BREAKING DOWN SILOS: THE SELECTION OF CORPORATE HEADQUARTERS’ LOCATIONS BY BUSINESSES

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INTRODUCTION

The selection of a corporation’s place of incorporation has long been established as not only a business choice, but also a fundamentally legal question—businesses seek out the state with their desired corporate law, just as states design their laws with businesses’ needs in mind.¹ Equally established is the fact that the location of a corporation’s headquarters, in addition to the state of incorporation, is equivalent to the corporation’s domicile—the legal term for a corporation’s home, which has long had critical implications for a corporation in civil procedure.² Why then, do businesses evaluate location options for headquarters without the same legal dialogue as they do in determining their states of incorporation?

This Comment focuses on the legal research and considerations around how a corporation chooses to locate its headquarters. Today, choice of law and place of incorporation decisions for corporations are closely related, as corporate law evolves with business needs, while businesses in turn evaluate corporate law in their decisions for incorporation. However, this discourse is missing in headquarters’ location deliberations. I argue that the role of corporate headquarters, which despite also constituting a corporation’s legal home, is being addressed by the law and by businesses in siloes when the decisions should be driven with both in mind. Corporations are not giving enough consideration to the law when determining their headquarters’ location; simultaneously, the law is changing how headquarters’ locations impact companies’ liabilities without taking into account strategic corporate structures and business considerations.

I. THE EVOLUTION AND SIGNIFICANCE OF CORPORATE HEADQUARTERS FOR CORPORATIONS TODAY

A. The History of Corporate Headquarters as Strategic Decisions

To better examine how the law and businesses address the selection of a corporate headquarters’ location, it is important to first understand the history and significance of the term. Today, the term “headquarters” is defined as “the main office or cent[er] of control of a company or

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¹ See discussion infra Part III.B.
² See discussion infra Part I.B.
organization.”³ It has become a key feature of the modern organization, which is often comprised of diversified businesses.

Prior to the 1850s, the majority of American economic enterprises had yet to develop the administrative structures that we are familiar with today.⁴ The idea of a centralized administration first emerged with a few large private enterprises and grew into a more comprehensive system as railroad companies expanded.⁵ Newly completed western railroads expanding from New York to Illinois demanded wholly new methods of management.⁶ As described by the General Superintendent of the Erie railroad, Daniel McCallum: “[a]ny system which might be applicable to the business and extent of a short road would be found entirely inadequate to the wants of a long one. . . .”⁷ To combat the complexity of expansion with individual administrative structures, one of the first organizational charts in an American company emerged with a system of constant detailed reports to the headquarters and superintendents focused on coordinating, appraising, and planning the work of other operating divisions.⁸

Fast forwarding to the beginning of the twentieth century, the dominant configuration of corporations became the unitary form, otherwise known as the U-form.⁹ The U-form relied heavily on a centralized structure with divisions generally organized across functional lines—critical areas of business management, such as marketing or sales.¹⁰ This strategy emerged in response to a need for strong centralization within the manufacturing industry, as U-form companies benefited from economies of scale.¹¹ Companies like the DuPont Explosive Powder Company, one of the first recognized organizations to attempt a “structured corporate hierarchy. . . within centralized functional departments,”¹² engineered a massive reorganization. DuPont’s reorganization is still acknowledged as having

⁵ Id. at 20-22.
⁶ Id. at 20-22.
⁷ Id. at 22.
⁸ Id. at 22.
¹⁰ Id. at 1614-15.
¹¹ Chandler, supra note 4, at 52-57.
¹² Lee-ford Tritt & Ryan Scott Teschner, Amazon Delivers Diversity: Geographical and Social Influences on Corporate Embeddedness, 16 BERKELEY BUS. L.J. 1, 7 (2019).
“transformative growth” on the company today.\textsuperscript{13} In particular, the U-form structure allowed the corporation to streamline communication along the functional lines and to support specialization within each department.\textsuperscript{14}

The U-form structure, however, had its limitations, particularly as businesses began to expand. Today, DuPont’s transformed structure is known as the multidivisional form, or M-form, where each unit is “self-contained.”\textsuperscript{15} Unlike the U-form, the M-form decentralizes operations into departments, separating the strategic decision-making and the day-to-day decisions rather than focusing on delegation across functions.\textsuperscript{16} Leadership realized that “[t]he structure built to manage a single line of products proved insufficient to handle the administration of several different lines of goods.”\textsuperscript{17} The central office became “overwhelmed . . . by the increased administrative needs resulting from diversification.”\textsuperscript{18} To address diversification, DuPont separated operating decisions from the central office. Rather, they created several central offices, each responsible for one line of products, with an executive committee overseeing overall administration of the multi-industry enterprise.\textsuperscript{19} The transformation of DuPont was one of the first case studies in which corporations began to adopt the mindset of “structure follow[s] strategy.”\textsuperscript{20}

The M-form is now "the preferred organizational form for the large firms that dominate the American economy."\textsuperscript{21} A number of theories explain the M-form and its rise in popularity, although the catalyst for the shift and the extent of the M-form’s benefits are debatable.\textsuperscript{22} For example, Alfred Chandler’s seminal work, \textit{Strategy and Structure},\textsuperscript{23} argues that the M-form serves as a strategic response to the U-form’s limitations in managing

\begin{thebibliography}{99}
\bibitem{OURHISTORY} Our History, https://www.dupont.com/about/our-history.html (last visited Oct. 31, 2023) [https://perma.cc/WW3C-5VMZ].
\bibitem{Chung} Chung, \textit{supra} note 9, at 1615-16.
\bibitem{Chungnote9} Chung, \textit{supra} note 9, at 1616-17.
\bibitem{Chandlernote4} Chandler, \textit{supra} note 4, at 78.
\bibitem{Id} Id. at 91.
\bibitem{Id1} Id. at 104-13.
\bibitem{Id2} Id. at 112.
\bibitem{Chandler} Chandler, \textit{supra} note 4.
\end{thebibliography}
multiple product lines (as discussed in the DuPont example). On the other hand, Oliver Williamson’s study relates the M-form back to transaction costs considerations, as the U-form leads to “cumulative ‘control loss’ effects, which have internal efficiency consequences.”

The development of corporate structure, moving from the U-form to the M-form, has made today’s corporations incredibly conscious of the lesson that “structure follows strategy.” A company’s decision for how to build and locate its corporate headquarters, as an essential component of successfully implementing the M-form, is one of critical importance. Not only are corporations’ administration and structure key criteria for a business’s success, but they also have the potential to impact the broader market economy. Since Chandler’s work over five decades ago, businesses have carefully considered their decisions on corporate headquarters. Today, there is a “consensus among scholars that the [corporate headquarter] is critical to achieve a corporate advantage....” Consequently, lawyers and other experts on market behavior should not fail to overlook the value of corporations’ systemic structural decisions with respect to headquarters’ location.

B. The Evolution of Corporate Headquarters in the Eyes of Courts

As corporate structure evolved, general jurisdiction doctrine also developed to address the jurisdictional question of managing corporations’ decentralized approaches. Today, corporations come in all shapes and sizes across multiple forums. The law has shifted to address jurisdictional

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24 Fligstein, supra note 21, at 378-79.
25 See id. at 379 (citing OLIVER E. WILLIAMSON, MARKETS AND HIERARCHIES: ANALYSIS AND ANTITRUST IMPLICATIONS, A STUDY IN THE ECONOMICS OF INTERNAL ORGANIZATION 133 (1975)) (summarizing key takeaways from Williamson’s study on understanding the economics influencing the M-form).
26 Fligstein, supra note 21, at 379 (quoting WILLIAMSON, supra note 25).
27 Chandler, supra note 4, at 14.
28 Id.
30 See Chandler, supra note 4 at 393-96 (discussing the implications of corporate strategy and structure on resource allocation on the broader economy).
31 M-form organizations vary, from organization across product and geographical divisions to multi-subsidiary forms to a more recent phenomenon of multiple headquarters. See, e.g.,
problems that come with the M-form. Courts are concerned with a corporation’s presence in a state or domicile in most jurisdictional analyses, yet M-form companies operate with corporate headquarters for oversight in addition to decentralized structures across numerous states. This Part examines how the location of a headquarters impacts (i) personal jurisdiction and (ii) diversity jurisdiction.

i. Personal Jurisdiction

Personal jurisdiction, which allows a party to be “justly subject to [a state’s] process, and bound personally by the judgment pronounced on such process against [them],” was historically based on a litigant being physically present “within a territory.” Modern personal jurisdiction law stems from the canonical decision *International Shoe v. Washington.* In *International Shoe*, recognizing the conceptual difficulty of identifying a corporation’s physical presence, the Supreme Court expanded personal jurisdiction beyond the historical *in personam* viewpoint and focused instead on “the nature and extent of ‘the defendant’s relationship to the forum State.’”

