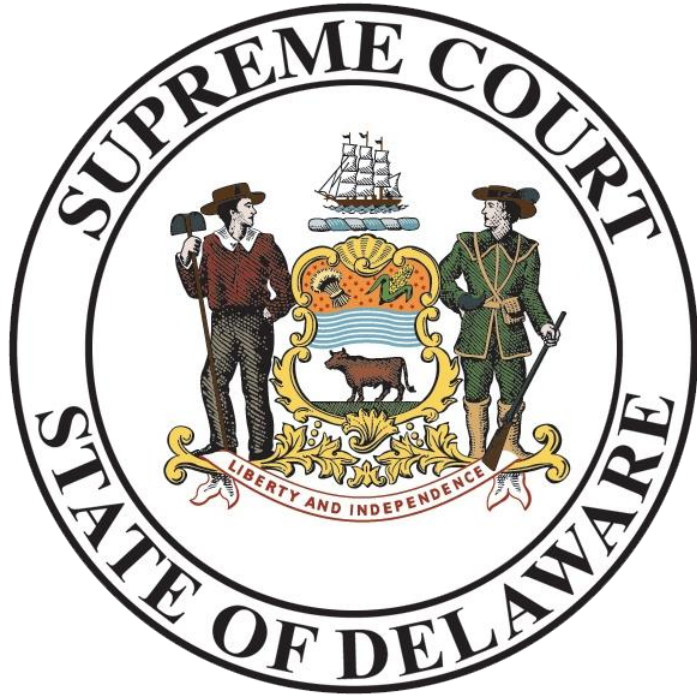
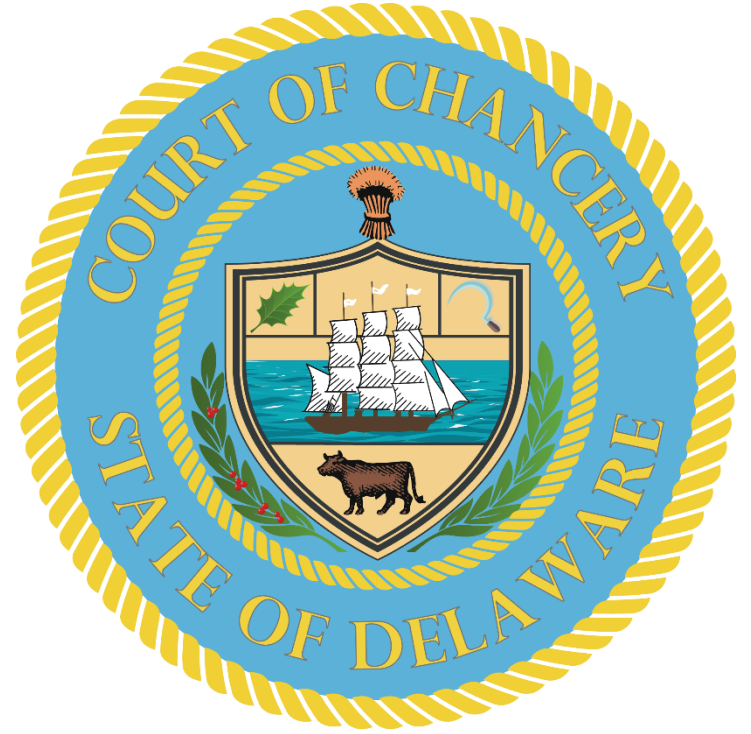


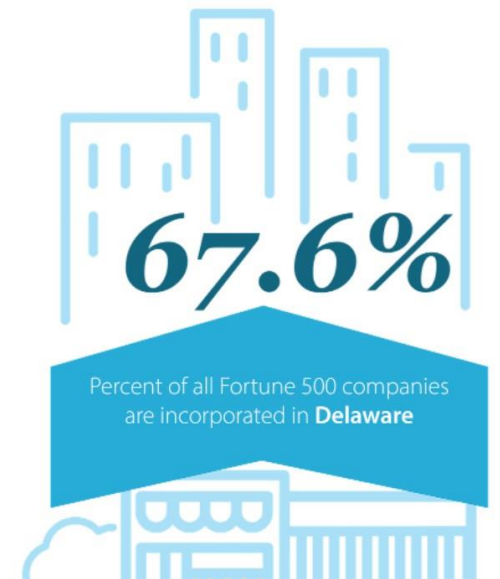
IBA M&A Conference
June 14, 2022
New York, New York



**DELAWARE
COURTS**
JUDICIAL BRANCH



Over 2/3 of the Fortune 500 Companies are incorporated in Delaware, thus many corporate disputes are litigated in Delaware



- Number of legal entities incorporated in Delaware as of 2021: **1.8 million**
- Business Entity Formations in 2021: **336,407**





