

SPECIAL COMMITTEE ON SUPERIOR COURT BUSINESS/COMPLEX LITIGATION

REPORT AND RECOMMENDATIONS

June 2, 2009

Frederick L. Cottrell, III, Chair
Robert J. Katzenstein
Edward M. McNally
Somers S. Price, Jr.
Donald E. Reid
Philip A. Rovner
John W. Shaw
Allen M. Terrell, Jr.
Jeffrey M. Weiner

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND CHARGE OF THE COMMITTEE.....	1
BUSINESS/COMPLEX LITIGATION IN THE DELAWARE COURT SYSTEM	2
1. The United States District Court	2
2. The Court of Chancery	3
3. The Superior Court.....	5
THE SUMMARY PROCEDURE RULES.....	6
CURRENT HANDLING OF COMPLEX BUSINESS LITIGATION IN SUPERIOR COURT	10
“BUSINESS” OR COMMERCIAL COURTS IN OTHER JURISDICTIONS	13
THE DELAWARE DISTRICT COURT MODEL FOR HANDLING COMPLEX CASES	14
WHY WOULD THE SUPERIOR COURT ADOPT THE RECOMMENDED CHANGES?	16
RECOMMENDATIONS FOR CREATION OF A BUSINESS/COMPLEX LITIGATION DIVISION WITHIN THE SUPERIOR COURT	18
ACTIVITIES AFTER CREATION OF SUCH A DIVISION	21
APPENDIX A – Business Courts Summary	22
APPENDIX B – Case Management Order	62
EXHIBIT A – Protocol For The Inadvertent Production Of Documents.....	68
EXHIBIT B – Protocol For Expert Discovery	71
APPENDIX C – E-Discovery Plan Guidelines	75
APPENDIX D – Civil Case Information Statement (CIS).....	79

INTRODUCTION AND CHARGE OF THE COMMITTEE

By letter, the Honorable James T. Vaughn, Jr., President Judge of the Delaware Superior Court (the “Court”), appointed a committee of nine lawyers (the “Special Committee) to explore the management of complex and commercial litigation matters within the Court and to make recommendations about the handling of such matters going forward. The Special Committee held various meetings, researched various issues and held a series of additional meetings before the preparation of this Report.

What follows is a short history of the management of complex and commercial litigation matters within the Delaware court systems, the investigation undertaken by the Special Committee and a detailed discussion of the recommendations offered by the Special Committee.

For the reasons stated below, the Special Committee recommends the creation of a division within the Court to handle business/complex litigation. Delaware consistently is recognized as having the best court system in the country. From judges to juries to predictability of outcomes, Delaware has established itself as a top venue for major and varied types of litigation. Such success, however, has not gone unrecognized by other states eager to copy our system. As we do with cutting-edge business laws passed by our General Assembly, we need to keep our court system current and competitive without sacrificing quality or fairness of adjudication. One of the goals of this Report is to recommend the addition of another avenue in Delaware for litigants to adjudicate disputes important for them in a professional and unbiased manner.

BUSINESS/COMPLEX LITIGATION IN THE DELAWARE COURT SYSTEM

The Delaware court system is unique in its handling of business/complex litigation. As an initial matter, the Delaware court system is one of the most considered venues in which to bring such litigation, since a party filing an action may have available to it the place of incorporation of the defendant, the defendant's principal place of business or a venue which has a significant relationship to the cause of action at issue. While Delaware may not host a significant number of primary places of business, the incorporation of many companies in Delaware and the relationship of Delaware to the dispute, *e.g.*, questions of corporate law, both place Delaware near the top of frequently considered venues.¹

Other well-known factors also result in the consideration of Delaware as a preferred venue: appointment (not election) of experienced judges, well-established bodies of case law and a fairly conservative jury system which generally eschews unpredictable awards or "run-away" verdicts including punitive damages.

Litigants have three primary venues in Delaware from which to choose to litigate significant disputes: the United States District Court, the Court of Chancery and the Superior Court. Each, however, may impose certain jurisdictional restraints on the ability to file suits there or, once the case is filed, may have in place certain requirements for the management and progress of the cases that may encourage or discourage the adjudication of disputes there.

1. The United States District Court

Historically, the United States District Court for the District of Delaware handled a fair number of "classic" business/complex cases, typically large commercial cases which satisfy the

¹ In addition, many contracts or "deals" specify Delaware as the agreed-upon venue to resolve disputes. A typical provision in agreements provides that any dispute "shall be adjudicated in a court of competent jurisdiction in Delaware."

diversity of citizenship requirements imposed by federal law. Many other cases categorized as “complex” have been, and continue to be, filed there, typically larger federal question cases such as patent, trademark, copyright, antitrust or securities litigation, in addition to numerous bankruptcy appeals from a greatly expanded Delaware Bankruptcy Court.

A recent trend, however, is a marked increase in the number of complex federal question cases, mostly in the patent area. For example, each judge now carries an average of more than 50 patent cases. This is one of the highest number of patent cases per judge in the United States. Each patent case typically requires between 18 and 20 months from filing to trial and involves complex discovery and pre-trial proceedings. Each trial may last up to two weeks or more. An informal survey reveals that time spent in trial during the course of a year by the federal judges is not only significant but weighted heavily toward patent cases. In short, the Delaware District Court is one of a small number of nationally-recognized district courts specializing in patent litigation and the nature of that docket means the judges are spending a greater percentage of their time managing those cases.

Accordingly, while our District Court still handles large commercial diversity cases for money damages, the heavy patent docket may give some litigants pause in selecting District Court as a Delaware venue.² They fear their cases will be delayed if they file in District Court.

2. The Court of Chancery

As commercial litigants are well aware, Delaware is one of the few states that separates its trial courts between law and equity. The hallmark of the Court of Chancery is its handling of matters involving Delaware corporate law, including many in which money damages are the

² Indeed, as of the preparation of this Report, the fourth Article III seat remains vacant. Even with the addition of a second Magistrate Judge and the appointment of a panel of Special Masters and special case assignment procedures implemented by the Third Circuit Court of Appeals, the Court’s docket remains heavy with large, trial-intensive patent cases.

primary, or at least ancillary, relief requested. The Court of Chancery also enjoys a stellar reputation as a trial court willing to handle technology disputes when the parties have consented to jurisdiction or mediation by that court (10 Del. C. §346) and mediations of business disputes where the amount in controversy is at least one million dollars (10 Del. C. §347). However, there are significant limitations to the Court of Chancery's handling of complex commercial litigation. The first is subject matter jurisdiction. For the Court of Chancery to consider adjudicating a large commercial claim for money damages, it must have original equitable jurisdiction. It may also decide to keep claims at law (including monetary claims) under the "clean-up doctrine".³ However, even under this doctrine, a second significant impediment exists for litigants in a large commercial case: the inability of the Court of Chancery to conduct a jury trial. Even in complex commercial cases between large companies, the desire of one or both parties to seek a jury trial may be a controlling factor.

For these reasons, the Court of Chancery and the Delaware District Court may impose certain limitations on the ability of litigants to bring and quickly resolve large commercial disputes in Delaware.⁴

³ Donald J. Wolfe, Jr. and Michael A. Pittenger, Corporate and Commercial Practice in the Delaware Court of Chancery §2-4 (2005).

⁴ In a few limited instances, parties have invoked Article IV of the Delaware Constitution which allows a judge of the Court of Chancery or Superior Court to preside over both claims at law and equity. The process for appointment may be a bit unwieldy and does not necessarily result in the efficient handling of complex commercial cases.

3. The Superior Court

The Delaware Superior Court is fully staffed and may conduct jury trials. In theory, therefore, the Superior Court may be the ideal forum in Delaware to resolve complex commercial disputes. Indeed, historically, the Court has seen its fair share of such cases in the insurance coverage area, asbestos litigation and general commercial litigation brought by, or against, Delaware companies. Further, the Court does not possess many of the jurisdictional limitations of District Court and the Court of Chancery that would prevent it from adjudicating large commercial disputes.

However, a current perception is that the Court does not have the number of such cases one would expect in Delaware. This report reviews the reasons why the Superior Court does not have as many complex business cases as might be expected, studies how other jurisdictions and courts have handled such litigation, and proposes a plan for the Court to handle such disputes with a minimum of new rules and procedures.

THE SUMMARY PROCEDURE RULES

Initially, it is useful to review a prior attempt to increase the number and efficiency of handling large commercial disputes in the Superior Court. Superior Court Rules 124 through 130 are referred to as the Rules Governing Actions Subject to Summary Proceedings (“SP Rules”). The SP Rules establish an expedited procedure for non-jury trials for business disputes when the parties (at least one of which must be a Delaware citizen or business entity) have consented, by written agreement or stipulation. Punitive damages are not available under this procedure. The most important features of the SP Rules are as follows:

- All such cases are heard by a Judge of the Summary Proceedings for Commercial Disputes Panel, which Panel is appointed by the President Judge.⁵
- There are deadlines for briefing of, and decisions on, motions to dismiss.⁶
- A plaintiff must file within 7 days of the filing of an answer, and the defendant must file within 30 days thereof, copies of all documents intended to be relied upon at trial and a list of intended trial witnesses.⁷
- A party may serve only ten interrogatories, including sub-parts.⁸
- A party may depose any person on the other party’s witness list, any designated affiant, if the parties elect to submit the case on briefs and affidavits in lieu of live testimony, and only four other persons. Depositions must be completed within 120 days of the filing of the last answer.⁹

⁵ Rule 125.1

⁶ Rule 126

⁷ Rule 127(a)

⁸ Rule 127(b)

⁹ Rule 127(d)

- A party may serve only ten requests for admissions.¹⁰
- At the option of the Court, discovery disputes may be addressed by a Master at the expense of the parties, or by the Court.¹¹
- Unless otherwise ordered by the Court, all fact discovery must be completed within 180 days after the filing of the last answer.¹²
- Unless otherwise ordered by the Court, expert discovery must be completed within 60 days after completion of fact discovery.¹³
- There are no motions for summary judgment.¹⁴ However, it should be noted that then Judge, now Justice Ridgely, permitted the filing and briefing of a motion for summary judgment in *Bridgestone / Firestone, Inc. v. Cap Gemini America, Inc., et al.*, C.A. No. 00C-10-058, presumably with the consent of the parties and pursuant to Rule 131, discussed *infra*.
- Rule 129 provides that if the parties notify the Court within seven days after the close of discovery that they agree to forego witnesses at a trial, they may submit briefs and affidavits.
- Rule 130 provides procedures for trials. Absent Court order, trials are limited to five days. The Court's decision is to be rendered 30 days after the filing of the final brief, if no oral argument occurs, or within 30 days of oral argument.