Personal jurisdiction has since been divided into two types: specific jurisdiction, which is “case-linked”, and general jurisdiction, which is “all-purpose.” Specific jurisdiction requires a link between the forum state and the cause of action and, consequently, requires only “minimum contacts,” so long as the exercise of jurisdiction does not offend due process. General

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*33 326 U.S. 310 (1945).*
*Ford Motor Co. v. Montana Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1024-25 (2021) (quoting Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty., 582 U.S. 255, 262 (2017)). *See also* Pennoyer, 95 U.S. at 734-36 (holding that there was no jurisdiction because the plaintiff was a non-resident of the state where the action was brought and was not personally served).*
*34 582 U.S. 255, 262.*
*35 See Int’l Shoe Co., 326 U.S. at 316 (holding that due process requires that if a party is not present within the territory of the forum, the party have certain minimum contacts with the
jurisdiction, however, requires the defendant to have a stronger relationship with the forum in order to allow the courts to be “dispute-blind,” meaning an “exercise of jurisdiction made without regard to the nature of the claim presented.” Given the strength of a corporation’s relationship with its headquarters, the location of a headquarters has evolved into a key legal component in determining general jurisdiction.

The test for general jurisdiction has evolved over time. When *International Shoe* addressed general jurisdiction, the Supreme Court required contacts with the state to be so “continuous and systematic” that a corporation is “essentially at home.” Today, however, the test of being “at home” has most effectively been understood as equivalent to the place of incorporation or the principal place of business following the Supreme Court’s decision in *Daimler AG v. Bauman*. Both of these locations are where a corporation is “comparable to a domestic enterprise in [the] State.” Courts have, with rare exceptions, treated a corporation’s “principal place of business” as synonymous with a corporation’s headquarters for purposes of analyzing general jurisdiction.

However, despite the tests pointing to the same outcome for headquarters, the various terms: “at home,” “principal place of business,” and “headquarters” each refer to different concepts and should not be used forum such that the suit would not offend “traditional notions of fair play and substantial justice”); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292-93 (1980) (expanding on the limits of due process and the factors to consider when evaluating specific jurisdiction in addition to minimum contacts).

39 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011), *See also* Int’l Shoe Co., 326 U.S. at 318 (requiring contacts to be so “continuous and systematic” that the corporation is “amenable to suits unrelated to [their activity in the state]”).
40 *See Daimler AG v. Bauman*, 571 U.S. 117, 118 (2014) (“The paradigm all-purpose forums for general jurisdiction are a corporation’s place of incorporation and principal place of business.”).
41 *See id.*, at 133 n.11 (“As the Court made plain in Goodyear and repeats here, general jurisdiction requires affiliations ‘so ‘continuous and systematic’ as to render [the foreign corporation] essentially at home in the forum State.’ i.e., comparable to a domestic enterprise in that State.”) (internal citation omitted) (quoting Goodyear Dunlop Tire Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)).
42 The Court has not foreclosed the possibility that for “exceptional case[s],” general jurisdiction could be recognized outside of the principal place of business and place of incorporation. *Id.* at 139 n.19. *See Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (finding that the complete transfer of a company’s headquarter operations in a temporary relocation was sufficient to be considered a “principal place of business” for general jurisdiction).
interchangeably. Since Daimler, the Supreme Court has made it clear that the term “at home” connotes a significant limitation on the scope of general jurisdiction—“[a] corporation that operates in many places can scarcely be deemed at home in all of them.”

Furthermore, the Court discussed the consideration that an actual “principal place of business” could extend beyond the nominal designation of a corporation’s singular headquarters. In today’s world, M-form corporations operate with key divisions across multiple states. The Daimler concurrence recognizes and raises the fact that corporations could have multiple places conducting their principal business, arguing that the movement towards decentralized units in the M-form should not cause states to “lose [] power:”

[The majority] never explains why the State should lose that power when, as is increasingly common, a corporation “divide[s] [its] command and coordinating functions among officers who work at several different locations.” Suppose a company divides its management functions equally among three offices in different States, with one office nominally deemed the company’s corporate headquarters. If the State where the headquarters is located can exercise general jurisdiction, why should the other two States be constitutionally forbidden to do the same?

Notwithstanding the debate for expanding the definition of “principal place of business,” courts agree that a corporation’s headquarters is where “[i]nconvenience will usually be minimal.” Even “[j]urisdiction at the place of incorporation, at first glance, seems less justifiable [than a corporation’s headquarters],” since so many corporations “lack any other significant ties with their state of incorporation.” Consequently, despite the wrinkles in general jurisdiction doctrine developments, courts have been able to exercise broad, “dispute-blind” jurisdiction on corporations in the state in which their headquarters are located since International Shoe first introduced

43 Daimler AG, 571 U.S. at 139 n.20.
44 See id. at 157 (considering general jurisdiction in a circumstance where a company has equivalent management functions across different states).
45 Daimler AG, 571 U.S. at 157 (internal citations omitted).
46 Twitchell, supra note 37, at 669.
47 Id. at 669-70. Corporations are not required to have specific ties with a state in order to incorporate there, meaning managers are free to select any state that they wish. See generally William L. Cary, Federalism and Corporate Law: Reflections Upon Delaware, 83 YALE L.J. 663, 684-85, 705 (1974) (discussing Delaware’s primary role and its ability to address corporate management in the race for incorporation); Lynn M. LoPucki, Corporate Charter Competition, 102 MINN. L. REV. 2101, 2104 (2019) (describing the notion that corporations choose states of incorporation as a key part of the corporate charter competition system).
the concept and they will likely continue to be able to do so.\textsuperscript{48}

ii. Diversity Jurisdiction

Another aspect to consider in the terminology of defining a corporation’s home is how courts consider citizenship in the context of diversity jurisdiction. Grounded in a federal statute, diversity jurisdiction gives federal courts subject matter jurisdiction in certain matters involving citizens of different states, where corporate citizenship is explicitly defined as “every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.”\textsuperscript{49}

In the context of diversity jurisdiction, the Court endorsed the “nerve center” test for establishing principal place of business in \textit{Hertz Corp. v. Friend}.\textsuperscript{50} The Court interpreted the definition of principal place of business under the statute as the location from which the business “‘radiates out to its constituent parts and from which its officers direct, control and coordinate all activities without regard to locale, in the furtherance of the corporate objective.’”\textsuperscript{51} In practice, the nerve center “usually” equates to the headquarters, provided that core functions occur in that state, and “not simply an office where the corporation holds its board meetings....”\textsuperscript{52}

Given the similarity in language and outcome, there has been some comparison of the Court’s analyses on corporate citizenship in the context of personal and subject matter jurisdiction by scholars and in the lower courts.\textsuperscript{53} However, the Court has not explicitly addressed whether citizenship for diversity jurisdiction is equivalent to a corporation being at home for the purposes of general jurisdiction. Currently, a corporation’s headquarters is

\textsuperscript{48} 326 U.S. at 316.
\textsuperscript{49} 28 U.S.C. § 1332 (emphasis added). There is also a constitutional limit on diversity jurisdiction in Article III, but the statute further narrows the scope to what is the doctrine today. U.S. CONST. art. III, §2, cl 1.
\textsuperscript{50} 559 U.S. 77 (2009).
\textsuperscript{51} Id. at 90.
\textsuperscript{52} Id. at 93.
\textsuperscript{53} See, e.g., Lindsey D. Blanchard, \textit{Goodyear and Hertz: Reconciling Two Recent Supreme Court Decisions}, 44 McGeorge L. Rev. 865, 884-85 (2013) (“While Hertz certainly is not binding precedent on the issue of general personal jurisdiction, it should be used as persuasive evidence. . . . [T]he Court was presented with the same question: where are a corporation’s contacts so significant that it will not suffer from local prejudice if forced to defend against litigation in state court?”); Global Tech. Int’l, Ltd. v. Continental Automotive Systems, Inc., 2013 WL 1809773, at *4 (D.S.C. Apr. 29, 2013) (applying the Hertz standard on a corporation, who filed a form listing its executive offices in a given location, and determining that the exercise of general jurisdiction in that location was not appropriate).
generally sufficient for both tests, but this nonetheless remains an open question.

Overall, throughout the evolution of different tests and the exact language of the standards defining a corporation’s domicile, corporate general jurisdiction doctrine as applied to headquarters has trended towards a more straightforward interpretation. Locating headquarters in a state is consistently sufficient for the various tests determining corporate domicile and will have critical legal implications.