DELAWARE JUDICIAL SYSTEM



SUPREME COURT



COURT OF
CHANCERY

SUPERIOR COURT

COURT OF
COMMON PLEAS

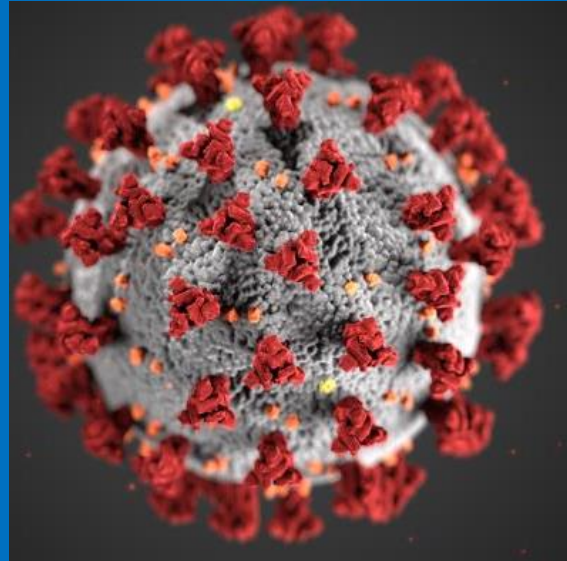
FAMILY COURT

JUSTICE OF THE
PEACE COURT

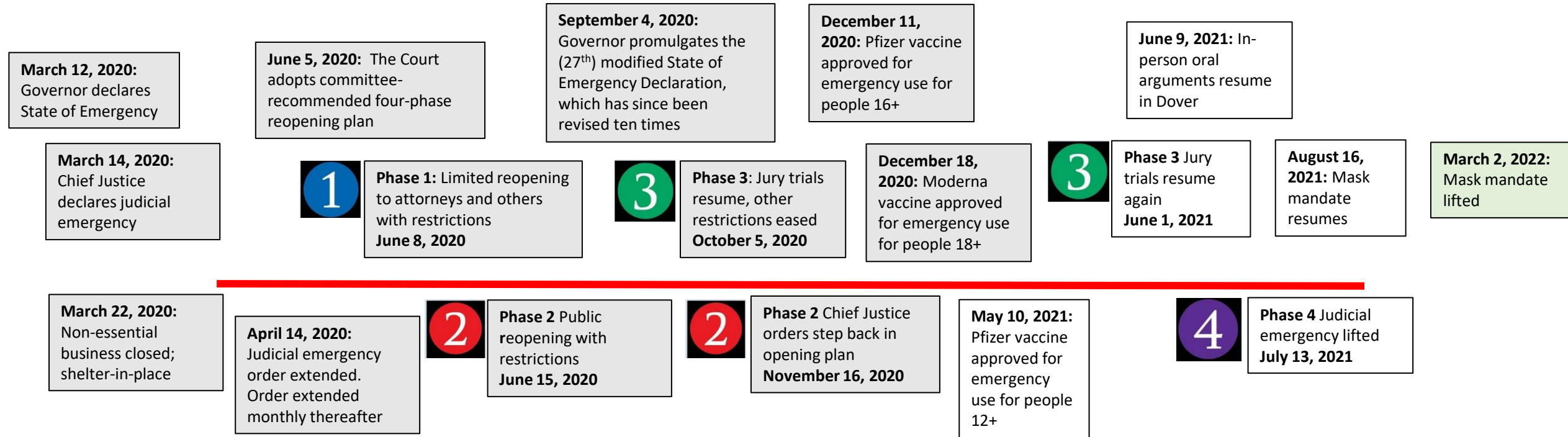
ALDERMAN'S COURT

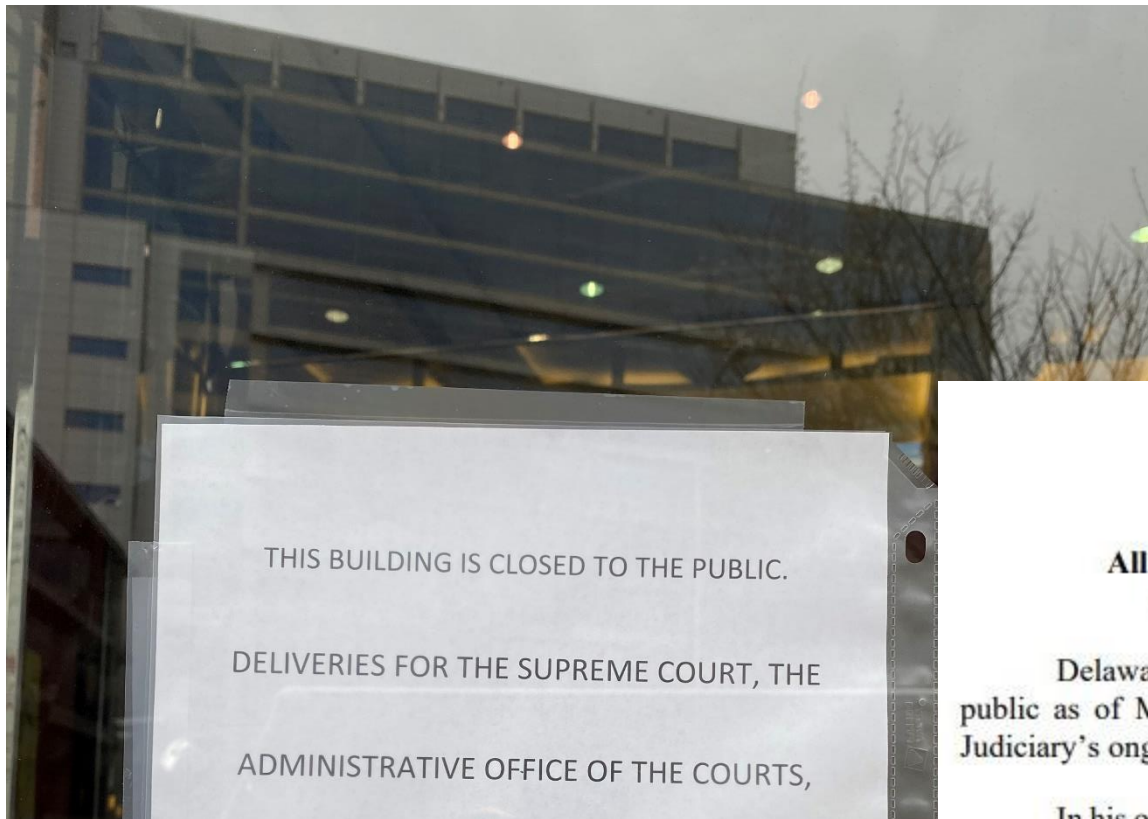
Our biggest challenge

- Coping with the Coronavirus.