¹⁰ Rule 127(e)

¹¹ Rule 127(g)

¹² Rule 127(h)

¹³ Rule 127(i)

¹⁴ Rule 128

- Rule 131 provides that all of the SP Rules except Rules 129 and 130 may be modified by agreement of all parties with approval of the Court.

The Special Committee contacted the Prothonotary's office in New Castle County about the use of the Summary Proceedings Act. Sharon Agnew gathered the docket sheets of the six cases that she could determine have been filed under the SP Rules. While the SP Rules took effect in 1994, parties have rarely used the procedure.

Only one case, *Freudenberg Spunweb Co. v. Fibervisions L.P.*, went to trial, before Judge Silverman. That case was filed in March 2004 and tried in July and September 2005. Post-trial briefs were filed in October 2005 and the case was decided in March 2006. The case was appealed and the judgment was affirmed by the Delaware Supreme Court. The Delaware attorneys in the case, Phil Rovner and Jeff Goddess, both thought that the procedure worked well. Judge Silverman permitted the parties to take more discovery than provided for in the SP Rules. The Court also extended the schedule at the request of the parties.

Bridgestone / Firestone, Inc., supra, was filed in October 2000 and settled in June 2002 after Judge Ridgely denied the motion for summary judgment in May 2002.

A third case was stayed soon after it was filed, and then dismissed. A fourth was converted to a summary case four months after it was filed and dismissed by stipulation three months later. A fifth case was dismissed by stipulation eleven months after it was filed, without any discovery having been conducted. The sixth case was dismissed by the plaintiff three days after it was filed.

It is difficult to explain why the Summary Proceedings Act has not been invoked more often. Possible reasons include a lack of awareness of the Act itself and a reluctance to include such provisions in a contract or stipulation at a time when the nature of future disputes may be

unknown. Additional reasons may include a perception that the Superior Court docket is so heavy that the best intentions of prompt trial dates and dispositions will necessarily be trumped by criminal speedy trial requirements and the pressure to schedule older civil cases for trial; and a fear that, even if a case is specially assigned to a judge designated as a member of the Panel, that judge may not be able to allocate adequate time to the case during her or his assignment to the criminal docket. The Committee's proposals below are in addition to, and separate from, the Summary Proceedings Act.

**CURRENT HANDLING OF
COMPLEX BUSINESS LITIGATION IN SUPERIOR COURT**

Of course, a fair number of complex disputes may be found on the current docket of the Superior Court. Delaware has attracted a number of complex insurance coverage cases. The asbestos cases often have many defendants and those cases have their own standing orders and procedures. The Special Committee's recommendations below are in addition to, and separate from, the asbestos cases, as it believes the handling of products liability cases does not fall within the type of matter this Report addresses: large and complex business disputes, particularly between corporate parties.¹⁵

Notwithstanding the presence of a number of complex/business cases in the Court, the Special Committee discussed internally, and with clients and co-counsel nationally, the perception that the Court could and should handle additional cases and the reasons why it does not.

The reasons most frequently mentioned were: (i) the significant criminal docket of each Superior Court judge interferes with their presiding over civil matters; (ii) the substantial number of “smaller” civil matters, such as automobile accident, premises liability, personal injury, mechanics’ liens and general debt collection actions, has created a backlog that prevents close attention to larger civil matters; (iii) the larger number of Superior Court judges (at least as compared to the Court of Chancery) has led to a lack of uniformity and certainty in approach to civil litigation that increases the risk of unpredictable results and (iv) clients and co-counsel are reluctant to file in state courts as they often perceive them as “unfair” as compared to federal courts.

¹⁵ The Special Committee on Superior Court Toxic Tort Litigation Report and Recommendation, May 9, 2008, details how toxic tort litigation is handled in Superior Court. http://courts.delaware.gov/Courts/Superior%20Court/pdf/?asbestos_toxic_tort_report.pdf.

While those perceptions may be widely held, they are not correct. Superior Court judges handle criminal matters on a schedule that is fixed months in advance for a limited term of a few months. Thus, they typically schedule civil trials for those periods when they are not assigned to criminal cases. Even when they are handling criminal cases, there is typically one day a week, at least, when the Superior Court judge assigned to a civil action may hear motions in that action. In short, the criminal case load is not a barrier to the Court's handling of business/complex litigation.

Nor do the smaller civil cases create an insurmountable problem for the Superior Court. The vast majority of those cases, including the asbestos docket, settle before trial. Moreover, the issues in many of those cases tend to be more routine, requiring less judicial supervision to resolve. In effect, the smaller cases run themselves through established rules and experienced counsel and do not affect the handling of larger civil matters.

There is admittedly some variation in how large civil litigation is handled by different Superior Court judges. For the most part, however, these variations relate to individual preferences in procedural matters, such as in the details of scheduling orders. We do not perceive any significant differences in the substantive law applied by the various Superior Court judges. The Superior Court does not have, for example, conflicting legal precedents such as may exist between different judicial panels in the various United States Courts of Appeals.

Finally, judges in Delaware are appointed, not elected, and frequently see out-of-state counsel or clients in cases before them. The handling of cases involving Delaware-based businesses and Delaware lawyers is no different from those in which out-of-state counsel or clients are the primary participants. Thus, the perception of any "home-cooking" in our state courts is misplaced.

Nonetheless, the creation of a Delaware business court “division” consisting of a limited number of Superior Court judges, in conjunction with rules and procedures adopted by each for the management of business litigation, could address these perceptions and result in more certainty and comfort in filing large business disputes in the Superior Court.

"BUSINESS" OR COMMERCIAL COURTS IN OTHER JURISDICTIONS

The Committee undertook to examine business courts or divisions within other states. The Committee's overview of other states' attempts to handle business disputes reveals a few common themes: First, many attempt to "copy" the Court of Chancery's jurisdiction to handle corporate or alternative entity disputes. These procedures are already in place in Delaware and there is no need for their inclusion in the Committee's recommendations below. Second, many of the proposals adopt new and frankly overly complex rules and procedures for handling such disputes, a few even similar to Delaware's Summary Procedures Act. The Committee's recommendations below are largely within the existing Rules and procedures and do not require adoption of a great number of new features. Third, a few procedures considered by other states may be useful in our system, including the use of special masters, expedited (but not rushed) scheduling orders and the use of a known panel of judges familiar with the handling of large commercial disputes.

While the information on other states was helpful, because the Delaware court system is fairly unique, particularly the separation of matters at law and equity, it is recommended that Delaware adopt its own model within the existing court structure, primarily through the creation of a division within the current Superior Court system. Appendix "A" contains a summary of some of those business courts in other states.

THE DELAWARE DISTRICT COURT MODEL FOR HANDLING COMPLEX CASES

While the District Court handles many types of large federal question cases such as patent, trademark and antitrust, these cases really are just a type of “complex business” litigation for which certain procedures have been put in place by the Court or by the individual Judges. The following are some procedures most of the Judges in District Court have in place for handling of large civil cases:

1. **Rule 16 Order and Conference.** Soon after the complaint is filed, the parties are assembled for a Rule 16 scheduling conference. Before that conference, the parties consult on an appropriate form of scheduling order governing most aspects of the case through trial. That form of scheduling order is submitted to the Judge prior to the Rule 16 conference. During the Rule 16 conference with the Judge, the scheduling order is modified and approved. In most cases, a firm trial date is set. Each Judge has a form of scheduling order he or she uses and they even post several forms on the Court’s website depending on the type of case; e.g., patent and non-patent.

2. **Handling of discovery and discovery disputes.** In most cases, the District Court orders that document production commence and be completed before the start of depositions. Early “contention interrogatories” are encouraged so the parties typically are expected to state their positions on the claims and defenses before the case progresses too far. Mechanisms are put in place to resolve discovery disputes, including regular motion days, discovery teleconference procedures, regular meetings with the Judge or an assignment to a Magistrate Judge or Special Discovery Master.

3. **Summary judgment procedures.** Most of the Judges will provide for a briefing schedule for summary judgment motions and a hearing on such motions. For a bench trial, the Court may decide that no summary judgment motions may be filed.

4. **Firm Pretrial and Trial Dates.** At the pretrial, the Judges typically rule on *in limine* motions and provide a final schedule for the total time of trial.¹⁶ The trial date typically is not moved from the original date provided in the Rule 16 scheduling order.

5. **Predictability of, and Access to, Judges.** There are certain characteristics of the District Court model which have helped lead to a marked increase in the number of civil filings. First, there is the predictability factor. There is a set number of Judges, each of whom has a website that details the particular Judge's practices, standing orders and decisions. Thus, not only are potential litigants familiar with the limited pool of Judges, they know before filing how a civil case may proceed to trial.

Another important factor is accessibility to the Judges. Because the District Court historically has had one Magistrate Judge, the Article III Judges themselves have handled most disputes before trial including motions and discovery issues. While a second Magistrate Judge has been appointed and the Court now has a Special Master Panel in place for discovery disputes, the accessibility of the Judges is still a frequently cited reason for the filing of cases here.

¹⁶ Most District Court civil trials are timed, with each party receiving a total number of hours in which to present its case.

WHY WOULD THE SUPERIOR COURT ADOPT THE RECOMMENDED CHANGES?

