conference.<sup>23</sup>

CCLD cases are assigned to one of a panel of four judges, appointed by the President Judge.<sup>24</sup> Once assigned, the CCLD panel judge remains with the case through final disposition, even if the judge rotates off the panel.<sup>25</sup>

As in the federal system, trial dates are firmly fixed during an early Rule 16 scheduling conference, scheduled after all responsive pleadings have been filed. The panel judges will seek to schedule cases so as not to conflict with their criminal docket. At the Rule 16 conference, the parties will also construct a case management order<sup>26</sup> which will establish, among other things, a procedure for handling discovery disputes, dispositive motions, electronic discovery and early mandatory disclosures. The parties have flexibility in deciding on a case management order, e-discovery plan, and protocols for expert discovery and the inadvertent production of documents.<sup>27</sup>

The court's standard form of e-discovery plan requires that parties meet and confer three weeks before the first scheduling conference, and submit their plan two weeks before the conference. Once parties agree on an e-discovery plan, two "safe harbors" apply: (1) they may resume regular document destruction procedures not covered by the e-discovery plan; and (2) inadvertent production of electronically stored information shall not constitute a waiver of attorney-client privilege or work-product protection.<sup>28</sup>

The court's standard expert discovery protocol sets dates for the identification and disclosure of expert testimony and depositions. To the extent the parties cannot agree on a location for the depositions, they are required to be taken in Wilmington, Delaware.<sup>29</sup>

#### **IV. An Interdependent Approach**

Decisions from the Court of Chancery have focused on the complementary role played by the CCLD. Thus, in *Massachusetts Mutual Life Insurance Co. v. Certain Underwriters at Lloyd's of London*, Vice Chancellor J. Travis Laster considered what (at

---

<sup>23</sup> *Id.*

<sup>24</sup> See Admin. Directive No. 2013-3 (Del. Super. Ct. May 1, 2013), available at [http://courts.delaware.gov/Superior/pdf/Administrative\\_Directive\\_2013\\_3.pdf](http://courts.delaware.gov/Superior/pdf/Administrative_Directive_2013_3.pdf) (last visited Apr. 2, 2014).

<sup>25</sup> See Admin. Directive No. 2010-3 (Del. Super. Ct. Apr. 26, 2010), available at [http://courts.delaware.gov/Superior/pdf/Administrative\\_Directive\\_2010-3.pdf](http://courts.delaware.gov/Superior/pdf/Administrative_Directive_2010-3.pdf) (last visited Apr. 2, 2014).

<sup>26</sup> Example available at [http://courts.delaware.gov/Superior/pdf/CCLD\\_sample\\_case\\_mgt\\_order\\_rev\\_2011.pdf](http://courts.delaware.gov/Superior/pdf/CCLD_sample_case_mgt_order_rev_2011.pdf) (last visited Apr. 2, 2014).

<sup>27</sup> See Admin. Directive No. 2010-3 (Del. Super. Ct. Apr. 26, 2010), available at [http://courts.delaware.gov/Superior/pdf/Administrative\\_Directive\\_2010-3.pdf](http://courts.delaware.gov/Superior/pdf/Administrative_Directive_2010-3.pdf) (last visited Apr. 2, 2014).

<sup>28</sup> Available at [http://courts.delaware.gov/superior/pdf/cclid\\_appendix\\_b.pdf](http://courts.delaware.gov/superior/pdf/cclid_appendix_b.pdf) (last visited Apr. 2, 2014).

<sup>29</sup> *See id.*

its core) was an insurance coverage dispute characterized as a claim for “equitable apportionment” of defense costs between two, insurance “towers.”<sup>30</sup> But the court saw the dispute as one in which “a docked equitable apportionment tail [was] wagging a very large and complex insurance coverage dog.”<sup>31</sup> Having focused on the nature of the controversy, as opposed to the labels applied by the litigants (neither side challenged jurisdiction in Chancery), the court *sua sponte* dismissed the case, in favor of “its natural home in Superior Court.”<sup>32</sup> In so doing, the Vice Chancellor noted that jurisdiction over contribution claims is concurrent, but that sufficient remedy could be had at law.<sup>33</sup> The court then expanded on Chancery’s effective partnership in such matters with CCLD:

The availability of the Superior Court’s Complex Commercial Litigation Division further ensures that a remedy in that court will be “as practical to the ends of justice and to its prompt administration as the remedy in equity.” The Complex Commercial Litigation Division offers special procedures designed to ensure that cases are handled expeditiously. The judges currently assigned to the Division have significant experience with complex insurance disputes. In noting the availability of the Division, I do not presume to pre-empt the President Judge’s discretionary decision over how to assign the case. The point is simply that complexity is no bar to the adequacy of a legal remedy in Superior Court. The Superior Court historically has handled many complex insurance cases, and the Complex Commercial Litigation Division is certainly up to the task.<sup>34</sup>