Delaware's COVID State of Emergency





**FOR IMMEDIATE RELEASE
March 22, 2020**

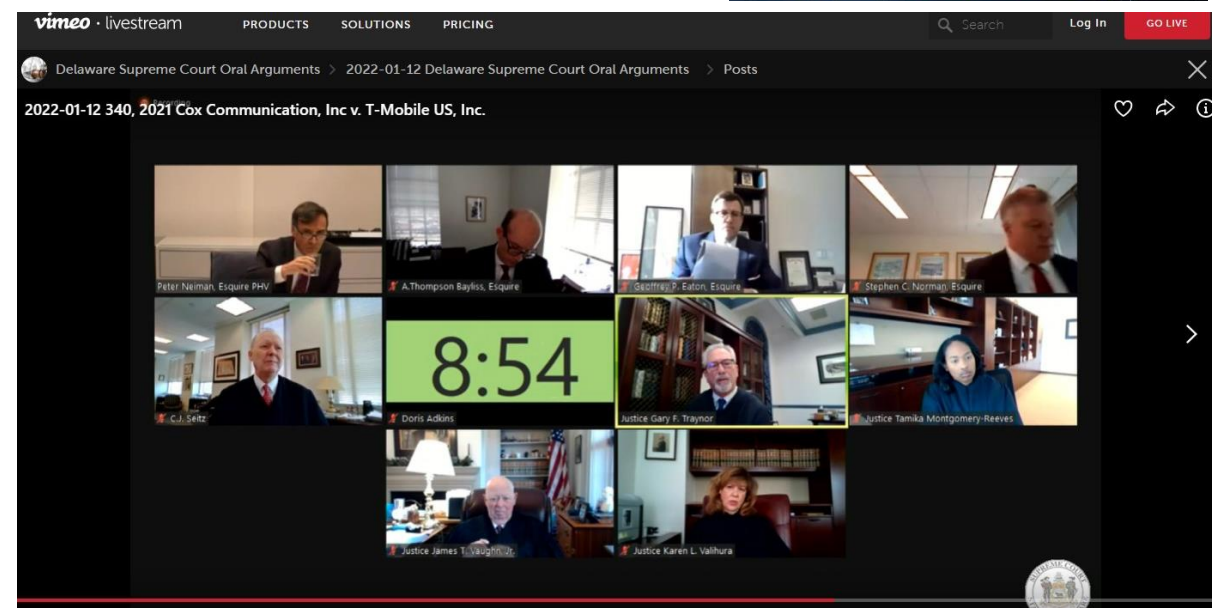
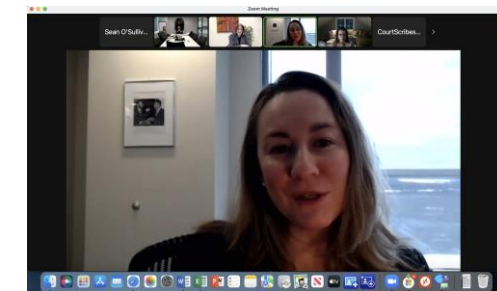
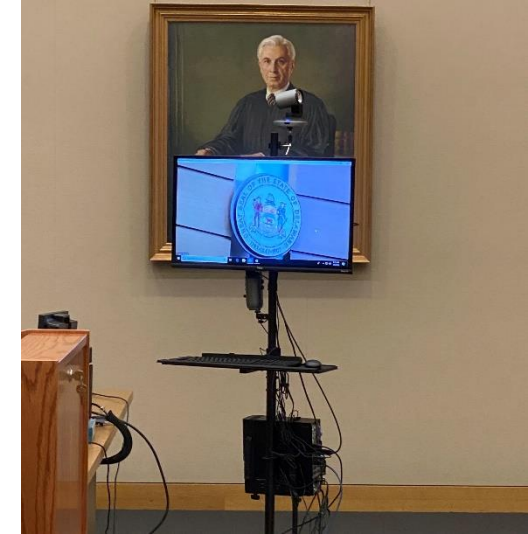
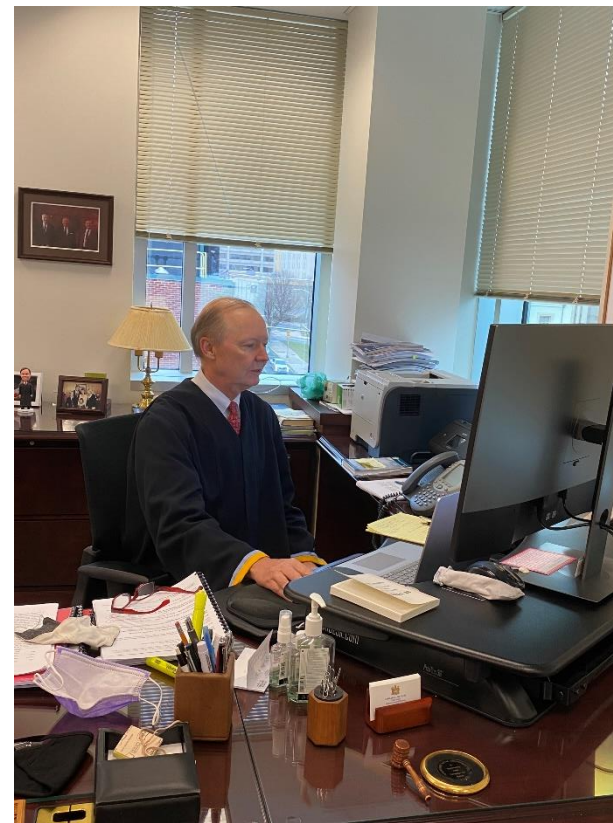
All Delaware Court facilities ordered closed to the public until April 15, 2020
Only limited exception is for 24-hour Justice of the Peace Court locations

Delaware Chief Justice Collins J. Seitz, Jr. today ordered all court facilities closed to the public as of Monday, March 23, 2020 until at least April 15, 2020 as part of the Delaware Judiciary's ongoing response to the COVID-19 outbreak.

In his order, the Chief Justice noted that the escalation of the spread of the COVID-19 virus

The Delaware Courts Never Closed

- Court employees moved to remote work when possible
- All courts moved to video proceedings in some form
 - The Courts' Judicial Information Center found ground-breaking ways to implement video (leading to a Governor's citation for innovation), including software and hardware updates and creating video "carts" that could be moved from courtroom to courtroom

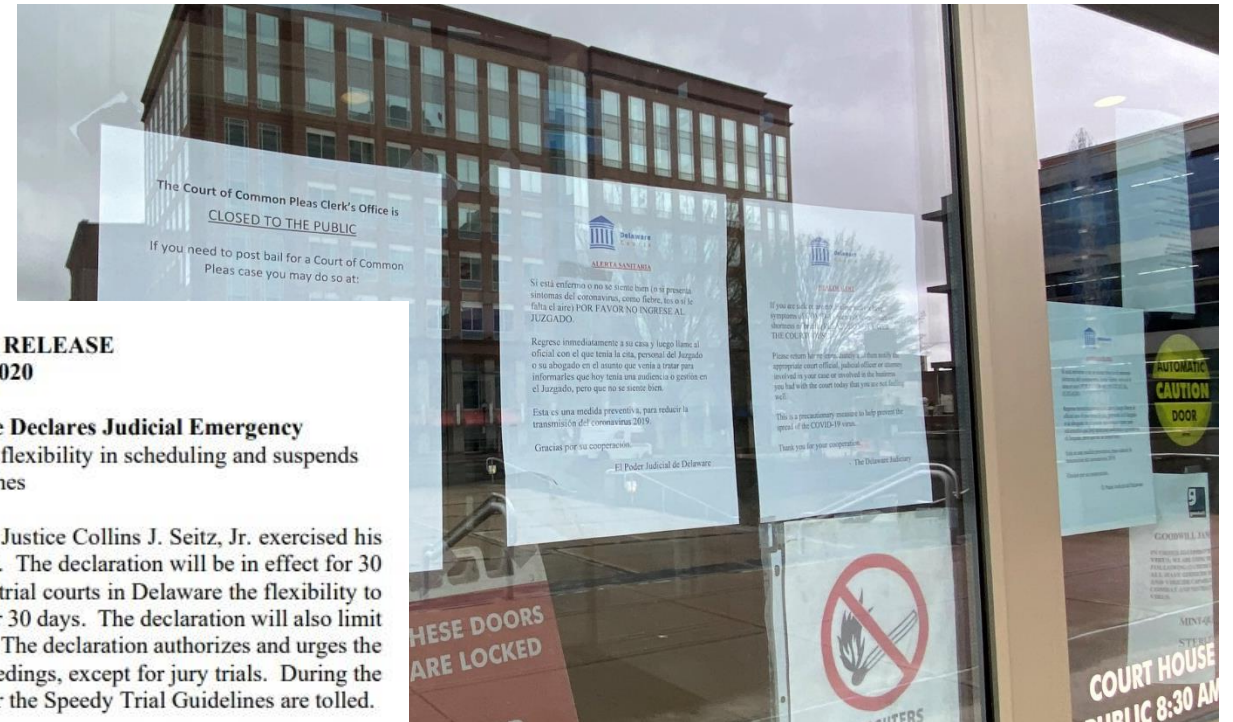
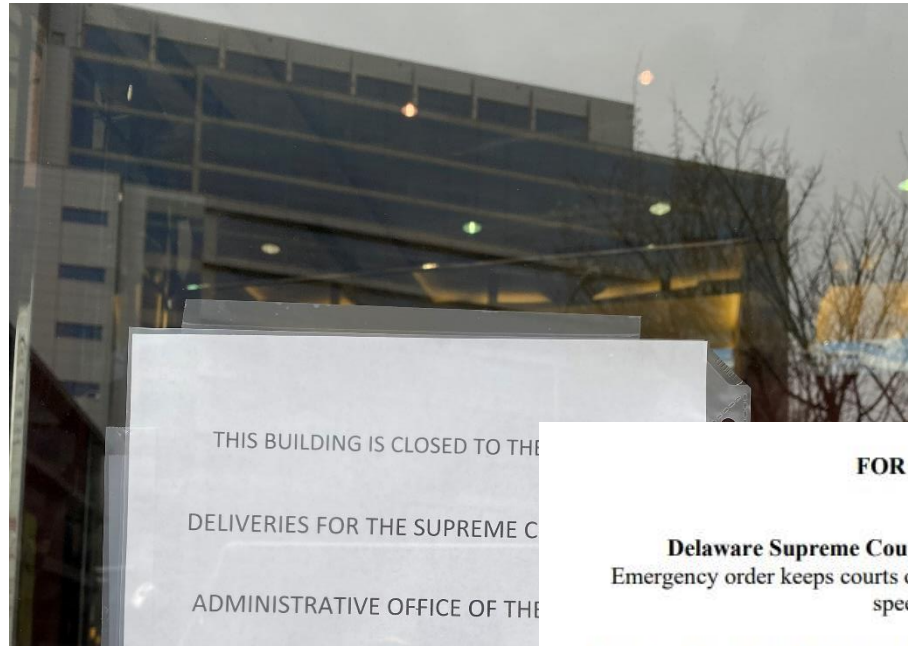