II. DRIVING FACTORS BEHIND DETERMINING WHERE TO LOCATE CORPORATE HEADQUARTERS

With the history of the headquarters’ role from a business and legal perspective in mind, this Comment will explore the considerations driving the choice of its location and the impact of that choice. For business decision-makers, the multidivisional firm has continued to be “one of the most important areas of management research,” including the corporate headquarters as the central organizational unit. In particular, the core of research literature focuses on the characteristics of the headquarters, with location being one of the main attributes.

A. Trends in Today’s Business Location and Relocation Decisions

Globalization has changed the way corporations consider location decisions. Corporations have increased flexibility to match location to their specific needs, such as splitting up units across developing and developed countries to account for costs. Most multidivisional firms are more than capable of thriving across the globe, as advances in telecommunication and transportation infrastructure allow executives to coordinate multiple corporate departments across far-ranging locations. Furthermore, in the age of big data, corporations can access a vast array of information on labor markets, housing costs, transportation, specialized services, tax structures, and more when selecting their locations, thereby moving the “location

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54 Menz, Kunisch & Collis, supra note 29, at 1.
55 Id. at 6.
57 Id. at 2.
decision-making process to the center of corporate strategic planning.”

With greater flexibility, the trend of headquarters’ relocation is also on the rise. Corporations are increasingly willing to move their worldwide headquarters out of their existing homes to new states or even overseas. Many studies have shown that geographical location affects firm performance and competitiveness. As a result, corporations will sacrifice the short-term inconveniences of moving to create value for their business in response to the demands of their external stakeholders. For example, in 2021, over 150 California corporations relocated to other states in an “unprecedented exodus,” as California was “at or near the bottom in rankings of business climate and economic policies” despite its economic advantages. The relocation process is lengthy and requires many years of developments to build sufficient institutional social ties. However, when companies decide to move closer to key influencers, primarily shareholders and financial markets, research shows that stock prices tend to react favorably.

With increased globalization and flexibility, corporations have more options to consider when choosing their headquarter locations. As a “world market for corporate headquarters” emerges, headquarters location decisions

58 Id. at 2.  
60 See id. at 682 (“[G]eographical location affects firm competitiveness, so any decision to relocate specific activities overseas is potentially very important to the future success of the [multinational corporation].”).  
61 Id. at 681-82.  
64 Birkinshaw et. al, supra note 59, at 697-98.  
65 Raymond A.K. Cox & James D. Schultz, The Initial US Stock Market Effect On Firms That Announce Corporate Headquarters Relocation, 17 INT’L J. COMMERCE & MGMT. 255 (2007) (“In general, the stock-market reaction is favorable for companies moving their head office. Moreover, stockholders react most positively to the managerial interest reason for such a shift.”).
are becoming more complex and require a comprehensive evaluation.66

B. Key Decision-Making Factors Linked to Geography

Headquarters location decisions are incredibly firm-specific and depend on multiple fundamental components of the business, including industry sector, function, product maturity, competitive strategy, and culture.67 The constantly evolving nature of a corporation also shows that corporate headquarters are not stable entities, but “transform[] over time to meet internal and external demands.”68 Even with the increased phenomenon of relocation, studies nonetheless suggest that the majority of companies have similar preferred locations, such as central cities or strong first-tier suburbs.69 To understand how businesses make this decision, existing research shows four common considerations that align with headquarters location priorities: (i) economic clustering, (ii) human capital, (iii) infrastructure, and (iv) taxation.

i. Economic Clustering

Substantial literature discusses the impact of economic clustering, commonly referred to as agglomeration, on corporate headquarters’ location.70 Empirical studies have suggested that “competitive advantage is not just rooted in the firm’s internal assets, but in the resources of its cluster, that is, the nearby firms with which it shares suppliers, workers and

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66 See, e.g., Birkinshaw et al., supra note 59, at 682 (citing multiple examples of companies moving their headquarters overseas and noting that in a recent study, 59% of all relocation events had taken place in the period 1999 - 2001 and many Fortune 500 cases also occurred in the 2000s).
67 Cohen, supra note 56, at 6.
68 Menz, Kunisch & Collis, supra note 29, at 10.
69 See Cohen, supra note 56, at 7-8 (citing Ernst and Young & The National Association of Corporate Real Estate Executives, Reshaping America: The Migration of Corporate Jobs and Facilities, ECON. DEV. REV., Winter 1994-1995) (citing large cities, such as New York City, and suburbs including Washington D.C.’s suburbs, northern suburban Atlanta, Charlotte, Dallas, Raleigh-Durham as common choices).
70 See Birkinshaw et al., supra note 59, at 682 (“There are well established theories of agglomeration in the literature, and it is now accepted that proximity to specialized labor, complementary suppliers and customers, and access to knowledge spillovers are all important benefits to the firm”); see, e.g., James C. Davis & J. Vernon Henderson, The Agglomeration of Headquarters, 38 REG’L SCI. & URB. ECON. 445, 445 (2008), https://www.sciencedirect.com/science/article/pii/S0166046208000513 [https://perma.cc/VS75-2NBM] (providing two explanations for why corporations find it advantageous to join in on headquarters clusters).
The clustering effect thereby makes firms linked together in similar locations more competitive than those that are isolated and less connected.

To explain this effect, James Davis and J. Vernon Henderson put forth two complementary theories. First, corporations are more likely to locate somewhere with a network of professional support services. Headquarters rely on services from specialists in areas such as law, advertising, and finance. These professional services are generally concentrated in larger cities and involve in-person interactions and close spatial proximity to best facilitate the transfer of information and services. This phenomenon appears even for organizations choosing to move overseas. For example, the benefits of clustering are evidenced in global financial centers, as corporate leaders often choose to relocate their headquarters to “service-dominated cluster[s]” such as London.

To quantify this effect, Davis and Henderson’s research on profit maximizing locations for headquarters found that a 10% increase in the number of local intermediate business service providers increased the expected number of corporate headquarters in the county by 3.6%. In particular, the diversity of services played a strong role, as firms preferred to have optionality for their vendors.

The second, different but complementary, rationale for clustering is the opportunity for corporate leaders to learn industry trends and market conditions through the exchange of information from similar firms. This phenomenon pervades multiple industries. New York City, for example, is considered “specialized in headquarters activity” for professional services. The availability of professional services draws other businesses in, and with more potential clients present, other business-adjacent services flock to the area given the increased demand. Another example is in the export industry. A study of the spatial concentration of headquarters revealed that exporters, who require specialized knowledge of foreign markets that can be

72 Davis & Henderson, supra note 70, at 445.
73 Cohen, supra note 56, at 8.
74 Davis & Henderson, supra note 70, at 445.
75 Birkinshaw et al., supra note 59, at 687.
76 Davis & Henderson, supra note 70, at 458-59.
77 Id. at 445-46.
78 Id. at 445-46.
79 Id. at 445-46.
both difficult and expensive to obtain, are significantly more likely to co-location.\textsuperscript{80} Many international shipping and ship-brokering firms are found in Hong Kong, which has become a leading marketplace for those services.\textsuperscript{81}

Even across industries, firms with similar business models can benefit from each other. A study showed that headquarters for Italian multinational corporations were more likely to cluster than those that only served the domestic market.\textsuperscript{82} In a similar realm, in China, publicly listed firms of different industries agglomerated in metropolitan areas based on institutional-contextual factors, such as the political hierarchy of the region.\textsuperscript{83}

Overall, Davis and Henderson were able to quantify the impacts of clustering more broadly, with strong positive effects on the number of headquarters in a location when the availability of diverse local services and the scale of other local headquarters increased. Statistical evidence suggested that it was “extremely beneficial” for corporations to learn from other headquarters nearby.\textsuperscript{84}

ii. Human Capital

A firm’s desire to secure talent or human capital also acts as a key determining factor for evaluating potential headquarters’ locations, particularly in a world of “knowledge-based capitalism.”\textsuperscript{85} Studies suggest that human capital growth has been concentrated in a relatively small number of cities and metropolitan areas.\textsuperscript{86} This effect is especially salient for the kind of talent important to headquarters, such as in finance, high-level


\textsuperscript{84} Davis & Henderson, \textit{supra} note 70, at 456-57. Note, however, that the marginal beneficial effect of nearby headquarters diminishes as the number of headquarters escalate. Davis and Henderson estimate that the elasticity diminishes to zero at around 133 headquarters, meaning that being in a region of approximately 130 headquarters has a similar effect to a region with 500 headquarters. \textit{Id}.

\textsuperscript{85} Adler & Florida, \textit{supra} note 71, at 611-12.

\textsuperscript{86} \textit{Id.} at 612.
management, corporate strategy, marketing, and technology. Some firms may be able to attract talent to smaller locations, such as Wal-Mart in Bentonville, Arkansas, or Berkshire-Hathaway in Omaha, Nebraska, but most firms feel compelled to follow the talent.