In addition to the Court's obvious desire to improve upon its handling of complex commercial/business cases, there are a number of reasons to consider the Special Committee's recommendations. First, it will help the Court's administrative handling of such cases. Second, there may be a "need" for a separate division within the Court. As noted above, the Delaware court system not only enjoys an excellent reputation, it has at least three venues for the handling of significant business litigation cases. However, in two of the venues, litigants may face jurisdictional or administrative limitations. Thus, the Superior Court may be an untapped resource for Delaware companies wishing to resolve large commercial cases promptly. Third, the Delaware court system continues to rank near or at the top of relevant surveys studying the handling of cases and administration of justice. The April 16, 2007 and April 15, 2008 final reports of state liability systems prepared for the U.S. Chamber of Commerce again rated Delaware first among a national sample of in-house general counsel or other senior corporate litigators of public corporations. Thus, the national business community not only views the Delaware court system favorably, it likely would welcome an improved system for the handling of complex commercial disputes in a court not burdened with jurisdictional or subject matter restraints. It would also serve to establish a system other states already have created and keep Delaware in the forefront of business litigation. Fourth, while it should not be the driving force behind the creation of a commercial "division", the legal community in Delaware is a very important part of the Delaware economy. Not only do lawyers benefit from a favorable court system, segments of the economy which depend on the legal community benefit such as delivery services, litigation support firms, hotels, restaurants, catering services and the like. Assuming the creation of a division within the Court necessitates a modest expenditure of capital or Court

and attorney time, such expenditures could easily be offset by an increase in the work by the legal community in handling such cases and the resultant benefit to the Delaware economy.

**RECOMMENDATIONS FOR CREATION OF A
BUSINESS/COMPLEX LITIGATION DIVISION WITHIN THE SUPERIOR COURT**

The Special Committee's recommendations are based upon simplicity, predictability and the use of the Court's rule making power, Court structure and judges already in place. There would not be need for General Assembly intervention or a wholesale modification of the Superior Court Rules. Instead, the creation of a division or panel of judges assigned to these cases, along with the adoption of required procedures and model orders for the use in such litigation, would mean minimal disruption of existing structures or expenditure of additional funds or other resources. Indeed, the Committee feels that the creation of such a division could be done by an administrative directive from the President Judge. Importantly, it would mean that a known entity, using familiar rules and providing ready access to commercial litigants, could provide another option for businesses when jurisdiction exists in Delaware. Thereafter, the implementation of the Division would be followed by public discussion of the new Division and its practices and procedures.

The specific recommendations that follow also are designed to address two principal concerns that potential litigants have expressed as influencing their choice of forum. There are concerns that there be predictable procedures in place that will control the course of the proceedings, bring them to conclusion in a reasonable amount of time, and that there be reasonable control over the cost of discovery, including e-discovery. To accomplish these goals, the Committee recommends the following:¹⁷

¹⁷ The Committee is available to work with the Court, should it decide to create a business/complex litigation division, on the implementation of these recommendations including meetings with assigned judges, creation of websites and forms for the division, and publicizing of the new division locally and nationally.

1. The Committee recommends the assignment of two or three judges or the creation of a division within the Court of a set number and identity of judges who will handle, either primarily or exclusively, complex business disputes. Initially, the division can be a “pilot program” limited to New Castle County Superior Court filings which meet a certain criteria (as suggested below);¹⁸

2. While statutory authorization is not required, and new rules may not be necessary, the Court should establish standing orders or a case management plan for the handling of such cases. A sample Case Management Order is attached as Appendix B. Each judge assigned to the Division should issue sample case management orders and other standing orders or protocols on his or her website.

3. The standing orders or protocols should include at least the following:

- (a) Assignment to one judge within the Division for the life of the case;
- (b) An early Rule 16 scheduling conference after the defendant has responded to the complaint, which conference would detail the progression of the case through trial;
- (c) A set procedure for the handling of discovery disputes and dispositive motions which may include the handling of such disputes by the assigned judge or a particular commissioner or special master, such as is done in the asbestos and benzene dockets;
- (d) Firm pretrial and trial dates which would not be “bumped” by smaller civil cases or a criminal docket; if the judges assigned to these cases continue to do criminal rotation, the trial dates would be when the judge is not assigned to criminal cases;

¹⁸ 10 Del. C. §346 authorizes the Court of Chancery to decide technology disputes where the amount in controversy is no less than \$1 million. We suggest the same threshold amount be used to refer cases to the “business” division and that personal injury actions be excluded.

(e) Early mandatory disclosures such as those contemplated by Federal Rule of Civil Procedure 26(a); and

(f) Required procedures for electronic discovery. A sample E-Discovery Plan Guidelines is attached as Appendix “C”.

4. The creation by the Court, or by the individual judges within the Division, of a website which would contain sample scheduling orders, standing orders, recent opinions and sample jury instructions.

5. The expectation that the Judges will be accessible for disputes and conferences between the parties, to a point.

6. A procedure for the assignment of new civil cases to the new Division:

(a) A new civil cover sheet in which the plaintiff requests assignment to the Division;¹⁹

(b) A protocol for which cases require such assignment, including a certain amount in controversy, the number of parties, etc. As noted above, some suggested threshold requirements for such an assignment would include an amount in controversy greater than \$1 million (including direct claims and declaratory judgment claims) and an exclusion of personal injury claims;

(c) A procedure by which the defendant may ask for, agree to, or oppose, the possible assignment; and

(d) The assignment by the President Judge or Resident Judge to one of the Division members.²⁰

¹⁹ A sample civil cover sheet is attached as Appendix D.

²⁰ Of course, the Committee makes no specific recommendations on the number, identity or terms of the judges within the Division. However, given that such a division would need

ACTIVITIES AFTER CREATION OF SUCH A DIVISION

To avoid perceived deficiencies in past attempts to bring large commercial cases to this Court, the Committee recommends the following:

1. Publication on the Court's website, in Bar Association publications and through List Serve of the creation of the new Division, any adopting orders, protocols, etc.
2. Joint bench/bar seminars, locally, regionally or nationally, discussing the adoption of such a Division. These seminars could include the Chancellor or Vice Chancellors which would clearly highlight the options available in the Delaware state court system when jurisdiction is proper
3. Encouragement of Delaware law firms to promote the use of the Division particularly for inclusion into venue provisions of commercial agreements.

Respectfully submitted,

Frederick L. Cottrell, III, Chair
Robert J. Katzenstein
Edward M. McNally
Somers S. Price, Jr.
Donald E. Reid
Philip A. Rovner
John W. Shaw
Allen M. Terrell, Jr.
Jeffrey M. Weiner

some time to begin handling new cases, two or three judges would probably be able to handle the initial caseload . It would be anticipated that turnover for the Division would not be frequent and the judges would handle their assignments through trial even if rotated out of the Division.

APPENDIX A

Arizona

On October 17, 2002, the Arizona Judicial Council approved the final report and recommendations of the Committee to Study Complex Litigation.²¹ The committee suggested a pilot program to experiment with a Complex Civil Litigation Court in the Maricopa County Superior Court.²² On November 22, 2002, Arizona Supreme Court Chief Justice Charles E. Jones responded by issuing an order establishing the program.²³ The 2002 order also created the Complex Civil Litigation Court Evaluation Committee (the “Committee”) to monitor the program.²⁴

The court “anticipated that the program [would] accelerate the time-to-disposition of complex civil disputes, allow for the more effective utilization of court resources, and permit improvements to the processing of civil cases generally.”²⁵ Initially, the court intended that the program would run for a two-year period beginning in January 2003 and ending December 31, 2004.²⁶ The term of the program was later extended to December 31, 2008.²⁷

²¹ *In the Matter of Authorizing a Complex Civil Litigation Pilot Program Applicable in Maricopa County*, Administrative Order No. 2002-107 (Ariz. Nov. 22, 2002) at <http://supreme.state.az.us/orders/admorder/Orders02/2002-107.pdf> [hereinafter “Order No. 2002-107”].

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Order No. 2002-107, *supra* n. 1.

²⁶ *Id.*

²⁷ *In the Matter of Extension of Authorization for the Complex Civil Litigation Pilot Program Applicable in Maricopa County*, Administrative Order No. 2006-123 (Ariz. Dec. 20, 2006) at <http://supreme.state.az.us/orders/admorder/Orders06/2006-123.pdf> [hereinafter “Order No. 2006-123”].

The Maricopa County Superior Court designated three judges assigned to the civil bench to preside over the program cases.²⁸ Presently, the panel includes Judge Douglas Rayes, Judge Edward O. Burke, and Judge John A. Buttrick. In addition to handling complex cases, these judges maintain a full non-complex civil case load.²⁹ In-coming complex cases are assigned to one of the three judges on a rotating basis.³⁰ To aid the panel, the court created a position for an experienced staff attorney to assist the program judges with research and drafting.³¹

The court modeled the scope of complex cases admitted to the program after the California Complex Civil Litigation Pilot Program.³² Arizona, likewise, adopted the same definition of a complex case as California in Arizona Rules of Civil Procedure, Rule 8(i), which states that a complex case is “a civil action that requires continuous judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote an effective decision making process by the court, the parties, and counsel.” In determining whether a case meets the Rule 8(i) definition, the court focuses on case management rather than subject matter and considers, among other factors, the number of pre-trial motions, number of witnesses, number of parties and the amount of evidence.³³

²⁸ Joint Report to the Arizona Supreme Court Submitted by the Superior Court in Maricopa County and the Complex Civil Litigation Court Evaluation Committee, at 2 (Dec. 2006) at <http://www.supreme.state.az.us/courtserv/ComplexLit/JointRptFinal.pdf> [hereinafter “Joint Report”].

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 3.

³² Mitchell L. Bach & Lee Applebaum, *A History of the Creation and Jurisdiction of Business Courts in the Last Decade*, 60 Bus. Law. 147 at 214 (2004) at http://finemanlawfirm.com/publications/final_online.pdf.

³³ *Id.* at 213.