Delaware Courts Never Closed

- Courts convened a daily, morning teleconference with all stakeholders – including all six courts, court staff, DOJ, DOS, DOC and law enforcement
 - Calls covered information-sharing, logistical issues and problem-solving for the continued operation of the justice system
- The Courts worked with state public health officials and retained an infectious diseases expert Dr. Alfred Bacon
- The Courts created a cross-agency committee to work on creating a detailed plan to reopen safely



March 2020



FOR IMMEDIATE RELEASE March 14, 2020

Delaware Supreme Court Chief Justice Declares Judicial Emergency Emergency order keeps courts open but allows flexibility in scheduling and suspends speedy trial guidelines

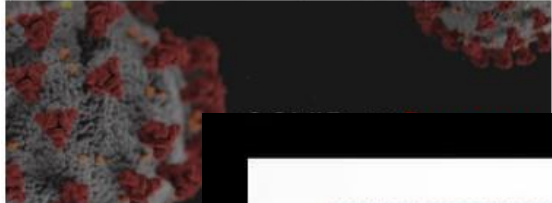
Effective 8 a.m. Monday, March 16, 2020, Chief Justice Collins J. Seitz, Jr. exercised his authority under State law to declare a judicial emergency. The declaration will be in effect for 30 days, subject to further review. The declaration gives all trial courts in Delaware the flexibility to continue trials and hearings in civil and criminal cases for 30 days. The declaration will also limit the number of people gathering in public court buildings. The declaration authorizes and urges the use of audiovisual devices by all courts to conduct proceedings, except for jury trials. During the period of judicial emergency, all time requirements under the Speedy Trial Guidelines are tolled.

The emergency declaration is authorized under 10 Del. C. § 2004, which allows the Chief Justice to declare a judicial emergency when emergency circumstances are present affecting one or more court facilities. Unless circumstances require otherwise, the Delaware courts will remain open until further notice to handle emergency matters or other urgent issues, particularly those related to criminal proceedings.

According to the Chief Justice, "I signed this emergency declaration after the President of

Planning April – May 2020

The Delaware Judiciary Response to Coronavirus Disease (COVID-19)



The spread of Coronavirus disease (COVID-19) has significantly impacted the daily operation of the Delaware Courts. In response to the Delaware Emergency Management Plan, the Delaware Judiciary has worked with our justice system partners to continue to provide the best possible service below. The latest statements and advice are available on the Delaware Courts website.

How to Contact the Courts
During the COVID-19 public health emergency, and therefore it may be difficult to reach the courts. For more information on how to contact the courts during this time, please visit the Delaware Courts website.



- Latest News & Information
- The Delaware Judiciary returned to full operation on May 29, 2020.
 - Mask Mandate lifted March 2, 2020.
 - Delaware Judiciary lifts mask mandate for courtrooms.
 - Court of Chancery has issued Standing Order No. 9 concerning the continued use of Unlawful Declarations.

Delaware Courts

COURTS REOPENING TOWN

May 29, 2020

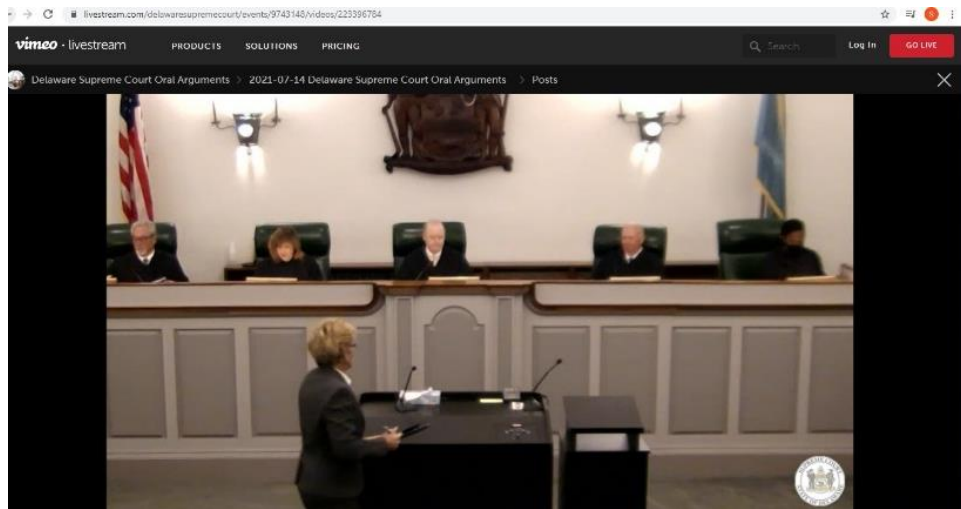
Delaware Courts

COURTS REOPENING COMMITTEE

INTERIM REPORT
May 2020



In March 2016 the Delaware Supreme Court began to live-stream oral arguments



- The livestream increased accessibility and transparency worldwide
- Briefs are posted before arguments.
- A video archive of past oral arguments back to 2013 is also available.