The labor force, like the corporations, orients itself to certain regions that serve as “symbolic focal point[s]:”

In a meaningful sense, Apple, Google and other leading tech firms are of Silicon Valley; Goldman Sachs and other leading financial firms are of New York; leading media and film companies are of Los Angeles, even though these firms have sprawling global operations. Such symbolism matters for those skilled workers who seek to carve out careers with firms and in places that align with their individual identity.

The reputation of a region as an industry-leading talent pool, consequently, has a very strong geographical pull for corporations.

Silicon Valley, for example, is widely recognized by its specialization in technology. When Tesla moved its headquarters to Texas from Silicon Valley, Elon Musk criticized the Bay Area as “complacent, a little entitled” and felt the company had limited ability to scale in California. Nonetheless, Tesla maintained a presence of 48,000 employees in California—over a third of the company’s global workforce. Most recently, Tesla even announced the establishment of a global engineering headquarters in Palo Alto while plans to invest in California continue. Despite companies leaving California and recent downturns in the tech industry, Silicon Valley

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87 Id. at 612.
90 Adler & Florida, supra note 71, at 612.
93 Id.
94 Id.
95 See Large, supra note 62 (“More California company headquarters are relocating out-of-
maintains “historical centrality in the tech industry.”\textsuperscript{96} As a Silicon Valley executive noted: “[a]s we know, land in the Valley is at a premium, but there’s a reason. It’s a great place for us to continue to invest in growing our population in a great place that has a deep talent pool that we can leverage for our future needs. . . .”\textsuperscript{97} Fueled by symbolism and network effects, this phenomenon creates a strong pull for corporations and remains pervasive even in other locations beyond California.\textsuperscript{98}

Given the importance of the association of these regions with their industries, locating a corporation’s headquarters in a region with strong industry reputation and network effects reflects the specialization of the talent. Recent trends across cities showed a relationship between increasing specialization and growing in the number of Fortune 500 companies’ headquarters.\textsuperscript{99} Houston, for example, is not only considered the nation’s “energy hub” but has also added multiple energy headquarters in the last decade.\textsuperscript{100} This process is “self-reinforcing,” as an increase in skilled workers in the region attracts more firms, creating a geographic concentration of the industry.\textsuperscript{101}

\textsuperscript{96} Alex Wilhelm, Is Silicon Valley Really Losing Its Crown?, TECH CRUNCH (Sept. 27, 2022, 12:00 PM), https://techcrunch.com/2022/09/27/is-silicon-valley-really-losing-its-crown/ [https://perma.cc/2THR-E89X].

\textsuperscript{97} In 2017, Adobe Systems had decided to add an additional tower to their San Jose headquarters as part of a major continual expansion in Silicon Valley. Jonathan Francom, the Vice President of Employee and Workspace Solutions, made this comment in support of the company’s decision. Janice Bitters, Adobe to Add a Fourth Tower to San Jose’s Skyline With Major Expansion, SILICON VALLEY BUS. J. (Jul. 13, 2017, 3:19 PM), https://www.bizjournals.com/sanjose/news/2017/07/13/adobe-doubles-down-on-san-jose-with-expansion.html [https://perma.cc/G32A-F55C].

\textsuperscript{98} See Adler & Florida, supra note 71, at 612-13 (discussing how energy and resource talent is concentrated in Houston; finance skills can be found in New York; and film and media talent is associated with Los Angeles).

\textsuperscript{99} Id. at 616-17.

\textsuperscript{100} Id. at 616-17. See also Brina Morales, Energy 2.0 Companies Relocating Headquarters to Houston, GREATER HOUSTON P’SHP (Feb. 22, 2022), https://www.houston.org/news/energy-20-companies-relocating-headquarters-houston [https://perma.cc/K9QH-6YWR] (discussing the move of Archaea Energy, one of the largest renewable energy companies in the U.S., and Bucha Bio, a biomaterials company, to Houston).

\textsuperscript{101} Ronald J. Gilson, The Legal Infrastructure of High Technology Industrial Districts: Silicon Valley, Route 128, and Covenants Not to Compete, 74 N.Y.U. L. REV. 575, 576 (1999).
Not only do these larger cities and metropolitan areas have unevenly concentrated talent with specific competencies, but they also simply have bigger population sizes, and therefore more and a greater diversity of talent. Larger cities can better take on large corporate relocations, while sustaining the growth of these firms. Scholars have characterized large and skilled cities as “the ideal large firm headquarters” due to the insensitivity of both land and labor markets when the headquarters move in. In an empirical analysis, scholars Patrick Adler and Richard Florida confirmed this hypothesis, finding that America’s Fortune 500 corporate headquarters were located in areas “relatively rich in human capital,” with almost 90% found in regions in the top quartile of population size.

In addition to the size of the talent pool, location can also influence a company’s ability to access talent. The regulation of non-compete covenants is governed by state-specific employment law. Professor Ronald Gilson examined the impact of limiting companies’ ability to poach employees, and therefore to gain knowledge from the employee’s specialized knowledge, by comparing the rise of Silicon Valley versus Route 128. He concluded that the differential enforceability of non-compete covenants and the enhanced ability for employee mobility supported the growth of specialized human capital and eventual agglomeration of a successful technology economy in Silicon Valley. Ultimately, the war for talent will continue to be a critical differentiator for companies, and location has long been considered indispensable in attracting to superior talent.

iii. Infrastructure

Infrastructure is another key driver of corporate headquarters seeking out large metropolitan areas. In a survey of over a hundred multinational companies, chief executive officers indicated that housing, educational and medical facilities, and air transportation were all important factors in making

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102 Adler & Florida, supra note 71, at 613.
103 Id. at 617-18.
105 Gilson, supra note 101, at 580-81.
regional headquarters decisions. In particular, infrastructure has critical effects on regional development through the capacity to move people and cargo. Not only does urbanization support employees’ needs, but clients are also dependent on the location of headquarters. Often, headquarters facilitate significant face-to-face contact, unlike other functions such as manufacturing.

While roads and highways continue to be key infrastructure considerations, today, airports and global connectivity have become paramount. Statistically, access to international airports is positively and consistently associated with the location of a Fortune 500 company’s headquarters. In Adler and Florida’s study, they found that 87% of Fortune 500 headquarters were located in metropolitan areas with global airports. Similarly, scholars Germà Bell and Xavier Fageda found that the availability of nonstop intercontinental flights heavily drove the location choice of a corporation’s headquarters; a 10% increase in the supply of intercontinental flights led to an approximately 4% increase in the number of headquarters located in that metropolitan area.

In addition to airports, companies also consider access to urban lifestyle amenities, including a range of meeting venues, hotels, and entertainment facilities, advantageous. For example, when Adobe Systems first decided to move to downtown San Jose, the company cited factors such as “greater proximity to good hotels,” “shorter ride from the airport for its many visitors,” and even the “ability to have a quick lunch in a nearby restaurant.” Some corporations even claimed that a major league sports arena is regarded as a “hallmark of ‘headquarters’ cities” as a “luxury skybox is... an attractive and private place for business meetings.”

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108 See Richard Florida, Charlotta Mellander, & Thomas Holgersson, Up In The Air: The Role of Airports For Regional Economic Development, 54 THE ANNALS OF REG’L SCI. 197, 197 (2015), https://link.springer.com/article/10.1007/s00168-014-0651-z [https://perma.cc/4KRW-2ZUJ] (discussing the importance of airports in helping regional development due to their capacity to move both people and cargo); Heenan, supra note 107, at 414 (finding that American executives in particular had a high preference for satisfactory air transportation).

109 Adler & Florida, supra note 71, at 618.

110 Id. at 617.


112 Cohen, supra note 56, at 11.

113 Id. at 11.
All in all, companies consider access to infrastructure, both public and private, a key community factor that can serve as both a “lifestyle amenity” and “productivity enhancement” for companies in a highly competitive market.\textsuperscript{114}

iv. Taxation

Given the trends of increasing globalization and consolidation, taxation is a key monetary incentive when businesses evaluate competitive jurisdictions. Tax incentives can amount to billions of dollars in mega-deals, such as in 2017 when Wisconsin provided Foxconn with tax incentives of up to $4.5 billion.\textsuperscript{115} Many corporate location decision frameworks highlight tax incentives as a factor for evaluation.\textsuperscript{116}

Specifically, high taxes can act as a “push factor” and increase the likelihood of re-location while low taxes represent a “pull factor” and increase the attractiveness of a region.\textsuperscript{117} Literature on fiscal geographical relationships with taxation continually show that firms design their corporate activities to minimize exposure to taxation through prudent tax avoidance strategies.\textsuperscript{118} For example, since governments regulate tax rates at many levels, including for electricity, some states have different levels of regulation allowing for electric utility competition.\textsuperscript{119} Consequently, some companies with operations that sufficiently depended on electricity usage within a geographic area factored in the impact of competition on driving down costs into their cost structures during location decision-making.\textsuperscript{120} In fact, “tax elite[]” corporations are those that can “successfully exploit[] the legislative aberrations between fiscal spaces, forging new networks of


\textsuperscript{116} \textit{See} Rabianski, DeLisle, & Carn, supra note 114, at 173 (noting that while locational decision models differ across firms, new and relocating plants generally respond to current incentives).