The Presiding Civil Department Judge acts as the program's gatekeeper, ruling on all motions for complex designations filed by parties seeking assignment to the Complex Litigation panel.³⁴ This gatekeeping function significantly reduced the number of complex cases accepted into the program.³⁵ As of December 2006, parties sought complex case designation in 301 cases.³⁶ The court admitted 91 cases, which represented 242 separate actions.³⁷ The court denied motions for complex designation in 59 cases.³⁸ The parties cannot appeal the court's decision regarding the complex or noncomplex designation.³⁹ Of the cases accepted into the program, the majority dealt with construction defect and contract disputes, but others included product liability, anti-trust, insurance coverage, securities, shareholder derivative suits, toxic tort, securities and medical and legal malpractice.⁴⁰

An online survey conducted in 2006, revealed that ninety-six percent of attorneys responding to the survey favored continuation of the program. The program judges were "uniformly perceived to be well-equipped to handle complex civil matters and were somewhat more able to devote attention to these cases compared with other non-program judges."⁴¹ The judges also received favorable "marks in consistency of rulings, predictability, communication with counsel, familiarity with complex case law, experience, active case management, and client

³⁴ Joint Report, *supra* n. 8, at 2.

³⁵ *Id.* at 4.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Joint Report, *supra* n. 8, at 4.

³⁹ Ariz. Civ. Ct. R. 8(i)(7).

⁴⁰ Joint Report, *supra* n. 8, at 4.

⁴¹ *Id.* at 5.

and attorney satisfaction.”⁴² In conjunction with the 2006 survey, the Committee recommended (1) a permanent complex case program, (2) exploration of funding options to supplement the \$500 filing fee and existing court resources, and (3) an effort to increase complex case volume without changing the rules for admission.⁴³

⁴² *Id.*

⁴³ *Id.* at 5-6.

California

The Business Court Study Task Force of California, appointed by then-Chief Justice Malcolm M. Lucas, conducted an extensive inquiry on the desirability of creating specialized business courts.⁴⁴ The task force recommended, in 1996, against creating business courts and, instead, recommended complex litigation departments in the trial courts.⁴⁵ In response, the California Judicial Council (the “Council”) initiated the Complex Civil Litigation Pilot Program (the “Pilot”), in January 2000, selecting six Superior Courts from the Alameda, Contra Costa, Los Angeles, Orange, San Francisco and Santa Clara counties to participate in the program.⁴⁶ Los Angeles began with six judges.⁴⁷ Orange had five judges.⁴⁸ Each of the other counties designated one judge each.⁴⁹ In 2006, San Mateo County also introduced its own Complex Civil Litigation Program designating two judges as Complex Civil Litigation judges to oversee cases qualifying as complex.⁵⁰

The Council intended with these courts to “improve judicial management of complex cases as a means to expedite case resolution, keep[] costs reasonable, and promote effective

⁴⁴ Judicial Council of California, *Fact Sheet Complex Civil Litigation Program* (2008) at <http://www.courtinfo.ca.gov/reference/documents/factsheets/comlit.pdf> [hereinafter “Fact Sheet”].

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Mitchell L. Bach & Lee Applebaum, *A History of the Creation and Jurisdiction of Business Courts in the Last Decade*, 60 *Bus. Law.* 147 at 207 (2004) at http://finemanlawfirm.com/publications/final_online.pdf [hereinafter “Bach, A History”].

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Malaika Fraley, *Special Court for High-Tech Litigation Set*, *Oakland Tribune* (Dec. 26, 2005) at http://findarticles.com/p/articles/mi_qn4176/is_20051226/ai_n15958862/.

decision making by the courts, parties and counsel.”⁵¹ Likewise, California Court Rule 1800(a) defines a complex case as one requiring “exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective judicial decision making by the court, parties and counsel.” Rule 1800(b) provides a list of factors to weigh in determining if a case is complex as defined subsection (a). These factors include the following: “(1) Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve; (2) Management of a large number of witnesses or a substantial amount of documentary evidence; (3) Management of a large number of separately represented parties; (4) Coordination with related actions pending in one or more courts in other counties, states or countries, or in federal court; or (5) Substantial post judgment judicial supervision.” Subject to the caveat of a court’s significant experience in resolving similar claims, the rules recognize certain types of cases, such as antitrust, mass torts, and securities claims, as “provisionally complex.” Cal. Ct. R. 1800(c).

As a result of this broad substantive scope, participating courts often deal with antitrust, securities claims, construction defects, toxic torts, mass torts, and class actions.⁵² About one fourth of the cases handled by the courts concern commercial litigation, and over one-third of the cases consisted of complex tort actions.⁵³

The program features “judges who are experienced in substantive law and complex case management practices, a substantially reduced caseload permitting judges to focus exclusively

⁵¹ Paula J. Hannaford-Agor, Nicole L. Mott, Timothy F. Fautsko, *Evaluation of the Centers for Complex Civil Litigation Pilot Program*, National Center for State Courts California Administrative Office of the Courts, at v (June 30, 2003) at <http://www.courtinfo.ca.gov/reference/documents/compcivilitpub.pdf> [hereinafter “NCSC Evaluation”]

⁵² Fact Sheet, *supra* n. 24.

⁵³ Bach, A History, *supra* n. 27 at 208.

on complex cases, and additional staffing and technological resources for case management.”⁵⁴ The complex cases are calendared separately and the complex case departments are typically staffed with one or more clerks, a court reporter, a bailiff, and one or more research attorneys.⁵⁵

Three years after the program’s implementation, the National Center for State Courts (“NCSC”) conducted an evaluation and made certain key findings.⁵⁶ Attorneys reported “that judges understood the legal and evidentiary issues, set reasonable time limits for discovery, were accessible and helpful in keeping the cases moving toward resolutions, and enforced case deadlines.”⁵⁷ The NCSC compared pilot program cases with complex cases that were not assigned to the pilot program and found that pilot program cases showed significantly more activity suggesting closer judicial supervision and often resulted in more interim dispositions such as partial settlement or partial summary judgment.⁵⁸

⁵⁴ National Center for State Courts, *Complex Litigation: Key Findings From the California Pilot Program*, 3 Civil Action 1, at 1 (2004) [hereinafter referred to as “NCSC Findings”].

⁵⁵ Judicial Council of California Civil and Small Claims Advisory Committee, *Complex Civil Litigation Pilot Program* at http://www.courtinfo.ca.gov/programs/innovations/documents/SI_Brief_ComplexCivLit.pdf.

⁵⁶ NCSC Findings, *supra* n. 34.

⁵⁷ *Id.* at 2.

⁵⁸ *Id.*

Colorado

In 2000, Colorado examined the feasibility and advantages of setting up business courts in that state. However, contrary to the recommendations made by the Governor’s Task Force of 2000 (‘Report’), Colorado has neither created special business courts nor implemented the changes to its case management system recommended by the Task Force Committee on Business Courts.⁵⁹

The Colorado Governor’s Task Force on Civil Justice Reform (“Task Force”) recommended the creation of business courts in the State of Colorado because it recognized that such courts offered potential benefits when “devoted exclusively to the resolution of commercial disputes.” *See Report*, p.11. The Task Force consisted of a separate Committee on Business Courts (the “Committee”) comprising members from Colorado’s bench and bar. *See Report*, Committee Assignments, pp.1-2. The Committee recommended “[e]stablishing a specialized business court system within the existing Colorado courts to handle commercial cases more quickly, less expensively, and with greater expertise.” *See Report*, Executive Summary: Key Recommendations, p.2. The Key Recommendations noted:

The rapid growth in Colorado’s commercial and professional services sectors – particularly in areas such as information technology (IT), where Colorado leads the nation according to a recent American Electronics Association survey in newly created IT jobs per capita – is placing new demands on Colorado’s court system. The Task Force recommends creating a specialized business court system to help resolve such disputes. This court should be located within an existing District Court in the Denver metropolitan area. Such a business court could develop the expertise and specialized procedures needed to help Colorado attract and retain world-class employers and employees alike. More generally, and as detailed in the Report, Colorado should strengthen the ability of all Colorado courts to resolve complex business disputes with less cost and reduced delay.

⁵⁹ The write-up on Colorado’s proposed business courts is based on information sourced from the Colorado Chief Justice’s office, the Colorado Supreme Court’s website, the Colorado Rules of Civil Procedure (the “CRCP”) and other internet sources.

Id. The Committee then made strong recommendations for setting up a business court in Colorado:

The Committee recommends the state Judicial Department consider the establishment of a business court for the exclusive purpose of hearing commercial cases. Specifically, the Committee recommends the following:

- a. The business court should initially be established under a pilot project within the Denver District Court or another district court within the Metropolitan Denver area having sufficient numbers of qualifying cases to test the parameters of the business court.
- b. The pilot project should be commenced only if a review of cases filed in the Metropolitan Denver area within a recent period of time indicates there is a sufficient number of commercial cases to justify the project. If such a review does not presently justify such an undertaking, subsequent periodic reviews should be made to identify when there is an adequate number of commercial cases.
- c. The business court should operate under rules – referred to in this Report as an “operating statement” – that define the “commercial case,” or type of case that may be heard by the business court, and establish case management and other procedures specifically applicable to the business court.
- d. If the pilot project proves successful, business courts should be established in other judicial districts or, in the alternative, the geographical venue of the Metropolitan Denver business court should be expanded.

See Report, p.12. The Committee considered several other alternatives to the handling of commercial disputes, alternatives that were back-up measures in the event Business Courts were not feasible in that state:

These include: (1) the enhanced use of the special masters in commercial cases to resolve questions of law and fact; (2) alteration of the practice of rapid rotation of judges among the types of cases; (3) inauguration of simplified court procedures for cases involving less than \$100,000; (4) institution of procedures for improvement case management, sometimes referred to as a “rocket docket”; and (5) application of digital and Internet technologies to court procedures. The Committee believes implementation of these proposals will enhance the ability of the courts to process commercial cases without adverse impact on the justice to be achieved in such cases.