- Areas in red indicate nations where users have viewed Delaware Supreme Court oral arguments between April 1, 2021 and April 1, 2022





vimeo · livestream PRODUCTS SOLUTIONS PRICING Search Log In GO LIVE

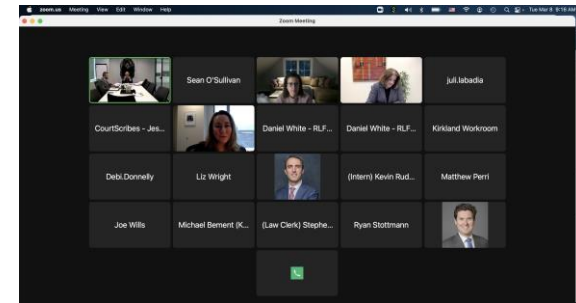
Delaware Supreme Court Oral Arguments > 2022-01-12 Delaware Supreme Court Oral Arguments > Posts

2022-01-12 340, 2021 Cox Communication, Inc v. T-Mobile US, Inc.

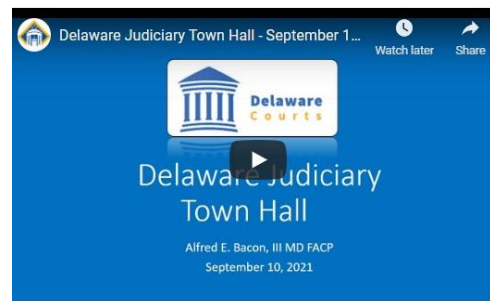
The video player displays a virtual courtroom session. The main view is a grid of participants. A central green box shows the time "8:54". The participants include:

- Peter Neiman, Esquire PHV
- A. Thompson Bayliss, Esquire
- Geoffrey P. Eaton, Esquire
- Stephen C. Norman, Esquire
- C.J. Seitz
- Doris Adkins
- Justice Gary F. Traynor
- Justice Tamika Montgomery-Reeves
- Justice James T. Vaughn, Jr.
- Justice Karen L. Valihura

32:18 / 47:24



- All the planning and preparation would be undermined if court staff, attorneys, the public and others did not have confidence that state courthouses were safe



The Delaware Judiciary Response to Coronavirus Disease (COVID-19)



The spread of Coronavirus disease (COVID-19) is a significant public health concern and has affected the daily operation of the Delaware Court system. The Delaware Judiciary, in conjunction with our partners at the Delaware Emergency Management Agency (DEMA) and the Department of Public Health (DPH) and our justice system partners, is continually evaluating our ongoing response to the pandemic. Please find below the latest statements and advisories from the Delaware Judiciary regarding COVID-19.

How to Contact the Courts

During the COVID-19 public health emergency, all Delaware Courts are operating with reduced staff and therefore it may be difficult to reach Court representatives. Please see the [Court Contact Information During COVID-19 Emergency](#) for the best contact information – either telephone, email, or both – for each court during this emergency period.


**Reopening
Plan**


**Statements &
Press
Releases**


**Court Orders
& Info**


**General
Advisories**

Latest News & Information

<p>📌 The Delaware Judiciary returned to normal operations on July 13, 2021.</p> <p>📌 Mask Mandate Lifted March 2, 2022.</p>	
03-23-2022	Delaware Judiciary lifts mandatory mask order in all Delaware Court facilities on March 23, 2022. View Order: In Re Additional COVID-19 Precautionary Measures
01-28-2022	Court of Chancery has issued Standing Order No. 9 concerning the continued use of Unsworn Declarations.
09-10-2021	Judicial Branch announces lifting of collections moratorium effective immediately.
07-15-2021	Justice of the Peace Court has issued Standing Order No. 7 Concerning Lifting of the COVID-19 Judicial Emergency.
09-14-2020	Delaware Courts resume issuing "failure to appear" bench warrants—Courts stopped issuing certain warrants at start of the pandemic.
09-19-2020	Justice of the Peace Court has issued Administrative Order 2020-1—In Re: Procedures for

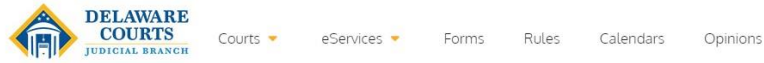
The Delaware Judiciary Response to Coronavirus Disease (COVID-19)



- Became one of the most visited pages on courts.Delaware.gov
- More than 80 pandemic-related press releases and statements posted on the page from March 2020 to March 2022 along with dozens of orders and advisories including 22 pandemic-related Administrative Orders issued by the Delaware Supreme Court.
- Provided up-to-date information on how to contact the court and other practical advice for the public like how to file paperwork and log-on to video proceedings
- Provided up to the minute information on the Judiciary's reopening plan, what phase the courts were in and what restrictions were associated with each phase