In the end, the court in *Massachusetts Mutual* observed that the CCLD could return the favor, “if, for some reason, the Superior Court determines that its powers at law are inadequate” by transferring back to Chancery for the imposition of equitable relief (under Delaware’s transfer statute, 10 *Del. C.* § 1902), or by the temporary appointment of a Superior Court judge as a temporary member of the Court of Chancery, under procedures specified in the Delaware Constitution.<sup>35</sup>

Nor should the clean-up doctrine, which allows the Court of Chancery to exercise jurisdiction over legal features of a complaint once it has found equitable jurisdiction, be used when complex litigation that otherwise falls under the jurisdiction of Superior Court

---

<sup>30</sup> *Mass. Mut. Life Ins. Co. v. Certain Underwriters at Lloyd’s of London*, 2010 WL 3724745, at \*1 (Del. Ch. Sept. 24, 2010).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *See id.* at \*3–4.

<sup>34</sup> *Id.* at \*4 (footnotes and citations omitted); *see also Cornell Glasgow, LLC v. LaGrange Props., LLC*, 2011 WL 1451840, at \*2 (Del. Ch. Apr. 4, 2011) (“[D]efendants are not prejudiced by the transfer, as the Complex Commercial Litigation Division of the Superior Court can expedite and accelerate the proceedings if needed.”).

<sup>35</sup> *Id.*

is the center of the dispute.<sup>36</sup> In *City of Roseville Employees' Retirement Sys. v. Ellison*, the defendants, Oracle Corporation and its directors and officers, filed a third-party complaint against their insurer for a declaratory judgment of coverage, since the structure for the settlement of the underlying derivative dispute depended on the insurer's coverage of the fee award.<sup>37</sup> Vice Chancellor Laster declined to use the clean-up doctrine to retain jurisdiction over a matter that he regarded as belonging in Superior Court, since "[t]he clean-up doctrine is largely one of efficiency. The insurance coverage issues here are a separate and distinct dispute."<sup>38</sup>

A similar analysis and outcome can be found in *Desai v. RSUI Indemnity Co.*, in which the plaintiffs (former directors and officers of the bankrupt Universal Health Care Group who were under investigation by the U.S. Attorney's office) characterized the claim as one for advancement of criminal defense costs under Section 145(k) of the GCL, which assigns exclusive jurisdiction of such disputes to the Court of Chancery.<sup>39</sup> Again, Vice Chancellor Glasscock focused on the essence of the controversy—a claim for advancement not against the company but against the D&O carrier—and concluded that the claim did not belong in Chancery under 145(k) but instead in the Superior Court as an insurance coverage dispute. In transferring the case, which has since been assigned to the CCLD, the Vice Chancellor noted that "Superior Court is readily able to provide expedited relief, as appropriate."<sup>40</sup>

Then Vice Chancellor Strine likewise transferred an insurance coverage case, *Viking Pump, Inc. v. Century Indemnity Co.*,<sup>41</sup> from the Court of Chancery to the Superior Court with instructions that the parties immediately request that the President Judge of the Superior Court designate the matter for the CCLD. The request was promptly granted, and the case was filed in Superior Court as a CCLD matter several days later.<sup>42</sup>

## V. Areas of Further Complement

As is the case with most siblings, Chancery and CCLD currently share well in some areas, and perhaps (with the help of creative litigants) could expand their complementary relationship in others. Existing law offers several opportunities in this regard.

---

<sup>36</sup> *Medek v. Medek*, 2008 WL 4261017, at \*3 (Del. Ch. Sept. 10, 2008).

<sup>37</sup> *City of Roseville Employees' Retirement Sys. v. Ellison*, C.A. No. 6900-CS (Del. Ch. Jan. 14, 2014) (TRANSCRIPT).

<sup>38</sup> *Id.* at 15:9–11.

<sup>39</sup> C.A. No. 9199-VCG (Del. Ch. Feb. 24, 2014) (TRANSCRIPT).

<sup>40</sup> *Id.* at 30:13–14.

<sup>41</sup> C.A. No. 1465-VCS (Del. Ch.).

<sup>42</sup> *See Viking Pump, Inc. v. Century Indemnity Co.*, C.A. No. N10C-06-141, D.I. 1 (Del. Super. Ct. June 15, 2010).

### A. *Temporary Appointment on Sibling Courts*

For example, the Delaware Constitution provides a unique procedure where the issues involved in a case span the jurisdiction(s) of separate courts: a judge of one court may receive temporary appointment as a judge of another.<sup>43</sup> For cases that originate in Superior Court but whose issues straddle the jurisdiction of both Superior Court and Chancery, the procedures of the CCLD maintain a rough parity with the procedures applicable in Chancery, thereby limiting the first-mover advantage to filing in either court—and any tactical, procedural disadvantage to which the party on the other side of the “v” may be vulnerable. Several CCLD cases thus far have seen Superior Court judges serving temporarily as Vice Chancellors, as well as Vice Chancellors serving as temporary Superior Court judges within the CCLD.<sup>44</sup> While complete procedural parity between the Court of Chancery and the CCLD may not be possible (or practical), the features of the CCLD process discussed above should give litigants confidence that complex commercial litigation in Delaware will be resolved expeditiously, on the merits, and by highly skilled “business court” judges, regardless of which court initially has responsibility for the controversy.