See Report, p. 11. Accordingly, the Committee further recommended the following alternatives to setting up business courts: (1) that Rule 53 of the Colorado Rules of Civil Procedure (“C.R.C.P.”) be amended to offer the services of special masters to litigants.⁶⁰ The special master could be an accountant or a business lawyer. *See Report*, p.17. The Committee noted that the appointment and availability of such special masters would: (1) repose confidence in the litigants that the business-oriented master would reach an accurate understanding of complex business disputes and make accurate recommendations to a judge; (2) the total cost of litigation could be reduced by relieving a judge’s docket, triggering a cost-benefit evaluation by litigants; and (3) speed up the resolution of cases by obviating the need for cross examination of experts appointed by the litigants. *Id.* pgs.16-18. To achieve its goals, the Committee recommended that the text of Rule 53 be amended to permit reference to special masters not only by a judge but also by the choice of litigants, with the court having the final say notwithstanding the parties’ stipulation. *Id.* p.18.

To rationalize the litigation system, ease the burden on Colorado’s courts and to achieve greater optimization in the deployment of judicial resources the Committee further recommended the following: (1) avoid rotating judges who handle commercial cases and even if they must be rotated, permit the judges to retain the commercial cases they handled. *See Report*, p. 19; (2) simplify Rule 1.1 (then being considered by the Supreme Court of Colorado) to permit speedier handling of cases under \$100,000. The proposed amendment was expected to streamline discovery and negate meetings and filing requirements of Rule 16, C.R.C.P., including most discovery options, depositions, interrogatories, requests for document production, and requests

⁶⁰ The then-Rule 53 permitted reference to special masters “only upon a showing that some exceptional condition requires it.” *See Rule 53 (b)*.

for admission. The simplified rules were to be tested on volunteering parties over 24 months in two pilot projects for cases filed on or after April 1, 2000. *See id.* p. 19 (referring to Rule 1.1 of the C.R.C.P.); (3) overhaul of case management techniques by introduction of a “rocket docket” case management system to speed up efficiency of handling of complex cases, as has been adopted by the United States District Court for the Eastern District of Virginia. *See id.*, pgs. 21-22.⁶¹

Despite the recommendations, the Colorado judiciary noted that the pilot project to be located in the Denver District Court had only about 230 cases, a number “too small to justify a specialized court.” *See* Mary J. Mullarkey, Chief Justice Colorado Supreme Court, State of the Judiciary, January 12, 2001, p.10-11. The Chief Justice then added that “we believe that the goals of the task force can be met by specialized case management. We propose hiring personnel with business expertise who can work with the parties and the judges to prepare the cases for decision.” *Id.*

The present Rule 53 shows that Colorado has not adopted the proposed recommendation that the rule be amendment to permit special masters to adjudicate business litigation matters. *See* C.R.C.P. Rule 53 (b) (2007). Similarly, the present Rule 16 of the C.R.C.P. does not demonstrate that any changes have been made with respect to the Committee’s recommendations pertaining to case management of business litigation matters. *See* (Exhibit CO-4); *see also* Rule

⁶¹ The Virginia system has the following features: (a) exclusive and firm docket control by judges; (b) streamlined local discovery rules; and (c) mandatory compliance with local and federal rules by attorneys. *See id.* The Virginian model: (1) permits a short scheduling conference within 30 days of filing an answer to “fix firm dates for discovery, pre-trial conference and trial.” *Id.* p. 22; (2) dispenses with arguments on expert qualifications, providing that information to the jury beforehand; (3) ensures the next witness is readily available at all times with witnesses testimony permitted out-of-turn if required; *see id.*; (4) requiring attorneys to be behind their podium at all times. *See id.* p. 22; and (5) introduction of an electronic filing system which permits real-time electronic filing of U.C.C. and corporate documents. *Id.*

Change #2002 (3), Colorado Rules Of Civil Procedure, Chapter 2, Pleadings and Motions, Rule 16, *Case Management and Trial Management*, p.1-12 (Exhibit CO-5).⁶²

There is no indication that Colorado has adopted any of the other recommendations noted above.

⁶² Available at <http://www.courts.state.co.us/supct/rules/rulesindex.htm>. However, review of the above rule changes demonstrates that Colorado has tightened case management generally for all civil cases except domestic relations, juvenile, mental health, probate, water law, forcible entry, C.R.C.P. 120, and other similar expedited proceedings, unless otherwise ordered by the court or stipulated by the parties.” *See id.* Rule 16 (a).

Georgia

Fulton County's Superior Court Business Case Division ("FCBC") originated in October 2005.⁶³ The FCBC's purpose "is to provide judicial attention and expertise to certain complex business cases and to facilitate the timely and appropriate resolution of such disputes." *See* Superior Court of Fulton County Business Court, Project Overview.⁶⁴

The FCBC's procedures are governed by the Atlanta Judicial Circuit Rule 1004 ("Rule"), promulgated by the Supreme Court of Georgia on June 3, 2005, as amended on June 6, 2007. The minimum jurisdictional amount for cases to be heard by the FCBC is \$1 million. *See* Rule 1004-3 (a). The FCBC has the highest jurisdictional limit of any U.S. Business Court.⁶⁵ A FCBC staff attorney noted that the high jurisdictional limit ensures that the FCBC hears only complex commercial cases:

"[t]he higher damages minimum in Georgia necessarily reduces the pool of cases eligible for the Business Court and has the potential to diminish the overall impact of the program . . . however . . . it does act as both a gatekeeper for the [FCBC], and as a readily identifiable and easily tracked potential indicator of complexity . . . it is a filter mechanism that requires little resources to employ and is a way to control the number of cases in a Business Court; thus the damages minimum tangentially advances efficiency."⁶⁶

In addition to the \$1 million threshold, the case must implicate at least one of the following to fall with the FCBC's subject matter jurisdiction: (1) Georgia Securities Act of 1973, O.C.G.A. § 10-5-1; (2) the U.C.C., O.C.G.A. § 11-1-101; (3) Georgia Business Corporation Code, O.C.G.A. § 14-2-101; (4) the Uniform Partnership Act, O.C.G.A. § 14-8-1; (5) The Uniform Limited Partnership Act, O.C.G.A. § 14-9A-1; (6) the Georgia Revised Uniform Limited Partnership Act,

⁶³ *See* 2007 State Of The Judiciary Address by the Honorable Chief Justice Leah Ward Sears, Supreme Court of Georgia, Jan. 24, 2007, at p.4.; *see also* State Of The Judiciary Address, February 9, 2005, 5.

⁶⁴ Available at <http://www.fultoncourt.org/sca200807/offices/business-court.html>

⁶⁵ Anne Tucker Nees, Making a Case for Business Courts: A Survey of and Proposed Framework to Evaluate Business Courts, 24 Ga.St. U.L. Rev. 477, 512 (2007)(citations omitted).

⁶⁶ *Id.* at 512-513.

O.C.G.A. § 14-9-100; (7) the Georgia Limited Liability Company Act, O.C.G.A. § 14-11-100; (8) any other action that the court and the parties mutually believe warrants assignment to the FCBC, including large business tort, contract and other complex commercial cases. See Rule 1004-3(a)(9)-(viii). The Business Court will not entertain cases involving personal injury, wrongful death, employment discrimination, or low-value consumer class actions, unless the parties stipulate to transfer the case. See Rule 1004-3 (b).

To seek successful docketing and disposal by the FCBC a case must first be filed in the Superior Court. *See* Rule 1004-5. It may then be transferred in 3 ways: (a) by joint stipulation by the parties; (b) the original judge to whom it is assigned may notice the parties and transfer the case to the FCBC if the above criteria - namely the jurisdictional amount of \$ 1 million and the subject matter jurisdiction - are met; and (c) any or all parties may move the original court to transfer the case. *See* Rule 1004-5 (1)-(3). A party may oppose the transfer by filing a brief within 20 days of the transfer motion being filed. *See* Rule 1004-5. The FCBC's Committee then votes on the transfer based on the mandates of Rule 1004. *See* Rule 1004-6. The Committee consists of the "Chief Judge, a member of the Business Court Committee and a Senior Judge to whom the case may be assigned." *See* Rule 1004-6. If accepted, the original judge signs a transfer order; if not, the case remains with the original judge. *Id.*

The FCBC comprises a maximum of three Senior Judges who manage, administer, and try the assigned cases. *See* Rule 1004-4. Georgia's Superior Court Rules apply to the FCBC. *See* Rule 1004-9; *see also* Georgia Civil Practice Act, O.C.G.A. § 9-11-1, *et seq.*; *see also* the Uniform Superior Court Rules. Business Court judges are empowered to modify the scheduling of the cases including for discovery, dispositive motions, pre-trial procedures and "conducting jury and non-jury trials." *See* Rule 1004-10. The FCBC's judges are empowered to accept e-

filing of cases and filings through e-mail and fax. *See* Rule 1004-11. The Rule permits the Court to order nonbinding alternate dispute resolution. *See* Rule 1004-12. The Business Court judges may serve as mediator or arbitrator over their own cases with the parties' consent. *See* Rule 1004-12.

Rule 1004 requires that within 30 days of assignment of the case to a judge, the parties shall meet and confer with the judge on: (1) a case management order; (2) discovery issues and the time frame; (3) expert depositions; (4) pre-discovery and dispositive motions, briefing, and argument; (5) need for alternate dispute resolution; (6) estimate of document volume and economics/management of discovery from parties and non-parties; (8) modifications to the Civil Practice Act or the Uniform Superior Court Rules if required; and (9) any other matters. *See* Rule 1004-15 (i) – (vii). The parties are required to submit a proposed case management order to the presiding judge within 10 days of the meeting. Rule 1004-15. The rule also permits any court hearing or conference to be conducted by video conferencing, with the costs borne by the parties. Rule 1004-17.