\textsuperscript{117} Menz, Kunisch, & Collis, supra note 29, at 62.

\textsuperscript{118} Adler & Florida, supra note 71, at 613.

\textsuperscript{119} Cohen, supra note 56, at 5.

\textsuperscript{120} Id. at 5.
financial flows across the globe.”

While tax will remain a concern for corporate decision-makers, it is important, however, to note that tax rates are generally part of the “more basic location analysis” and are often used to eliminate choices that are “out of line.” Despite the large amounts at stake, real estate executives have characterized tax incentives as “table stakes” when corporations negotiate moving their headquarters to a new city. In the more extreme, some argue that tax incentives are mostly wasteful, claiming they constitute “extractive rents that jurisdictions are duped into paying for corporations who have already made their location decision based on more fundamental factors.”

In a recent example, Citadel, a $29.6-billion hedge fund business, decided to move its headquarters from Chicago to Miami. While Citadel considered Miami’s lower tax rates, Mayor Suarez noted that “the firm’s decision to relocate to Miami wasn’t connected to any special incentives or tax breaks.” A recent case study further confirmed that while “tax may indeed serve as an incentive to meaningfully dislocate [from a home jurisdiction],” taxes are often “secondary to real business considerations,” notably the other three factors discussed: economic clustering, human capital and infrastructure.

Nonetheless, tax incentives continue to be a highly visible consideration in economic development packages. Companies can exert political

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123 Id. at 16.
128 See *supra* Parts II.B.i-iii. See also Marian, *supra* note 127, at 4 (noting that real attributions influencing dislocation of a corporate headquarters from their home location include “developed financial markets, skilled labor force, infrastructure and other agglomeration benefits”).
influences in these business decisions, as “no elected official wants to be blamed for losing a company because tax incentives were not part of the deal.” Ultimately, while tax incentives are unlikely to be the critical driver of a corporation’s headquarters location decision, tax considerations overall are still used as an “excuse for a move” or considered “tie breakers” when multiple communities fit their location needs, and will likely remain table stakes in the decision-making process.

When it comes to these factors, companies are comprehensive in their business decision-making, including considering relevant legal guidance. Government policy shifts often impact headquarters location decisions.
decisions when they understand the influence on daily business costs, such as requirements for environmental analysis, limitations in natural gas, air travel, utilities and telecommunications, or even government-controlled costs such as postage. Whether it was in the 1980s, when the cost of energy in the southwest and mountain states was lower and therefore drew jobs away from other industrial states, or most recently, during the pandemic when states such as Texas and Florida had fewer legal restrictions attracted businesses away from California, legal considerations are evaluated in light of broader business trends.

III. The Disconnect Between Business Strategy and Law in the Selection of Headquarters

Despite companies’ detailed analyses on the four factors above, there are other critical legal considerations left out of the picture. Because of the potential impact of these considerations, the choice of headquarters location is greater than what businesses recognize in their decision-making process.

A. The Law has Potential to Disrupt Headquarters’ Location Selection

Business decision-makers ultimately fail to place sufficient consideration on the law when selecting headquarters locations. This contrasts with the importance of legal considerations in the selection of a state of incorporation. Just like the incorporating state, the place of headquarters can impact corporations from (i) a jurisdictional standpoint when determining a corporation’s “home,” as well as through (ii) applications of corporate state law.

i. Defining Corporate Citizenship From Headquarters

As introduced in Part I, a corporation’s headquarters most often matters

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134 Rabianski, DeLisle, & Carn, supra note 114, at 190 fig. 10.
135 Cohen, supra note 56, at 4-5.
136 Id. at 4-5.
138 See discussion infra Part I.B.
when considering a firm’s “principal place of business,” which has critical implications from a general jurisdiction and a diversity jurisdiction perspective. Traditional business decision-making today fails to give due consideration to how a corporation’s citizenship may impact their liability. The implications of jurisdictional reach based on a corporation’s headquarters location can be critical both from a legal and a business perspective.

General jurisdiction is a powerful tool given its “dispute-blind” character. In *Daimler*, the Court “declined to stretch general jurisdiction beyond limits traditionally recognized,” and, in fact, sharply limited the scope of general jurisdiction. Some even argue that the Court has “unduly limit[ed] general jurisdiction in the future.” At the core of this decision is the importance of due process. Due process requires “a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.” In turn, predictability allows corporations to manage their expectations around liability to suit.

Although some scholars argue that there continues to be confusion and lack of predictability in general jurisdiction doctrine today, it is well-settled law that “[u]nder Daimler, in nearly all circumstances, . . . the corporation must be headquartered or incorporated in the forum state.” Consequently, irrespective of the debates around the limits of the “at home”

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139 See Twitchell, *supra* note 37, at 627 (discussing the broad reach of general jurisdiction given its dispute-blind character as compared to specific jurisdiction, which is dispute-specific).


142 See Danielle Tarin & Christopher Macchiaroli, *Refining The Due-Process Contours of General Jurisdiction Over Foreign Corporations*, 11 J. INT’L BUS. & L. 49, 50 (2012) (“‘The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal’s authority to proceed against a defendant and protects ‘a person against having the Government impose burdens upon him except in accordance with the valid laws of the land.’”).

143 World-Wide Volkswagen Corp v. Woodson, 444 U.S. 286, 297 (1980); see also U.S. CONST. amend. XIV, § 1, cl. 2 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law”).

144 See, e.g., Chung, *supra* note 9, at 1621 (arguing that general jurisdiction doctrine does not sufficiently account for the variety of corporate structures today); Edward D. Cavanagh, *General Jurisdiction 2.0: The Updating and Uprooting of the Corporate Presence Doctrine*, 68 Me. L. REV. 287, 308 (“The courts have historically disagreed about whether the foreign corporation would subject itself to general jurisdiction by the act of registration.”)

test, corporations expect to be subject to general jurisdiction in their place of headquarters.

Once a corporation is considered “at home,” the legal implications can seriously impact a corporation’s business. Beyond statutes and regulations, the courts and the judicial system are just as important.146 Whether it is the quality of the courts and their expertise, the jury pool and selection process, or the judicial selection process—these aspects are all state-dependent and carefully considered by corporations when determining a state of incorporation.147 The combination of these factors builds a resulting body of case law to provide substantive guidance to corporations and form a legal tradition specific to the state.148

Consequently, the choice of law governing the forum of the corporation’s headquarters could heavily influence litigation outcomes. Since the Supreme Court’s recent decisions, including Daimler, class actions have migrated to where corporate defendants are “at home.”149 Although specific jurisdiction remains an option for plaintiffs, the requirement for an “affiliation between the forum and the underlying controversy” is required to all class members’ claims,150 thereby making it a less straightforward

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147 See id. (explaining how the courts and the case law of Delaware has come together to build a strong legal system to serve as the legal home for corporations, including specifically calling out the courts and the case law); E. Norman Veasey, The Role of The Judiciary in Corporate Law, Corporate Governance and Economic Goals, Org. for Econ. Coop. & Dev., Dec. 2000, at 3, https://www.oecd.org/corporate/ca/corporategovernanceprinciples/1857539.pdf [https://perma.cc/4345-XAYU] (highlighting Delaware’s judicial selection process, including appointment by Governor, confirmation by Senate and a bipartisan judiciary, as being a key part of the legal regime). For a discussion connecting the relationship of the judicial environment to the legal home of the place of incorporation, see also infra notes 206-212 and accompanying text.
148 See Why Businesses Choose Delaware, supra note 146 (discussing the combination of factors that helped create Delaware’s legal environment).
150 Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty., 582 U.S. 255, 256 (2017) (quoting Goodyear Dunlop Tire Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)). In the decision of Bristol-Myers Squibb Co., the Court made it clear that out-of-state plaintiffs cannot rely on the personal jurisdiction of in-state plaintiffs to establish proper jurisdiction over their claims. However, the Court did not resolve whether specific personal jurisdiction
option as compared to relying on general jurisdiction.\textsuperscript{151} Because plaintiffs can always “chase defendants to their home states,”\textsuperscript{152} this indirectly allows corporate defendants to choose their forums through their incorporation and headquarters’ location decisions.\textsuperscript{153} Present day general jurisdiction doctrine has therefore “reinvigorate[ed] jurisdictional defenses for corporate defendants” to “resist[] litigation brought against them in unfavorable locations, as well as for mitigating litigation risks before cases are ever filed.”\textsuperscript{154}