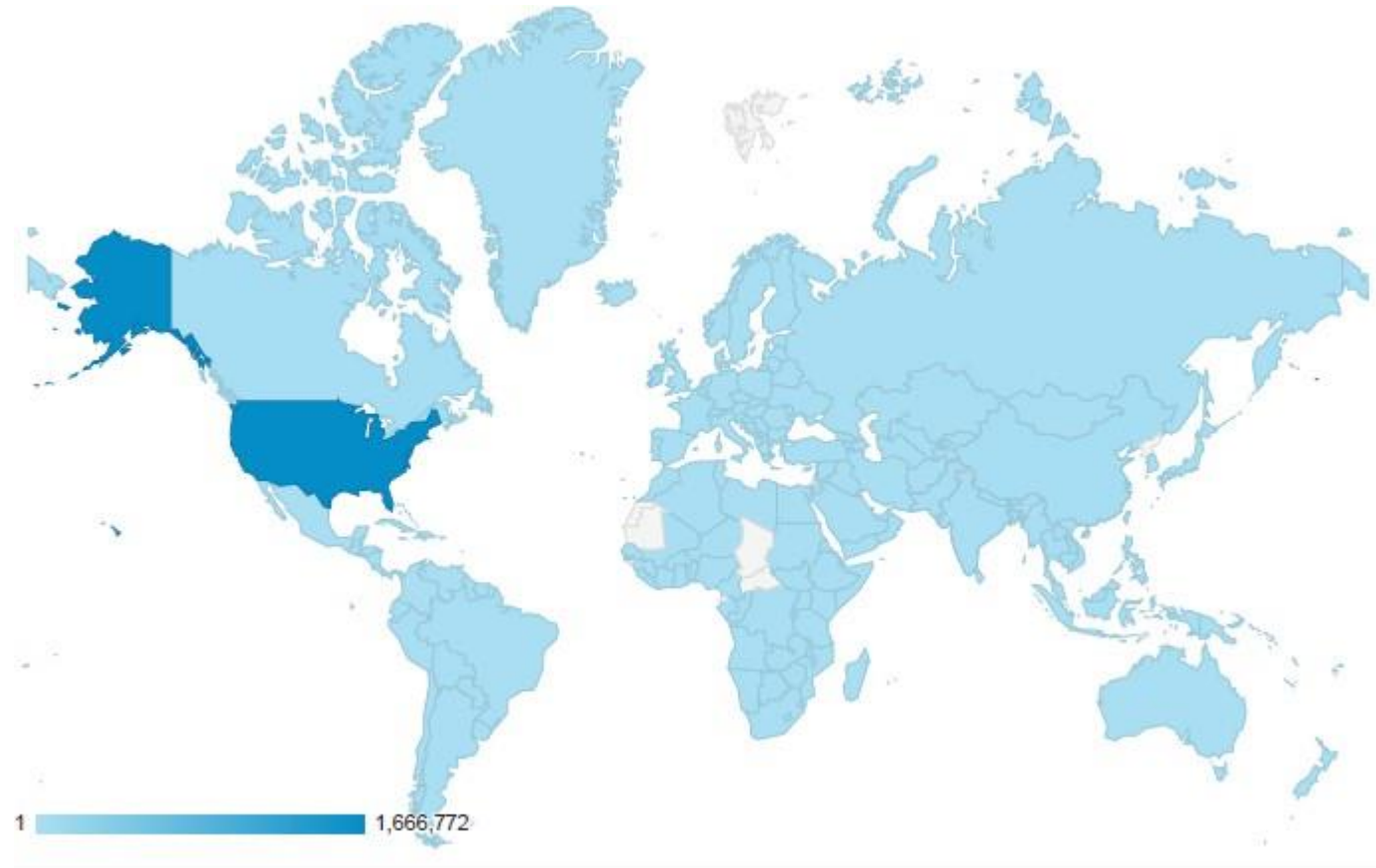


In March 2016 the Delaware Judiciary's website was revised and updated



- Update included new graphics, new tools and state of the art web-responsive design allowing easy use for both mobile and desktop devices
- Other improvements are ongoing

- Areas in blue indicate nations where users have visited the Delaware Courts website between April 1, 2020 and April. 1, 2022.



FOR IMMEDIATE RELEASE

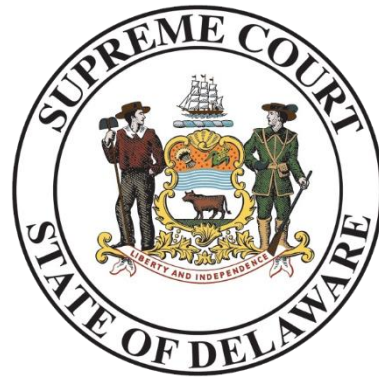
May 29, 2020

Delaware Judiciary unveils public reopening plan

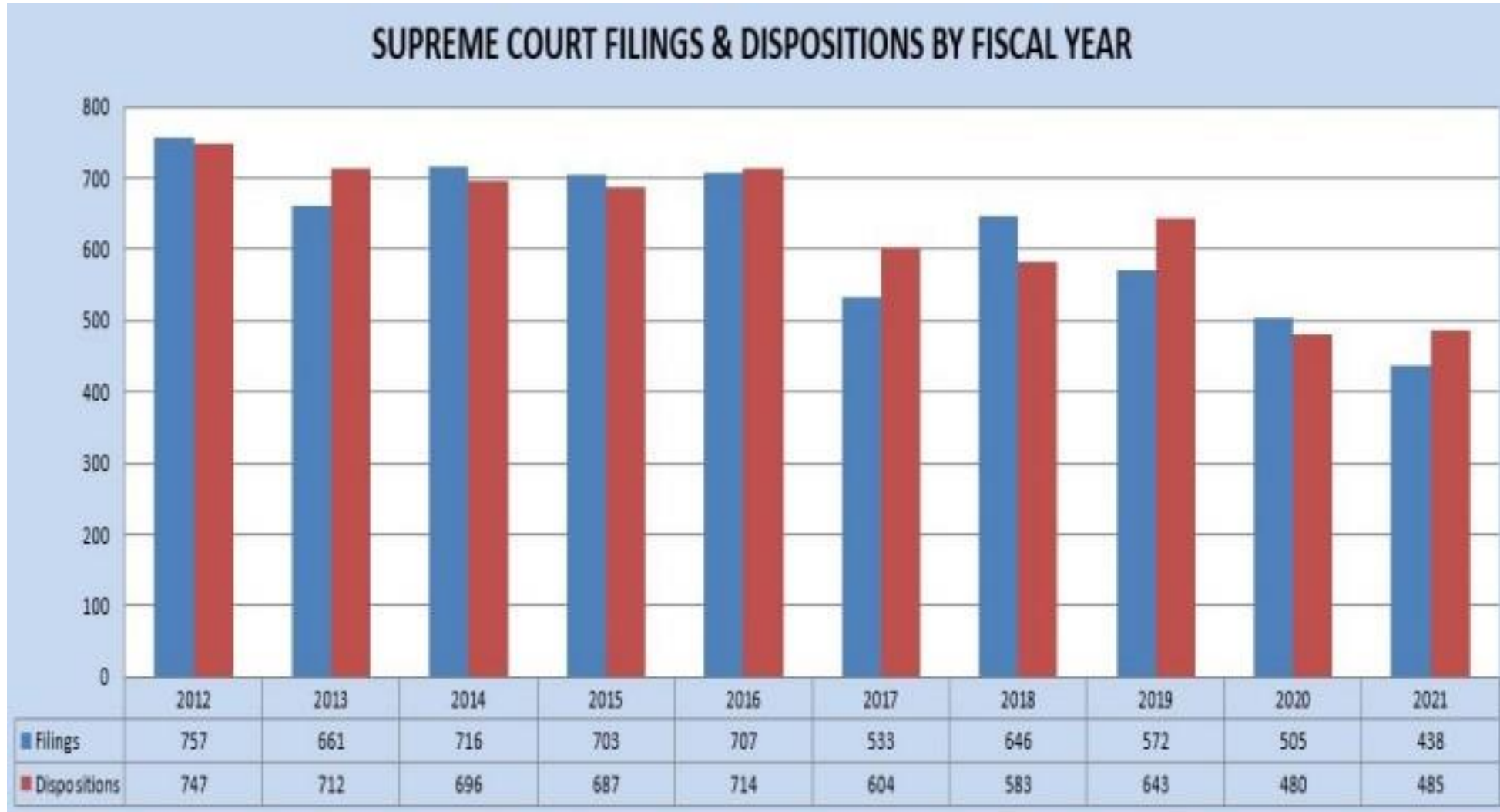
Phased approach recommended by Courts Reopening Committee to begin week of June 8, 2020

Date to resume normal operations not set; new procedures will involve wearing masks and social distancing inside court facilities.