A recent report indicated that the FCBC faces an uncertain future unless the Georgia Supreme Court adopts a rule change that would create a permanent funding for the Court.⁶⁷ Surveys have indicated that attorneys who have litigated in the FCBC were very satisfied with its process and procedure.⁶⁸

In 2008, Gwinnett County, GA established a pilot program for its own Business Court that is modeled on the FCBC. The jurisdictional limit in Gwinnett County Business Court is \$100,000.⁶⁹

⁶⁷ John Manasso, "Funding for State Business Court in Jeopardy," Atlanta Business Chronicle, Feb. 20, 2009).

⁶⁸ *Id.*

⁶⁹ Source: <http://www.GwinnettCourts.com> (under "Business Court," follow "General Information," "Criteria," and "News Articles" hyperlinks).

Illinois

The Circuit Court of Cook County's Business Court is in the "Commercial Calendars" section of its Law Division, that was created by an administrative Order of the Circuit Court on September 14, 1992, but began in 1993, as the second-phase of a judicial pilot project.⁷⁰ In 1993, three Commercial Calendar judges were appointed.⁷¹ By 2000, the number of Commercial Calendar judges grew to seven, due to the number of Commercial Calendar cases.⁷² Currently, eight judges are assigned to the Commercial Calendars.⁷³ From 1998-2003, the number of dispositions on the Commercial Calendars nearly equaled the number of new cases that were assigned to the business court division.⁷⁴

Cases that involve a commercial relationship between the parties, based upon theories of tort, contract or otherwise, and are valued at more than \$125,000,⁷⁵ can be placed on Commercial Calendars for hearings. Cases are automatically assigned to Commercial Calendars if the filing party designates the case for assignment to the Business Court in its initial filing.⁷⁶

The number of cases assigned to each Commercial Calendar is subject to the Law Division's Presiding Judge's discretion.⁷⁷ Each Judge has a form of Standing Order for his or

⁷⁰ Mitchell A. Bach and Lee Applebaum, *A History of the Creation and Jurisdiction of Business Courts in the Last Decade*, *The Business Lawyer*, vol.60, No.1, p. 161 (Nov. 2004)(Order included on pp. 238-239).

⁷¹ *Id.*

⁷² *Id.* at 161-162; John Flynn Rooney, *Popularity of New Calendar Necessitates New Judge*, *Chicago Daily Law Bulletin*, vol. 146, No. 1136 (July 12, 2000).

⁷³ *Id.*

⁷⁴ *Id.* at 163-164.(citations omitted).

⁷⁵ The Illinois Business Court has the second highest jurisdictional threshold in the nation. The Fulton County Superior Court Business Case Division (GA) has the highest jurisdictional threshold, at \$1 million. See Anne Tucker Nees, *Making a Case for Business Courts: A Survey of and Proposed Framework to Evaluate Business Courts*, 24 Ga.St. U.L. Rev. 477, 512 (2007)(citations omitted).

⁷⁶ See Nees, 24 Ga.St. U.L. Rev. 477, 515 at FN 126.

⁷⁷ See <http://www.cookcountycourt.org/divisions/law/CommercialCalendars.asp>

her assigned Commercial Calendar.⁷⁸ The Standing Orders provide each Judge's case management guidelines and identify dates, deadlines, rules and regulations for events, which may include: intake status; case management conferences; discovery; motion practice, briefing, and argument; mediation;⁷⁹ pre-trial submissions and conferences; sanctions; and trial.

In April 2009, the Circuit Court's Chief Judge launched an electronic filing pilot project in the Commercial Calendar Sections of the Law Division.⁸⁰

⁷⁸ *Id.* (follow hyperlink to [(appropriate Business Court Judge)], then follow hyperlink to "Standing Order.")

⁷⁹ Mediation is voluntary in Commercial Calendar cases (*See* Nees, 24 Ga.St. U.L. Rev. 477, 520), however, Commercial Calendar judges can order the parties to participate in non-binding mediation, which results in the resolution of many Commercial Calendar cases. *See* David Mitchell, *Judges, ADR Practitioners Assess Progress and Seek out Ways to Improve*, Chicago Daily Law Bulletin, vol. 152, No. 18 (January 26, 2006).

⁸⁰ Source: Memo from Clerk of the Circuit Court of Cook County, http://services.cookcountyclerkofcourt.org/eFile/MediaKit/Article_BrownAndEvans.pdf

Maine

Maine established the Business and Consumer Court, also known as BCD or the Business and Consumer Docket in 2007. This statewide docket is comprised of selected actions involving business and/or consumer disputes and is managed by two judges delegated by the Chief Justice of the Supreme Judicial Court. The Court's website and its Administrative Order state the goals of the BCD are to provide judicial action in cases involving business and/or consumer disputes, avoid placing unnecessary burdens on the court and the litigants, keep litigation costs reasonable, and promote an effective process for resolving such disputes.⁸¹ Cases considered for transfer to the BCD are jury and nonjury civil actions and family matters that do not involve children, in which the principle claim(s) involve matters of significance to the transactions, operation or governance of a business entity and/or the rights of a consumer arising out of transactions or other dealings with a business entity and the case requires specialized and differentiated judicial management.

Pursuant to the Maine Rules of Business and Consumer Docket Procedure, party seeking transfer may submit an application to the court where the case is currently pending or to be filed requesting that the case be transferred to the BCD. In addition, any District Court Judge or Superior Court Justice may recommend a case be assigned to the BCD.⁸² The decision of the BCD judge to accept or reject a case for transfer is made summarily, without a hearing and is not subject to review or appeal. Once transferred the case is randomly assigned to a BCD judge and typically once transferred the case stays with the same judge until conclusion.

⁸¹ The Business and Consumer Court's website is http://www.courts.state.me.us/maine_courts/specialized/business/index.shtml. Administrative Order JB-07-1 entitled Establishment of the Business and Consumer Docket can be found on the BCD's website.

⁸² The Main Rules of Business and Consumer Docket are attached as Appendix A to the Administrative Order.

Since its inception, the BCD has heard approximately 143 cases and held seven trials⁸³ the majority of which are business cases. The types of business disputes heard include: contract, fiduciary, financial transactions, commercial real estate, trade regulations and internal governance of a business entity.

⁸³ Noel K. Gallagher, *Order in the Court for Business Disputes*, MAINE SUNDAY TELEGRAM, Mar. 8, 2009, at D1, available at 2009 WLNR 4502494.

Massachusetts

The specialty track for business litigation in Massachusetts is through the Business Litigation Sessions of the Superior Court (BLS), which became permanent sessions of the Superior Court on January 19, 2009, pursuant to Superior Court Administrative Directive No. 09-1.⁸⁴ The BLS is located in the Suffolk County Superior Court, and the Suffolk County Clerk's Office serves as the clerk's office for the BLS.

To bring an action in the BLS, a plaintiff must qualify for jurisdiction in the Superior Court, which hears civil actions over \$25,000 and matters where equitable relief is sought, and file the case in the Suffolk County Civil Clerk's Office, along with a BLS Civil Action Cover Sheet stating why the case should be heard by the BLS. The BLS Administrative Justice will review the petition and determine, in her sound discretion, whether to accept the case into the BLS, depending on the complexity, the need for substantial case management, and whether it falls within any of the following categories: claims relating to the governance and conduct of internal affairs of entities; claims relating to employment agreements; claims relating to liability of shareholders, directors, officers, partners, etc.; shareholder derivative claims; claims relating to or arising out of securities transactions; claims involving mergers, consolidations, sales of assets, issuance of debt, equity and like interests; claims to determine the use or status of, or claims involving, intellectual property; claims to determine the use or status of, or claims involving, confidential, proprietary or trade secret information; claims to determine the use or status of, or claims involving, restrictive covenants; claims involving breaches of contract or fiduciary duties, fraud, misrepresentation, business torts or other violations involving business relationships; claims under the U.C.C. involving complex issues; claims arising from

⁸⁴ Administrative Directive No. 09-1:
<http://www.mass.gov/courts/courtsandjudges/courts/superiorcourt/09-1.pdf>.

transactions with banks, investment bankers and financial advisers, brokerage firms, mutual and money funds; claims for violation of antitrust or other trade regulation laws; claims of unfair trade practices involving complex issues; malpractice claims by business enterprises against professionals; claims by or against a business enterprise to which a government entity is a party; and other commercial claims, including insurance, construction, real estate and consumer matters involving complex issues. If the case is accepted into the BLS, then the BLS Administrative Justice will assign the case and issue a notice of acceptance.⁸⁵ If the case is not accepted, then a notice of denial of acceptance will be issued, and the case will be assigned or returned to a Time Standards Session.

Even if a case is not initially filed in the BLS, it may be so transferred. For example, if a plaintiff files an action in Suffolk County and does not seek to have the case accepted into the BLS, or if a plaintiff files an action in any other county, and the case is therefore assigned to a Time Standards Session, any party may move to transfer the case to the BLS by filing a motion to transfer pursuant to Superior Court Rule 9A.⁸⁶ However, a case shall be transferred to the BLS only with the approval of the judge in the Time Standards Session and then the BLS Administrative Justice.

There are no current statistics available, but the Lawyers Journal from the Massachusetts Bar Association reported in February 2003 that “[s]ince it began in October 2000, the Suffolk

⁸⁵ Even if the case is accepted into the BLS, it may remain subject to a motion to dismiss or transfer for improper venue, as the BLS Administrative Justice does not consider the appropriateness of venue when determining whether to accept a case.

⁸⁶ Amended Superior Court Rule 9A, effective March 2, 2009: <http://www.mass.gov/courts/courtsandjudges/courts/superiorcourt/rule9a.pdf>.

County business litigation session's popularity has surged so that it has become a full-time program rather than a pilot project.”⁸⁷

⁸⁷ Krista Zanin, *Business Litigation Sessions Looks To Expand To Other Counties*, Lawyers Journal, February 2003 (<http://www.massbar.org/for-attorneys/publications/lawyers-journal/2003/february/business-litigation-sessions-looks-to>).

