

For the First Time, Delaware Loses Number One Spot in Survey on Lawsuit Climate

September 20, 2017 | Client Update | 2-minute read

The state of Delaware fell from the top-ranked position to number 11 in the [most recent survey](#) on the business-friendly environment for lawsuits in state courts, ceding ground to the state of South Dakota. Delaware had been in the highest perch for the last ten surveys, going back to 2002 (the surveys were not conducted every year).

The 2017 Lawsuit Climate Survey: Ranking the States, was conducted for the U.S. Chamber Institute for Legal Reform to explore how U.S. businesses perceive the fairness and reasonableness of the states' liability systems. More than 1,300 in-house general counsel, senior litigators or attorneys and other senior executives at companies with at least \$100 million in annual revenues who indicated they had firsthand, recent litigation experience in the states they evaluated and were knowledgeable about litigation matters participated in the survey.

A state's litigation environment continues to be important, with 85% of respondents, compared to 75% in 2015, reporting that it is likely to impact major business decisions, such as where they locate or do business. Generally, 63% viewed the state court system to be excellent or pretty good, an increase from 50% in 2015.

States were graded in each of the following areas: enforcing meaningful venue requirements; overall treatment of tort and contract litigation; treatment of class action suits and mass consolidation suits; damages; proportional discovery; scientific and technical evidence; trial judges' impartiality; trial judges' competence; juries' fairness; and quality of appellate review. Delaware only ranked in the top five for scientific and technical evidence and trial judges' competence. In the area of judicial impartiality, Delaware's status fell from number two in 2015 to 15, and decreased from first to 26th place in the perception of treatment of class actions and mass consolidations.

According to news reports, there is speculation that the survey results may represent company frustrations after the Delaware legislature passed the ban on fee-shifting provisions, which some viewed as overriding judicial interpretations that had found it acceptable for nonstock corporations. Others believe that they reflect Delaware actions in some well-known appraisal cases, while another theory is simply that other states have passed more legal reforms aimed at limiting damages.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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