The selection of corporate headquarters can therefore be a critical tool to limit litigation risk. Litigation is a “form of competition in which one’s success is not assured” and the “game” of forum shopping changes the “set of rules for litigation.”\textsuperscript{155} State-to-state forum shopping is not only considered a legitimate litigation strategy,\textsuperscript{156} but even “the most logical choice under rational choice theory” and supported under expected utility and wealth maximization theories,\textsuperscript{157} as making the correct choice of forum must be found over unnamed class members in addition to the named class representatives, and this remains a debate amongst scholars today. See Connor Cohen, \textit{Personal Jurisdiction in Class Actions After Bristol-Myers Squibb: How Ford May Foreshadow the Supreme Court’s Answer}, \textsc{Nw. U. L. Rev. Note} (July 28, 2021), https://blog.northwesternlaw.review/?p=2536 [https://perma.cc/MM2W-TMWJ](discussing the open question regarding absent class members’ personal jurisdiction requirements following Bristol-Myers Squibb); Jonathan Remy Nash, \textit{Personal Jurisdictional Limits Over Plaintiff Class Action Claims}, 96 S. Cal. L. Rev. (forthcoming 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4261116 [https://perma.cc/758Q-M4Y4](arguing for the requirement of specific personal jurisdiction to extend to unnamed plaintiffs).

\textsuperscript{151} Following Bristol-Myers Squibb Co., lower courts have divided on this issue. See Cohen, \textit{supra} note 56 (discussing different approaches across circuits and district courts); David Kouba & Andreas Moffett, \textit{The Right Approach to Personal Jurisdiction in Class Actions}, \textsc{Law 360} (April 12, 2021, 06:43 PM), https://www.law360.com/articles/1373723/the-right-approach-to-personal-jurisdiction-in-class-actions [https://perma.cc/G75C-WL4N](outlining three approaches to personal jurisdiction in class actions following Bristol-Myers Squibb Co.).

\textsuperscript{152} Lea Brilmayer et al., \textit{A General Look at General Jurisdiction}, 66 \textsc{Tex. L. Rev.} 723, 725 (1988).


\textsuperscript{154} \textit{Id.}


\textsuperscript{156} See, e.g., Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 779 (1984) (“Petitioner’s successful search for a State with a lengthy statute of limitations is no different from the litigation strategy of countless plaintiffs who seek a forum with favorable substantive or procedural rules or sympathetic local populations.”)

\textsuperscript{157} Bassett, \textit{supra} note 155, at 375-77.
is potentially outcome-determinative.\textsuperscript{158}

Consequently, although corporations cannot select their forum as the defendant, they can make strategic decisions when determining their headquarters’ location to manage a plaintiff’s options in forum shopping. Scholars have argued that “[a]s long as the plaintiff’s bar can choose their ground for battle, even the strongest defense in fact and law stands little chance.”\textsuperscript{159} The post-\textit{Daimler} limits on general jurisdiction give corporations an opportunity to rethink their battlegrounds through their headquarters’ locations.

Tactically, if a corporation carefully considers its choice, it can not only better limit litigation spending, but also bolster other financial metrics for the corporation, such as impact on stock and credit ratings. If a corporation is located in a plaintiff-friendly forum, the corporation may lose lawsuits due to the wrong choice of forum, which can threaten a corporation with bankruptcy if an award is sufficiently sizable,\textsuperscript{160} or even become subject to more lawsuits.\textsuperscript{161} Philadelphia, for example, is considered a “promising venue for a [medical malpractice] lawsuit,” as it has seen both a rise in medical malpractice court cases and size of verdict awards.\textsuperscript{162} The surge

\textsuperscript{158} See Kevin M. Clermont & Theodore Eisenberg, \textit{Exorcising The Evil of Forum-Shopping}, 80 \textit{CORNELL L. REV.} 1507, 1508-09 (1995) (“Forum selection is very important not only to the litigator, but also to the office lawyer drafting contracts with an eye toward possible future litigation. . . Thus, forum selection is a critical concern of the legal system.”).


\textsuperscript{162} See Jason Laughlin & Abraham Gutman, \textit{Philly’s Medical Malpractice Cases Are Surging Since a New State Rule Went Into Effect}, THE PHILADELPHIA INQUIRER (Mar. 8, 2023, 04:45 PM), https://www.inquirer.com/news/medical-malpractice-lawyer-lawsuit-philadelphia-pennsylvania-court-venue-shopping-20230308.html [https://perma.cc/SWC9-3SUU] (discussing the history of million-dollar verdicts in Philadelphia courthouses and the rising number of court cases). This also extends to other healthcare-related cases, such as in
followed a new rule allowing plaintiffs in medical malpractice cases to sue providers in counties where they “regularly conduct[] business” or have “substantial contacts”—language that encompasses headquarters’ counties and is reminiscent of the original general jurisdiction test from *International Shoe*—rather than only in the county where they received the problematic treatment. Within twenty days of the rule change, medical malpractice lawsuit filings were up 148% and broke all monthly records from the last six years. In turn, healthcare organizations have faced increased costs of medical liability insurance and are unable to maintain practices in Philadelphia.

The prospect of increased litigation will cause corporations heavy expenditures. Case studies have shown that the cost of litigation consistently exceeds the sum of attorneys’ fees and settlement costs. Other costs include court-imposed constraints, transaction costs, and reputational damage. Reputational damage, in particular, suggests a company is willing to engage in allegedly illicit activities. This can cause concerns from trading partners that the corporation is “strapped for cash,” which makes negotiations more difficult and can lead to requirements of more detailed and stringent written contracts.

While these costs seem intangible, external stakeholders internalize these considerations. Multiple case studies demonstrate unexpectedly large drops in market value after litigation is announced due to stockholder reactions. For example, in *Berkey Photo v. Eastman Kodak*, where the

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165 Laughlin & Gutman, supra note 162.


167 Id. at 381.

168 See, e.g., id. at 377-78 (introducing major cases that demonstrate an asymmetrical change in market value of firms after litigation).

169 603 F.2d 263 (1979).
case was brought to Kodak’s headquarters in New York,\textsuperscript{170} the announcement of Kodak’s loss led to a $403-million de-valuation.\textsuperscript{171} The company’s drop in value was many multiples larger compared to Berkey’s valuation rising by $3.5 million.\textsuperscript{172} Creditors also carefully weigh a corporation’s risk of litigation, as firms with higher risk have lower credit ratings.\textsuperscript{173} Lower credit ratings can spiral into a higher likelihood that the corporation’s loans and bonds are rated speculatively, which in turns causes credit holders to require higher yields.\textsuperscript{174} As such, increased risk of litigation is positively correlated with the cost of debt.\textsuperscript{175}

Consequently, the selection of a headquarters location also impacts the judicial environment that a corporation faces and the choice of forum and law. These legal factors in turn can impact a corporation’s exposure to litigation and the respective outcomes, both of which can meaningfully impact a corporation’s bottom-line.

ii. The Internal Affairs Doctrine and the Reach of State Corporate Law

In addition to jurisdictional concerns, developments in the internal affairs doctrine and state statutes also potentially affect a corporation’s daily affairs depending on its choice of headquarters. The internal affairs doctrine is a choice of law rule that designates only one state with the authority to regulate a corporation’s internal affairs, meaning issues specific to the relationships of a corporation and its officers, directors, and shareholders, in order to avoid conflicting demands between states.\textsuperscript{176} Historically, the one state with authority has been the state of incorporation, which has led states to compete in making their corporate law attractive to corporations.\textsuperscript{177} Simultaneously, those who form a corporation are free to select their

\begin{footnotesize}
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\item \textsuperscript{170} Editors of Encyclopedia Britannica, \textit{Eastman Kodak Company}, \textsc{Britannica} (Mar. 3, 2023), https://www.britannica.com/topic/Eastman-Kodak-Company [https://perma.cc/Z7P6-7KWF].
\item \textsuperscript{171} Engelmann & Cornell, \textit{supra} note 166, at 393.
\item \textsuperscript{172} Id. at 393.
\item \textsuperscript{173} Matteo P. Arena, \textit{Corporate Litigation and Debt}, 87 J. BANKING \& FIN. 202, 202-03 (2018).
\item \textsuperscript{174} Id. at 202-03.
\item \textsuperscript{175} Id. at 202-03.
\item \textsuperscript{176} Edgar v. Mite Corp., 457 U.S. 624, 645 (1982).
\item \textsuperscript{177} See generally Cary, \textit{supra} note 47, at 684-85 (discussing states’ “race to the bottom” and Delaware’s rise to prominence through benefitting managers who in turn influence incorporation decisions); Ralph K. Winter Jr., \textit{State Law, Shareholder Protection, and The Theory of The Corporation}, 6 J. LEGAL STUD. 251, 251-54 (1977) (challenging the race to the bottom theory and citing considerations from the market for capital as forces that have pushed Delaware forward in the charter competition).
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corporate law of preference by incorporating in that state.\footnote{178} On the other hand, the choice of headquarters is not as readily associated with the determination of applicable corporate law. This status quo, however, is now being challenged in some states. In 2018, California passed a bill adopting a gender quota for corporate boards,\footnote{179} and specifically applied the quota to companies “whose principal executive offices” are in California.\footnote{180} Although the statute specifies that the “principal executive offices” are defined according to the corporation’s SEC 10-K form,\footnote{181} neither the bill nor the federal securities laws define the term.\footnote{182} However, discussions around defining the terminology suggest it means “the place where... most ... executive officers work most of the time” or “the head office, the place where the principal officers generally transact business, and the place to which reports are made and from which orders emanate.”\footnote{183} These are precisely the characteristics of a corporation’s headquarters.