Nevada

Nevada has two business courts attached to the Second Judicial District (Reno) and the Eighth Judicial District (Las Vegas). *See* State of the Judiciary Address, Seventy-Fourth Session of the Nevada Legislature, March 7, 2007, p.7. (Exhibit NV-8). Based on information provided to the Chief Justice of the Nevada Supreme Court and a public inquiry by the Second and Eighth Judicial Districts, the local rules of practice of the two districts were amended to permit selection of qualified judges to handle the business court dockets and for the dockets to be fully utilized and managed. *See In the Matter of the Court Administration in the Second and Eighth Judicial District Courts*, ADKT No. 398 (Nev. Oct. 02, 2006).

The foregoing amendment required: (1) the Chief Judge of the Eighth District to assign two judges to the Eighth District's business court in accordance with EDCR 1.33 (Eighth District's Local Rule) by December 1, 2006; (2) the court administrator to report to the chief judge all cases identified as involving "business matters" as defined in EDCR 1.61 (Eighth District's Local Rule); (3) the judges of the Second and the Eighth Districts were to meet and confer by December 31, 2006 on the effective handling of the business court docket and to prepare the following reports: (a) a plan of expansion of the Eighth District's business court docket by January 31, 2007; (b) both Districts to provide reports by January 31, 2007 on: (i) a plan for effective case management, early case conferences and settlement conferences; and (ii) cooperate in the "conduct of settlement conferences for business court cases"; (3) both Districts to file an annual report with the Nevada Supreme Court by September 1, 2007, on the number of cases filed and disposed. Amend Rule 2.1 of the Local Rules of Practice for the Second Judicial District Court (referred to as WDCR 2.1); and (5) amend Rule 1.33 of the Local Rules of Practice for the Eighth Judicial District Court (referred to as WDCR 1.33).

The Second Judicial District's business court is located in Reno, Washoe County, Nevada. *See* www.washoecourts.com ("Specialty Courts Division"). Washoe County has three judges appointed to its business court: (1) The Honorable Judge Brent Adams, Department 6, who receives all business cases for docketing in the first instance; (2) if for some reason a case presents a conflict for Judge Adams, that case is referred to The Honorable Judge Steven P. Elliott, Department 10; and (3) if for some reason both judges are conflicted, the case will be referred to The Honorable Judge Robert H. Perry, Department 9.

The Second District's Rule 2.1 provides that for a case to be assigned to its business court the case's dispute must fall under: (a) NRS Chapters 78-88 related to business entities or derivative actions; or (b) trade-mark, trade secrets, securities, deceptive trade practice or investment securities laws. *See* Rule 2.1 of the Local Rules of Practice for the Second Judicial District Court, Rule 2.1 (1) (a)-(b). The presiding judge may also determine whether any dispute between business entities is deserving of enhanced case management. *See* Rule 2.1 (1)(c). Personal injury, product liability, consumer claims, wrongful termination or landlord-tenant matters are excluded. *See* Rule 2.1 (2). A party to an action in another department (i.e., non-business court department) may request transfer of the matter to the Business Court in writing, a request that is reviewed by the presiding judge in his discretion and whose decision cannot be appealed. *See* Rule 2.1 (3). It is clear from the rules that the Business Court judge may retain or be assigned other civil and criminal matters too on his docket. *See* Rule 2.1(4). A qualified judge is appointed to the Business Court by the chief judge for a period of two years unless reappointed. *See* Rule 2.1 (5).

The Eighth District's rules are similar to that of the Second District's rules. *See* Rule 1.33. Rule 1.33 requires qualified judges to be appointed by the chief judge for a period of two

years unless reappointed. The subject matter jurisdiction, matters excluded from its jurisdiction, transfer requests and lack of appealability of the Business Court's refusal to docket a transfer request are similar to those provided under Rule 2.1 (a)-(c) for the Second District. *See* Rule 1.61 (a)-(d).

Current filings and dispositions statistics are not available. Available statistics for the Las Vegas Business Court (Eighth Judicial District) indicate as follows: 2001 - (177 filings and 33 dispositions); 2002 - (155 filings and 86 dispositions); up to Sept. 2003 - (144 filings and 98 dispositions); total cases from 2001 to Sept. 2003 (476 cases and 217 dispositions). Available statistics for the Second Judicial District (Reno) show that as of June 7, 2003, 57 cases were open, including 12 shareholder derivative cases.⁸⁸

⁸⁸ *See* Mitchell L. Bach and Lee Applebaum, *A History of the Creation and Jurisdiction of Business Courts in the Last Decade*, *The Business Lawyer*, Vol. 60, Nov. 2004, at 186-187 ("Bach at ___").

New York

New York adopted a pilot program in 1993 which was initially limited to a single judge in the Supreme Court of Manhattan. A few years later, a "Commercial Division" was established in New York and Monroe Counties with several specially-designated "business judges." Additional counties were added over the years, and as of 2008, the New York Commercial Division includes courts in ten counties. The number of judges assigned to the Commercial Division varies from county to county depending on the case load of the Court. New York County has six judges assigned to the Commercial Division, but several of the less-busy counties have only one or two judges assigned.

A state-wide set of Rules determines which cases are assigned to the Commercial Division. For cases in which damages are sought, there are monetary minimum limits which range from \$25,000, in a few counties, up to \$150,000 in New York County. In addition to the monetary limitation, the cases assigned to the Commercial Division must involve claims arising out of business dealings such as securities transactions, business agreements, trade secrets, business torts, UCC claims, complicated commercial real estate transactions, shareholder derivative suits, commercial class actions and similar litigation.

In an effort to process the cases more quickly, the Commercial Division has also set up its own separate ADR Program which over 250 volunteers act as neutral mediators and/or arbitrators. The website for the New York Commercial Division is: <http://www.nycourts.gov/courts/comdiv>.

North Carolina

The first North Carolina Business Court was established in Greensboro in 1996. *See* Report on Activities of the North Carolina Business Court 2006-2008, p. 2.⁸⁹ Since that time North Carolina has created two additional business courts in Charlotte and Raleigh. There are currently three Business Court judges. Since its inception, 489 cases have been assigned to the Business Court. In 2008, 173 cases were still pending. *Id.* at 4.

The North Carolina Business Court is a “specialized forum of the trial court division.” *Id.* at 2. It is designed to adjudicate “complex and significant issues of corporate and commercial law.” *Id.* The Business Court’s jurisdiction is not limited by dollar amount and a jury trial may be requested. By statute, cases involving “a material issue related to the law of corporations, securities law, antitrust law, state trademark and unfair competition law, and intellectual property law, and certain cases involving technology” are “mandatory complex business cases.” *Id.* In the instance of a mandatory complex business case, any party can file a Notice of Designation, along with a \$200 fee, to have the case removed to the Business Court. Any party can file an opposition to removal. The Chief Business Court Judge then determines whether the case should be designated a mandatory complex business case. This decision can be appealed to the Chief Justice of the Supreme Court. Once the case is removed to the Business Court, the Chief Business Court Judge assigns the case to one of the three Business Court judges. *Id.* at 3. In addition, for a commercial litigation or complex business case that does not fit into the definition of a mandatory complex business case, a party can petition the Senior Resident Superior Court Judge in the county where the case originated for removal to the Business Court. *Id.*

⁸⁹ Available at <http://www.ncbusinesscourt.net/New/links/2008%20Report%20to%20General%20Assembly.Final.doc>

The Business Court has a supplemental set of rules (the “BCR”) whose primary purpose is “to take advantage of computer-assisted methods of information processing and the transmission of such information by advanced communications equipment.” BCR 1.2. To that end, BCR Rule 6.1 strongly encourages the parties to use the court’s electronic filing and service system. After a case is assigned or designated to the Business Court, the parties have 30 days to meet and discuss a case management order. BCR 17.1. A court may shorten this time period. *Id.* Within 15 days of the case management meeting, the parties have to file a case management report. BCR 17.2. Included in the case management meeting and report are statements concerning a discovery schedule and a format for discovery, retention of documents, any pre-discovery motions, an estimate on the volume of discovery, use of electronic filing, legal and factual issues in the case, the time of any mediations, and a tentative trial date. *See* BCR 17.1.

The BCR also places presumptive limits on discovery. Discovery is expected to be completed within nine months “from issuance of the Case Management Order.” Interrogatories and requests for admission are presumptively limited to 50, including sub-parts. Depositions are presumptively limited to 12 (excluding testifying experts). Upon consent of the parties, discovery motions can be adjudicated through “an expedited oral argument procedure” negating the need to file briefs. BCR 15.10, 15.12. In addition, mediation is mandatory in all Business Court cases. BCR 19.1.

Ohio

Pursuant to Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio,⁹⁰ the Supreme Court of Ohio created a commercial docket as a pilot project in the courts of common pleas in Cuyahoga County, Franklin County, Hamilton County, and Lucas County. Under this program, which is set to last until July 1, 2012, the Chief Justice of the Supreme Court of Ohio designates up to five courts of common pleas to participate in the program. Each pilot project court is then authorized to establish and maintain a commercial docket pursuant to the requirements of Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio. The Chief Justice designates one or more sitting judges of each pilot project court to hear all cases assigned to the commercial docket. (Currently, each pilot project court has two judges.)

The commercial docket courts have jurisdiction over civil cases, including any jury, non-jury, injunction, temporary restraining order, class action, declaratory judgment, or derivative actions, that fall within the statutory jurisdiction of the courts of common pleas and where the gravamen of the case relates to any of the following: (1) the formation, governance, dissolution, or liquidation of a business entity; (2) the rights or obligations between or among the owners, shareholders, partners, or members of a business entity; (3) trade secret, non-disclosure, non-compete, or employment agreements involving a business entity and an owner, sole proprietor, shareholder, partner, or member thereof; (4) the rights, obligations, liability, or indemnity of an officer, director, manager, trustee, partner, or member of a business entity owed to or from the business entity; and (5) disputes between or among two or more business entities or individuals

⁹⁰ The Rules of Superintendence for the Courts of Ohio:
<http://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/Superintendence.pdf#TR1.01>.

as to their business or investment activities relating to contracts, transactions, or relationships between or among them. Temp. Sup. R. 1.03(A). The Temporary Rules also specifically exclude a number of claims, including, for example, consumer claims against businesses, personal injury matters, environmental claims, and employment law cases.