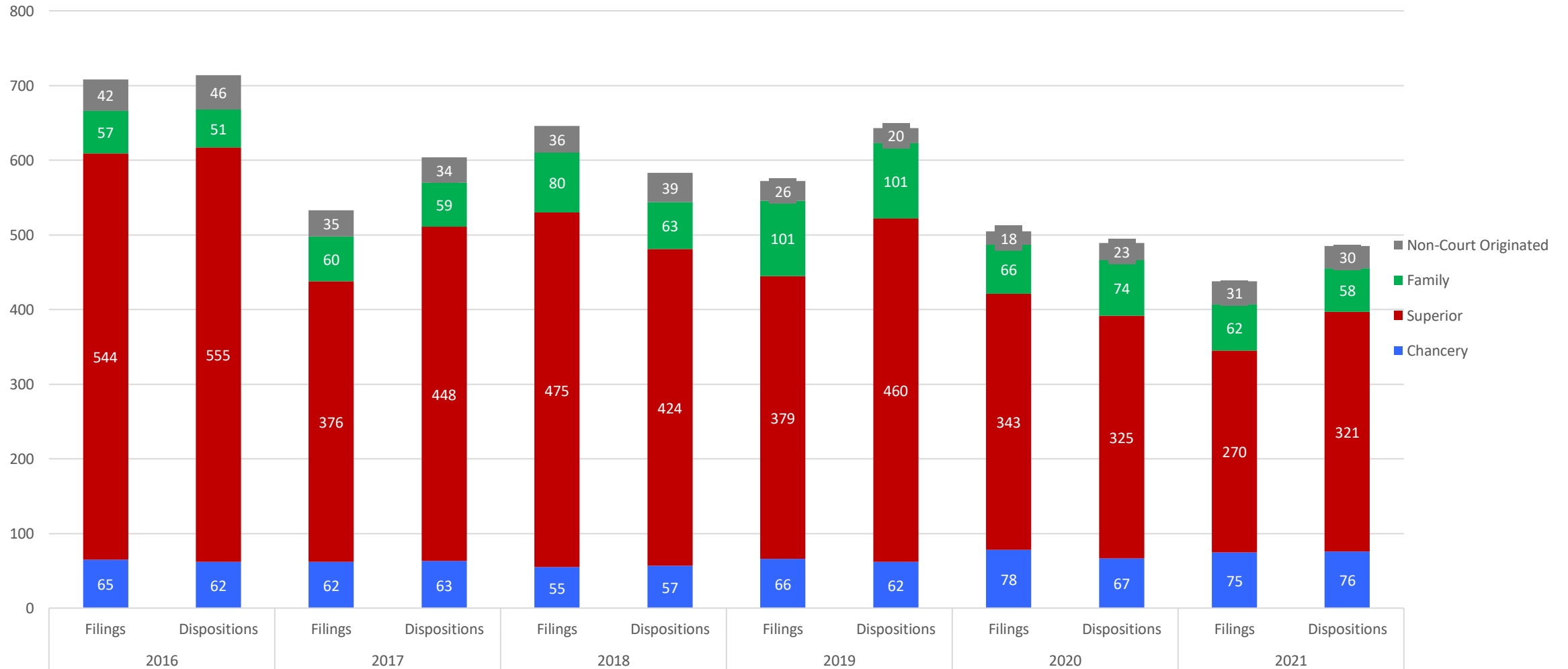
While some Delaware Courts, particularly those with jury trials, experienced significant backlogs and delays due to COVID-19, the Delaware Supreme Court stayed on top of its docket and had no backlog of cases in 2020-21



FY 2012-2021



BREAKDOWN BY COURT OF ORIGINATION



Chancery-Specific
Procedural
Responses to
COVID-19

Standing orders

Zoom hearings and trials

- Can the court require parties to participate in Zoom hearings and trials?
- Paperless approach
- Detailed Zoom instructions

Witness protocols

COVID-19 Related Chancery Matters

Busted Deal Cases

- Litigation resulting from failed mergers citing MAE/MAC clauses, ordinary business clauses, or satisfaction of conditions precedent, and the unprecedented economic impact of COVID-19
- *See, e.g., L Brands, Inc. v. SP VS Buyer LP, et al.; Level 4 Yoga, LLC v. CorePower Yoga, LLC et al.; Snow Phipps Group, LLC v. KCAKE Acquisition, Inc. et al.*
- One source reports close to 20 COVID-19-related busted deal cases filed as of June 2020; close to 30 cases total including other COVID-19-related business disputes

Poison Pill Cases

- Litigation challenging shareholder rights plans adopted by companies in response to COVID-19-related market volatility
- *See In re The Williams Companies Stockholder Litigation; Vladimir Gusinsky Revocable Trust v. AAR Corp.; Vladimir Gusinsky Revocable Trust v. Tribune Publishing Co.*