To request temporary assignment, the party or parties should first raise the possibility with the trial judge. The next step is to make the request, by letter or motion, to either the President Judge or the Chancellor, since they must agree to make the request for temporary appointment to the Chief Justice of the Delaware Supreme Court. Under the Delaware Constitution, the Chief Justice has ultimate responsibility for the decision.<sup>45</sup>

### B. *Punitive Damages and Juries*

In addition, the ability to seek punitive damages and to receive a jury trial can be important to litigants in complex disputes. As discussed above, controversies involving merger agreements, escrow claims, proxies, stock purchase agreements, LLC agreements and many others all are eligible (where equitable relief is not sought) for designation in CCLD, where juries and punitive damages (depending on the claims) are available. Thus, for example, in *Alta Berkeley VI C.V. v. Omneon, Inc.*, a case assigned to CCLD, the court interpreted a certificate of incorporation to find that an automatic conversion of preferred to common stock of defendant Omneon, Inc. was not a “Liquidation Event” as

---

<sup>43</sup> Del. Const. art. IV, § 13(2).

<sup>44</sup> *AFH Holding Advisory LLC v. Emmaus Life Sciences, Inc.*, 2013 WL 2149993, at \*1 n.1 (Del. Super. Ct. May 15, 2013) (“[Judge Johnston was] [d]esignated pursuant to Del. Const. art. IV, § 13(2) to sit on the Court of Chancery for the purpose of hearing and determining all issues in this case.”); *Anvil Holding Corp. v. Iron Acquisition Co.*, 2013 WL 2249655, at \*3 (Del. Ch. May 17, 2013) (“On January 2, 2013, Chief Justice Steele entered an order designating me to sit on the Superior Court to hear and determine all issues in *Iron Acquisition Co., Inc. et al. v. Anvil Holding Corp. et al.*, C.A. No. N12C-11-053. I then entered a stipulated order coordinating the Buyer’s cause of action in the Superior Court and Defendants’ cause of action in the Court of Chancery.”).

<sup>45</sup> Del. Const. art. IV, § 13(2)



defined in the company's charter. In so ruling, the court stated that "the rights of preferred stockholders as set forth in a certificate of incorporation are contractual rights" and analyzed "the applicable provisions of the C[ertificate] O[f] I[n]corporation] as contractual provisions . . . ." <sup>46</sup>

While (under Delaware law) punitive damages generally may not be awarded in breach of contract claims, in cases of extreme bad faith they can be available.<sup>47</sup> And Delaware juries have consistently been ranked in the top 10 for fairness, in reports commissioned by the U.S. Chamber of Commerce.<sup>48</sup> Procedures exist in the Superior Court for the assignment of special juries, comprised of jurors "qualified for special jury service by reason of education, training or experience."<sup>49</sup>

Accordingly, since punitive damages and juries are generally unavailable in Chancery, the temporary assignment provisions of the Delaware Constitution may be an option for litigants in CCLD, when seeking to combine equitable remedies with these traditional features available in the law courts. Conversely, where counterclaim plaintiffs in the Court of Chancery wish to avail themselves of punitive damage remedies, the temporary assignment provisions of the Delaware Constitution may also afford the seemingly disadvantaged defendant an opportunity to have its day in court (and, perhaps, a jury should it wish) on its exemplary damage counterclaim.

Either way, the partnership among Delaware's specialized business courts is certain to continue to evolve.

---

<sup>46</sup> *Alta Berkeley VI C.V. v. Omneon, Inc.*, 2011 WL 2923884, at \*1 (Del. Super. Ct. July 21, 2011).

<sup>47</sup> See, e.g., *Bhole, Inc. v. Shore Investments, Inc.*, 67 A.3d 444, (Del. 2013) (explaining that "[p]unitive damages are not recoverable for breach of contract unless the conduct also amounts independently to a tort"); *Tackett v. State Farm Fire & Cas. Ins. Co.* 653 A.2d 254, 265 (Del. 1995) ("[A]n insured may be entitled to the recovery of punitive damages in a bad faith action if the insurer's breach is particularly egregious.").

<sup>48</sup> U.S. Chamber of Commerce, 2010 Ranking the States Lawsuit Climate 2010: State Liability Systems Survey, p. 16, available at <https://www.uschamber.com/sites/default/files/documents/files/2010LawsuitClimateReport.pdf> (last visited Apr. 28, 2014).

<sup>49</sup> *Plan for the Selection of Special Juries*, ¶3, August 22, 1994, available at [http://courts.delaware.gov/Superior/pdf/special\\_jury\\_plan\\_1994.pdf](http://courts.delaware.gov/Superior/pdf/special_jury_plan_1994.pdf). See also 10 Del. C. § 4506 and Super. Ct. Civ. R. 40(b).