The focus on a corporation’s principal executive office rather than the place of incorporation represents a “fundamental shift in the law,” suggesting that “domestic relocations to and from California now potentially have a


\footnote{180} S.B. 826 (Ca. 2018).

\footnote{181} \textit{Id}.


direct impact on the applicable corporate law.” If individual states began to consider reforms that regulate corporations based on their headquarters, “California’s gender quota may mark the beginning of an age in which the law governing a corporation’s internal affairs is a combination of the law of the state of incorporation and the law of the headquarters state.” This would further emphasize the possibility of selection of headquarters becoming a critical choice of law question.

Although the California statutes were found unconstitutional in Crest v. Padilla I for violating the Equal Protection Clause of the California Constitution, the decision did not directly address the implications of the bill on corporate law and the internal affairs. Whether states can regulate corporations through their corporate headquarters’ locations in addition to their place of incorporation remains an open question in law today. While the Supreme Court has acknowledged the internal affairs doctrine and emphasized the importance of states’ power to regulate corporations, the Court has not explicitly addressed the question of choice of law principles in the event of a conflict between the law of the state of incorporation and the law of the headquarters’ state. The board quota legislation in question may not necessarily present a risk of inconsistent regulation, as other state laws do not prohibit corporations from having female directors and complying

184 Dammann, supra note 178, at 220-21.
185 Id. at 220-21.
186 Crest v. Padilla, No. 19STCV27561, 2022 Cal. Super. LEXIS 48298 (Cal. Super. Ct. 2022). See Sarah Fortt, Betty Huber & Maj Vaseghi, California Gender Board Diversity Law is Held Unconstitutional, HARV. L. SCH. F. ON CORPORATE GOVERNANCE (June 12, 2022), https://corpgov.law.harvard.edu/2022/06/12/california-gender-board-diversity-law-is-held-unconstitutional/#8 [https://perma.cc/7PR3-2F8A] (discussing the court’s decision in holding that the bill was not narrowly tailored to California’s stated interest); Alisha Haridasani Gupta, Another California Board Diversity Law Was Struck Down, But It Already Had a Big Impact, N.Y. TIMES (May 19, 2022), https://www.nytimes.com/2022/05/19/business/california-board-diversity-women.html [https://perma.cc/GJY3-4WAX] (highlighting that the bill violated the California constitution for failing to remedy a “specific, purposeful, intentional and unlawful” instance of discrimination).
187 The scope of the bill, however, is viewed more broadly by scholars. For a discussion on the impact on the internal affairs doctrine and comparisons with European corporate law, where corporations were governed by the law of the country where its head office was located until 1999, see Fisch & Solomon, supra note 182.
188 See CTS Corp. v. Dynamics Corp. of Am., 481 U.S. 69, 91 (1987) (“It thus is an accepted part of the business landscape in this country for States to create corporations, to prescribe their powers, and to define the rights that are acquired by purchasing their shares. A State has an interest in promoting stable relationships among parties involved in the corporations it charters, as well as in ensuring that investors in such corporations have an effective voice in corporate affairs.”)
189 Dammann, supra note 178, at 229-30.
with California law, for example. However, there nonetheless remains a theoretical risk that states may enact future legislation that could be inconsistent.\textsuperscript{190}

State statutes regulating corporations based on the location of their headquarters may become powerful tools that influence corporations to start weighing legal considerations in their headquarters selection processes more seriously and in a manner resembling the incorporation process.\textsuperscript{191} In addition to California, several other states are now considering legislation mandating greater board diversity bills, including Hawaii,\textsuperscript{192} Massachusetts,\textsuperscript{193} Michigan,\textsuperscript{194} New Jersey,\textsuperscript{195} and Washington.\textsuperscript{196} States and local governments today focus their business-attraction programs on fiscal incentives, including cash grants, rebates, and tax credits,\textsuperscript{197} but nonfinancial incentives are critical to gaining entry and also tend to have longer-term impact.\textsuperscript{198} Through these new statutes expanding the reach of corporate law to headquarters, states have another opportunity to influence corporations.

Not only do these statutes present an opportunity for states, but corporations likewise can shape the way these new statutes influence corporate law. Corporations have time and again influenced legislative changes within states.\textsuperscript{199} For example, even within the scope of corporate law

\textsuperscript{190} Id. at 229-30.
\textsuperscript{191} See Michael Hatcher & Weldon Latham, States Are Leading the Charge to Corporate Boards: Diversify!, HARV. L. SCH. F. ON CORPORATE GOVERNANCE (May 12, 2020) (“[T]he states have already begun to take action. Already a dozen states have enacted or are poised to enact requirements to enhance diversity on boards.”).
\textsuperscript{192} Relating to Gender Equity, H.B. 2720, 30th Leg., Reg. Sess. (Haw. 2020); see also Jeff Green, Hawaii Tries a New Twist on US Board Gender Quotas: Must Have Men, BLOOMBERG (Feb. 8, 2023, 9:00 AM), https://www.bloomberg.com/news/articles/2023-02-08/hawaii-tries-a-new-twist-on-us-board-gender-quotas-must-have-men [https://perma.cc/K8K6-NNX4] (discussing Hawaii’s ongoing proposals for gender quotas in public companies).
\textsuperscript{193} Resolutions Encouraging Equitable and Diverse Gender Representation on the Boards of Companies in the Commonwealth, S. Res. 1007, 189th Gen. Ct. (Mass. 2015).
\textsuperscript{196} Increasing Equitable Gender Representation on Corporate Boards, S.B. 5142, 66th Leg., Reg. Sess. (Wash. 2019).
\textsuperscript{197} See discussion supra Part II.B.iv.
\textsuperscript{199} Recently, for example, companies such as Uber and Lyft have influenced employment law
statutes under the traditional internal affairs doctrine, companies headquartered in the state influenced anti-takeover measures. Instances across states include Washington enacting protections at the request of Boeing Industries (headquartered in Washington, incorporated in Delaware),\(^{200}\) North Carolina doing so due to Burlington Industries (headquartered in North Carolina, incorporated in Delaware), and Massachusetts, which conducted “perhaps the most shameless transfer of wealth from shareholders to incumbent management,” where:

Dayton Hudson Corporation prevailed upon the Governor of Minnesota to call a special legislative session so that a law could be passed to protect the firm from takeover by Dart Group, Inc. In Massachusetts, to relieve any lingering doubts about the special-interest basis of that state’s anti-takeover statute, the Governor appeared at a Gillette Company plant to sign the statute into effect. Gillette had been the subject of a takeover attempt by Revlon.\(^{201}\)

These examples go to show how much influence corporations can exercise over the legal policies of the states in which they are headquartered. The incentive for corporations to participate in these discussions would only increase with the new board gender quota statutes explicitly tying corporations with headquarters in the state to local corporate law. A new status quo would give governments and corporations more opportunities to influence each other in shaping this new phase of corporate law in a way that mimics the current responsiveness of legislatures and judiciaries to the demands of states in their place of incorporation.\(^{202}\)


\(^{202}\) See, e.g., Demetrios G. Kaouris, *Is Delaware Still a Haven For Incorporation?*, 20 Del. J. Corp. L. 965, 973 (“Another advantage of Delaware’s General Corporation Law is that the statute is continually amended by the Delaware Legislature and the Bar Association’s Section on Corporate Law so that it remains responsive to corporate needs.”).
B. Businesses Primarily Weigh Legal Considerations in Determining Their Place of Incorporation

In contrast to the headquarters decision, selecting a place of incorporation is widely regarded as a predominantly legal choice. Corporations hold special relationships with their place of incorporation from a jurisdictional perspective and from a state corporate law perspective, including broad implications ranging from corporate governance to anti-takeover protections, given the longstanding traditional understanding of the internal affairs doctrine.