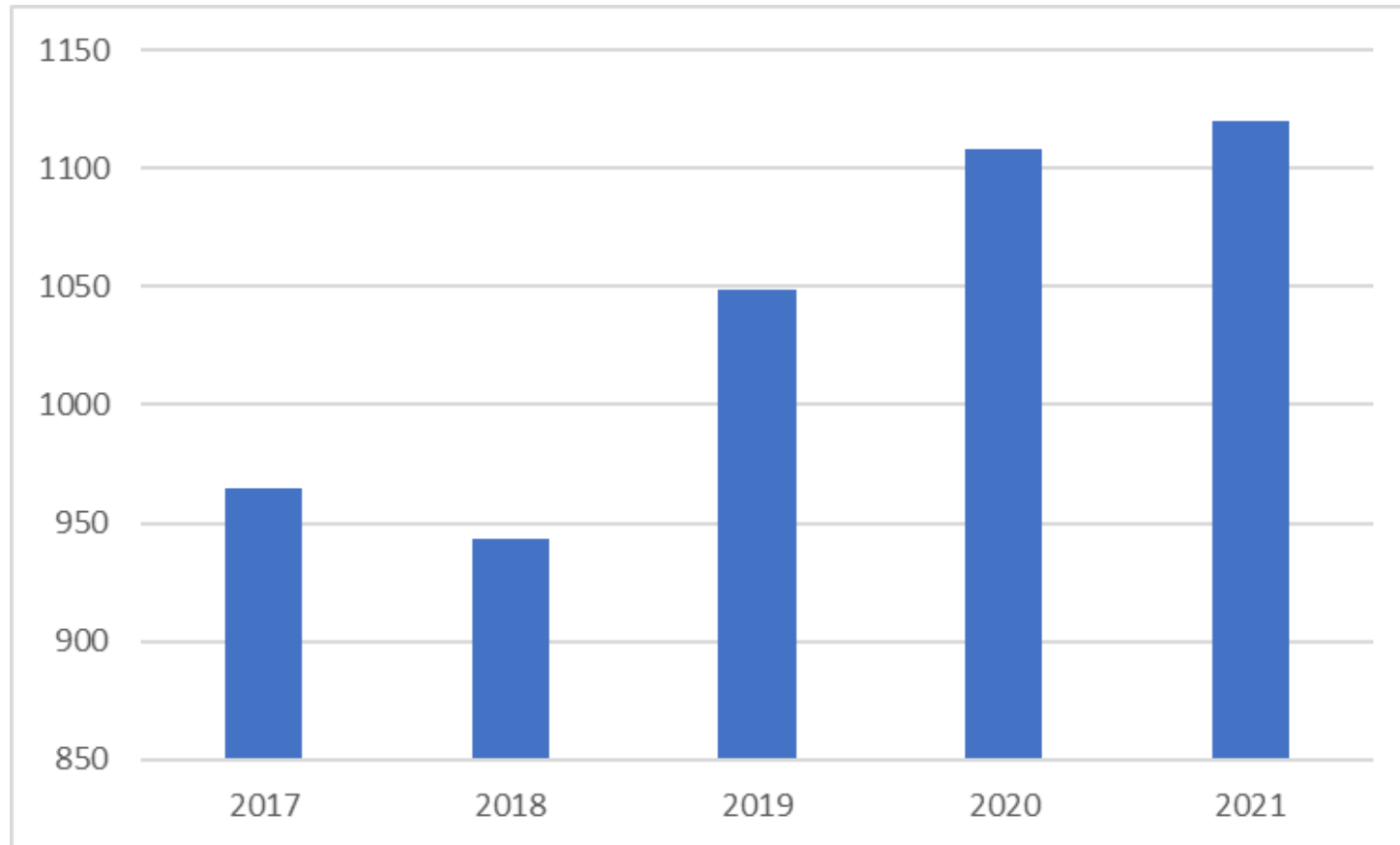
Voting Process Challenges

- Litigation challenging vote-by-mail statutes enacted in response to the need to social distance and shelter-in-place during an election year
- *See, e.g., The Republican State Comm. of Del. v. The State of Del. Dept. of Elections, et al.; League of Women Voters of Del., Inc. et al. v. State of Del. Dept. of Elections, et al.*

Increase In Guardianship Filings

Chancery Case Trends

Continued Increase In Volume



Continued Increase In Complexity

- Increase In Requests For Expedition
 - 37% of new cases accompanied by motion to expedite
 - Compared to 20-25% historically
- Issues Have Grown In Volume And Complexity
 - M&A
 - Derivative
 - Section 220
 - Bespoke Contractual Provisions
 - Busted Deals → drop off due to market stabilization

Caremark Claims Post-Marchand (2/3 MTDs granted)

- *Camping World Hldgs., Inc. S'holder Litig.*, 2022 WL 288 152 (Del. Ch. Jan. 31, 2022) (granting motion to dismiss)
- *Firemen's Ret. Sys. of St. Louis ex rel Marriott Int'l, Inc. v. Sorenson*, 2021 WL 4593777 (granting motion to dismiss)
- *In re Boeing Co. Deriv. Litig.*, 2021 WL 4059934 (Del. Ch. Sept. 7, 2021) (denying motion to dismiss)
- *In re Zimmer Biomet Holdings, Inc. Deriv. Litig.*, 2021 WL 3779155 (Del. Ch. Aug. 25, 2021) (granting motion to dismiss)
- *Petry ex rel FedEx Corp. v. Smith*, 2021 WL 2644475 (Del. Ch. June 28, 2021) (granting motion to dismiss)
- *In re Zimmer Biomet Holdings, Inc. Deriv. Litig.*, 2021 WL 3779155 (Del. Ch. Aug. 25, 2021) (granting motion to dismiss)
- *Petry ex rel FedEx Corp. v. Smith*, 2021 WL 2644475 (Del. Ch. June 28, 2021) (granting motion to dismiss)
- *In re TrueCar, Inc. S'holder Deriv. Litig.*, 2020 WL 5816761 (Del. Ch. Sept. 30, 2020) (granting motion to dismiss)
- *Teamsters Loc. 443 Health Servs. & Ins. Plan v. Chou*, 2020 WL 5028065 (Del. Ch. Aug. 24, 2020) [AmerisourceBergen] (denying motion to dismiss)
- *In re Metlife Inc. Deriv. Litig.*, 2020 WL 4746635 (Del. Ch. Aug. 17, 2020) (granting motion to dismiss)
- *In re GoPro, Inc.*, 2020 WL 2036602 (Del. Ch. Apr. 28, 2020) (granting motion to dismiss)
- *Hughes v. Xiaoming Hu*, 2020 WL 1987029 (Del. Ch. Apr. 27, 2020) [Kandi Tech.] (denying motion to dismiss)
- *Owens v. Mayleben*, 2020 WL 748023 (Del. Ch. Feb. 13, 2020) [Esperion] (granting motion to dismiss)
- *In re LendingClub Corp. Deriv. Litig.*, 2019 WL 5678578 (Del. Ch. Oct. 31, 2019) (granting motion to dismiss)
- *In re Clovis Oncology, Inc. Deriv. Litig.*, 2019 WL 4850188 (Del. Ch. Oct. 1, 2019) (denying motion to dismiss)
- *Rojas v. Ellison*, 2019 WL 3408812 (Del. Ch. July 29, 2019) [JP Penney] (granting motion to dismiss)

Zeroing In on Section 220 Actions

Filings More Than Doubled In Four Years

- 73 in 2017 → 155 in 2021
- 2019 was pivotal year

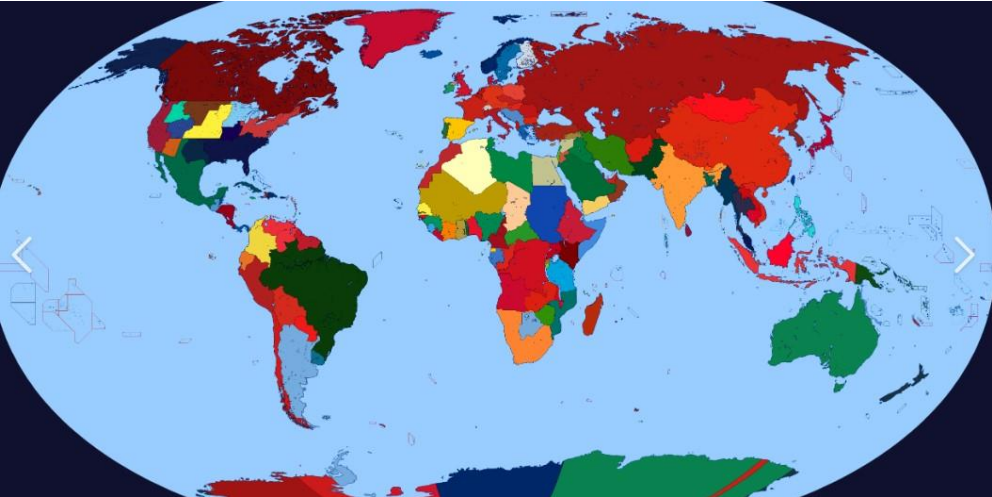
Increase In Volume Matched By Increase In Complexity

Filings Slightly Down Recently

- Working assumption is that this is a response to decisional authority

Battlefield Has Turned To Issue Of Scope

- Working assumptions are that:
 - M&A inspections present different problems than traditional inspections
 - Greater guidance from the court could result in greater efficiencies



DELAWARE
COURTS

JUDICIAL BRANCH