States compete for corporate charters through their legal policies, and today, Delaware is the “undisputed winner,” as the dominant choice for corporations since the early 1900s. More corporations listed on stock exchanges are incorporated in Delaware than any other state, and nearly 60% of Fortune 500 companies are incorporated in Delaware. Furthermore, over 80% of corporations seeking to reincorporate move to Delaware.

203 See Robert Daines, The Incorporation Choices of IPO Firms, 77 N.Y.U. L. REV. 1559, 160 (2002) (“In the United States, each of the fifty states, plus the District of Columbia, enacts its own corporate law and maintains its own court system for resolving corporate disputes. Firms can elect to be governed by any of these regimes simply by incorporating in the state of their choice, without regard to where they operate.”).
205 See discussion supra Part III.A.ii.; see also CTS Corp., 481 U.S. at 90 (discussing the history of states and corporate governance that has led to a free market system “depend[ant] at its core upon the fact that a corporation—except in the rarest situations—is organized under, and governed by, the law of a single jurisdiction, traditionally the corporate law of the State of its incorporation.”).
208 See Daines, The Incorporation Choices of IPO Firms, supra note 203, at 1563 (“Delaware has a nearly 70% share of IPO firms”); Kaouris, supra note 202, at 967 (noting that more corporations listed on the national exchanges are incorporated in Delaware compared to other states and citing the New York Stock Exchange, which listed 44% of corporations from Delaware).
209 Fisch, supra note 207, at 1061.
Delaware as their new domicile.\textsuperscript{210} Even stockholders recognize the value of incorporation in Delaware due to its corporate law benefits; one study found firms incorporated in Delaware to be worth “significantly more” than firms with other places of incorporation by up to as much as 2% on average.\textsuperscript{211}

Incorporation decisions are fundamentally driven by the law, yet businesses simultaneously recognize their ability to impact valuation. Likewise, the law is receptive to business considerations. Delaware maintains its status as a “haven for incorporation” in part due to its ability to adjust its corporate laws in reaction to changes in the business world.\textsuperscript{212} This allows Delaware lawmaking to offer corporations benefits such as “flexibility, responsiveness, insulation from undue political influence and transparency.”\textsuperscript{213} Delaware developed this reputation for responsiveness through a combination of a specialized Court of Chancery with a “national reputation of expertise in dealing with corporate law matters,”\textsuperscript{214} a “highly developed body of case law,”\textsuperscript{215} and a unique judicial lawmaking process.\textsuperscript{216} The entirety of the judicial environment—whether it is the quality of the courts, the presence of a jury, the body of precedent, the justices and their experiences,\textsuperscript{217} and the list goes on—is considered by states deciding on their place of incorporation. Each of these factors has the potential to be equally impactful for the place of headquarters, as a corporation’s other designated home state.

This dialogue, however, is missing from the selection of place of headquarters. Both businesses and legislature jointly understand that the choice of place of incorporation is mutually dependent and evolves with each other. There is consensus that states compete in the shaping of corporate law

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\textsuperscript{210} Kaouris, \textit{supra} note 202, at 1011 (citing Roberta Romano, \textit{Law as a Product: Some Pieces of the Incorporation Puzzle}, 1 J.L. ECON. & ORG. 225, 265-73 (1985)).
\textsuperscript{212} Kaouris, \textit{supra} note 202, at 998. \textit{See also} Romano, \textit{supra} note 206, at 38 (“The most important transaction-specific asset in the chartering relation is an intangible asset, Delaware’s reputation for responsiveness to corporate concerns.”).
\textsuperscript{213} Fisch, \textit{supra} note 207, at 1064-65. \textit{See also} Kaouris, \textit{supra} note 202, at 1004 (“Delaware has a responsive legislature, a flexible statute, specialized courts, a wealth of precedents, an efficient Secretary of State's Office, and efficient corporation service companies in haven.”).
\textsuperscript{214} Kaouris, \textit{supra} note 202, at 975-76.
\textsuperscript{216} \textit{See} Fisch, \textit{supra} note 207, at 1072-74 (discussing how Delaware relies on judicial lawmaking more than other states and how its courts have a distinctive process that cause it to resemble the legislative process).
\textsuperscript{217} \textit{Why Businesses Choose Delaware}, \textit{supra} note 165.
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to attract public corporations for incorporation and obtain franchise fees. In contrast, seldom do scholars consider this form of regulatory competition from a headquarters selection standpoint:

[C]orporate law scholars have paid no attention to firms’ ability to move their headquarters from one U.S. state to another. This lack of interest is unsurprising. Under the internal affairs rule, a publicly traded corporation's decision to relocate its headquarters from one state to another does not change the applicable corporate law, which continues to be determined by the corporation's state of incorporation.

However, especially with new board statutes across states and the potentially changing landscape of the internal affairs doctrine, states and businesses alike should not undervalue the criticality of the headquarters decision. This may be the start of a new form of competition amongst states in corporate law, and states may need to move beyond traditional economic considerations to attract corporations. Corporations are willing to relocate their headquarters just as they are willing to re-incorporate.

Furthermore, the headquarters decision can even help states with the incorporation race for charters. Today, 97% of public firms incorporate in Delaware or their home state. Home biases such as a local firm’s ability to lobby for corporate law reform and tendency to hire local lawyers who suggest local incorporation create “the gravitational pull of a firm's home state [that] is so strong that only about 5% of all firms that incorporate outside of Delaware make it anywhere else.” This suggests that an increase in headquartered corporations in the state could have exponential benefits to a state’s economy through the support of additional franchise fees from incorporation charters.

As legal scholarship begins to suggest that “state competition for corporate headquarters may end up shaping state law—including, potentially,
state corporate law—at least to some extent,\textsuperscript{225} states should increasingly pay attention to corporations’ headquarter location decisions. With the new trend in expanding the scope of corporate law statutes across states following California’s lead, this may be the catalyst to push businesses to think differently about their choice of corporate headquarters.

\textbf{Conclusion}

Against a backdrop in which the selection of headquarters continues to be critical for corporate strategy and legal jurisdiction, the increasing willingness of corporations to relocate their headquarters, and state efforts to deviate from the internal affairs doctrine have created an environment that is increasingly similar to the world of charter competition. Even as corporate structures become increasingly complicated,\textsuperscript{226} the use of corporate headquarters as a strategic component and the courts’ acknowledgement of headquarters as a corporation’s domicile have stood the test of time. Today, the choice of headquarters matters with respect to a variety of legal considerations beyond the traditional business factors that corporations focus on. This decision has evolved into a fundamental legal question akin to that of selecting a corporation’s place of incorporation.

As the legal environment gains potential to drive re-location choices and state competition for attracting headquarters, businesses need to be prepared to step into the dialogue with the states and courts. Complementarily, when businesses move beyond surface-level regulatory considerations and traditional business priorities, states will likely start

\textsuperscript{225} Kaouris, \textit{supra} note 202, at 247-48.

\textsuperscript{226} There are a number of discussions around recent trends that could complicate corporate structure and change how the courts may view corporations’ domicile, and therefore the related legal considerations. For discussions on corporations opening second headquarters and the potential implications of state law, see Tritt & Teschner, \textit{supra} note 12, at 13-14. For limitations on today’s general jurisdiction doctrine on different corporate structures such as de-centralized corporations with branch offices and franchise agreements, see Chung, \textit{supra} note 9. Finally, it is worth noting that remote work has the potential to change how corporations evaluate “principal place of business,” although most concerns are currently around implications on employment law. See \textsc{U.S. Legal Considerations for Remote Work Arrangements in the Wake of COVID-19}, Debevoise & Plimpton (Mar. 17, 2020), https://www.debevoise.com/insights/publications/2020/03/us-legal-considerations-for-remote-work [https://perma.cc/K8KA-E58S] (highlighting employment risks due to remote work, such as discrimination, timekeeping and overtime, employee expenses, and cybersecurity, but also noting that remote work has “effects on all aspects of the business”); Isaac Mamaysky & Kate Lister, \textit{Working From Home: Unraveling the Employment Law Implications of The Remote Office}, 36 ABA J. LAB. & EMP. L. 343, 344 (discussing the areas of employment law that are implicated by remote work).
making bigger moves to factor in business needs into their policies. These decisions should not be made in siloes. Only through a responsive dialogue, comparable to what has characterized Delaware’s dominance in serving the interests of the majority of public corporations today, will the states and businesses best work together to develop a mutually beneficial regulatory design.