If the gravamen of the case filed relates to one of these topics, the attorney filing the case may include with the initial pleading a motion to transfer of the case to the commercial docket. If the gravamen of the complaint relates to one of the above topics, but the plaintiff's attorney does not file a motion to transfer, and the case is assigned to the non-commercial docket, then any other party may file a motion to transfer. If neither party files a motion to transfer, then the judge may sua sponte request the administrative judge to transfer the case to the commercial docket. Alternatively, if the case is assigned to the commercial docket, but the gravamen of the complaint does not relate to one of the above topics, then upon motion of either party or the court sua sponte the commercial docket judge will remove the case from the commercial docket.

The commercial docket also promotes speed, as the Temporary Rules provide that the judges shall decide all pending motions within 60 days of being filed and that the judges shall decide all cases within 90 days of trial. The commercial docket provides a guideline of 18 months for resolving non-complex litigation.

As this program is in the early stages, there is little information about its effectiveness, but it has been noted that economic development officials in Ohio have hopes that, among other benefits, the program will help the state's corporate recruiting efforts.⁹¹

⁹¹ Kevin Kemper, *Ohio Supreme Court Test To Set Aside 'Commercial Dockets' For Biz Disputes*, Business First of Columbus, July 4, 2008 (<http://columbus.bizjournals.com/columbus/stories/2008/07/07/story2.html>).

Oregon

Oregon established the Commercial Court Program of the Second Judicial District (Lane County Circuit Court) in October 2006. The Court's Operating Statement sets forth the manner in which the Commercial Court will operate and is intended to supplement the Oregon Rules of Civil Procedure, Uniform Trial Court Rules and Lane County Supplementary Local Rules. The Commercial Court's jurisdiction encompasses the Circuit Court of the State of Oregon.

The types of actions the presiding judge considers in determining assignment to the Commercial Court includes: internal and external affairs of businesses; preliminary injunctions, relating to trade secrets, non-compete, non-solicitation and confidentiality agreements; securities transactions; insurance coverage; electronic technology and intellectual property cases; commercial real property disputes; land use; construction defect; professional malpractice; product liability; mass tort litigation; environmental litigation; and class action. The presiding judge may also assign other cases at his or her discretion.

A party to a case filed in another judicial district who seeks assignment to the Commercial Court must first confer with the other parties and the Lane County presiding judge to determine whether the case is appropriate for assignment to the Commercial Court. If deemed appropriate, the party seeking such assignment must then apply for a change of venue. Upon completion of the change of venue, the party must move to have the case assigned to the Commercial Court. A party in the Second Judicial District need only file a motion to have the case assigned the Commercial Court. In addition, the Court may on its own motion, assign a case to the Commercial Court. The presiding judge's ruling on the motion is final and not subject to review or appeal.

Within thirty days of assignment to Commercial Court, a case management conference is held. Prior to which the parties must meet and confer concerning matters to be raised at the conference and attempt to reach an agreement on as many of the issues as possible. Under the Court's Operating Statement, the parties must also attempt to achieve early resolution of their dispute by the use of Alternative Dispute Resolution. All cases assigned to the Commercial Court are under the direct supervision of a single judge for all purposes including referral to mediation, assignment to a settlement judge, and trial. The Commercial Court publishes its decisions on the Court's website.⁹²

⁹² The Commercial Court's website is <http://www.ojd.state.or.us/lan/Commercial%20Court/Comm%20Court.htm>.

Pennsylvania

The Philadelphia Court of Common Pleas established a business court which it refers to as a "Commerce Program" in 2000. According to its website (<http://courts.phila.gov/commonpleas/trial/civil/commerce-program.html>), three judges are assigned to the Commerce Program and it handles generally the same types of cases as the New York Commercial Division. There is, however, no monetary limitation that applies to the Philadelphia Commerce Program. In addition, the Philadelphia Program sets trial target dates for cases assigned to the Program, ranging from thirteen months from the filing of the complaint for expedited cases, to eighteen months for standard cases and two years for complex cases.

Maryland

Maryland established a Business and Technology Case Management Program in 2005. The rule (Maryland Rule 16-205) establishing the program provides that on written request of a party or on the Court's initiative the Circuit Administrative Judge may assign an action to the program if it presents commercial or technological issues of a complex or novel nature. The website for this program is: <http://www.courts.state.md.us/businessstech/index.html>.

New Jersey

New Jersey adopts a bifurcated approach to handling corporate and complex commercial matters: (1) all equity-based issues of the type addressed by Delaware's Court of Chancery involving corporate law, partnership and other such matters listed *infra*, fall within the exclusive jurisdiction of the New Jersey Superior Court's Chancery Division; and (2) all complex commercial matters that qualify under Track IV of Appendix XII to New Jersey's recently introduced "Best Practices" under *See* N.J.Ct.R. 4:5A, discussed *infra*, fall within the purview of every New Jersey county's Superior Court's law Division.

The Supreme Court of New Jersey approved a pilot program addressing complex commercial cases for four of its vicinages in 2004: Burlington (Vicinage 3), Hudson (Vicinage 6), Mercer (Vicinage 7), and Ocean (Vicinage 14) Counties. The program began on September 7, 2004. As an enabling measure, the New Jersey Supreme Court relaxed and supplemented its Rules of Court, to permit complex commercial cases filed in the above counties to be assigned to the General Equity/Complex Commercial Case Pilot Program on the request of the parties. *See* N.J.Ct.R. 4:3-1.⁹³

New Jersey amended its rules of civil practice adding provisions called "Best Practices." The Best Practices rules address jurisdictional, case management and scheduling issues. One notable feature of the Best Practices was the introduction of a four-tiered system, called Tracks I to IV, providing specific Tracks for all filings in the Superior Court of New Jersey. Complex commercial litigation cases fall under Track IV. *See* N.J.Ct.R. 4:5A ("Case Tracks"). The four-tiered system includes Appendix XII which categorizes the type of cases that fall into each

⁹³ Court Order available at www.judiciary.state.nj.us/notices/n040624a.htm 8/9/2007 (Exhibit NJ-1); *see also* New Jersey Courts Annual Report, Court Years 2004-2005, p.23.

Track. The four Tracks were adopted on July 5, 2000 and were in force from September 5, 2000. *See* N.J.Ct.R. 4.5A-1.

A court assigns a Track for a complaint within 10 days of filing through a Track Assignment Notice (“TAN”). *See* N.J.Ct.R. 4.5A-2 (a). The assigned Track is noted on the Case Information Statement (“CIS”). Within 30 days from receipt of that notice, a plaintiff may apply in writing to change the Track assignment by filing a certificate of good cause. Any other party can also seek a Track change by filing pleadings under certification within 10 days. When a complaint is filed with a request that the matter be assigned to the General Equity/Complex Commercial Case Pilot Program, the case is transferred to the General Equity Judge for management and disposition under its original law division docket number. Thereafter, a party can appeal the denial of an application by moving the court for relief within 15 days. *See* N.J.Ct.R. 4.5A-2 (b).

Track IV cases are heard by a single judge who presides “over all pretrial motions and management conferences until completion of discovery under R. 4:36-2.” *See* N.J.Ct.R. 4.5B-1. In the case of Track IV cases, “an initial case management conference shall be conducted as soon as practicable after joinder ... within 60 days thereafter.” *See* N.J.Ct.R. 4.5B-2. (Exhibit NJ-3). Although it appears at first blush that Track IV cases are disposed of quickly, Rule 4:24-1 demonstrates that this Track is provided a 450-day limit for completion of discovery. (Exhibit NJ-4). Rule 4:5B-3 permits more than one settlement conference prior to trial before the presiding judge or any other judge, whether initiated by the court or the parties themselves. *See* R. 4:5B-3.

At the Rule 4.5B-2 conference, the General Equity Judge reviews the case and, if the case presents complex commercial issues, he/she will retain the filing in Track IV; if not, the case will

be transferred to the Law Division-Civil Part with an appropriate Track recommendation from the reviewing judge. The reviewing General Equity Judge will then develop a discovery schedule with the attorneys, assigning dates for: (1) the next case management conference; (2) pretrial conference; (3) filing of dispositive and non-dispositive motions; and (4) trial. The object of these procedures is to help resolve the case within 12 months. *But see* New Jersey Judiciary Court Management, June 2007, P.1 (Exhibit NJ-8) (indicating that the goal for completing Track IV cases is 24 months). Additionally, the reviewing judge will also determine an appropriate dispute resolution mechanism and refer the case to that mechanism.⁹⁴

Mediation alternatives exist even for complex commercial cases and one author has noted that nearly 32% of cases sent to mediation settled during that process, with more settling a short while after the mediation process concluded.⁹⁵

Track IV cases have a minimum jurisdictional amount of \$15,000. Thus, to be classified and heard as a Track IV matter, a complaint must: (1) demonstrate that the minimum claim exceeds \$15,000; and (2) it falls under Track IV as described in Appendix XII-B. Corporate or business disputes relating to unfair competition, non-compete agreements, trade secrets matters or confidential information, trademarks and trade names, shareholder derivative actions, veil-piercing, partnership and joint venture dissolutions, and accounting actions are heard by the New Jersey Superior Court's Chancery Division.⁹⁶

Complex commercial litigation may be heard in every New Jersey County. Bergen and Essex Counties assign these types of cases to a single judge. Other counties assign these cases on

⁹⁴ See www.judiciary.state.nj.us/notices/n040624a.htm8/9/2007

⁹⁵ See Bach at 175.

⁹⁶ *Id.* at 174.

a rotation basis to judges within their civil law division.⁹⁷ Bergen County was the first to start hearing complex commercial matters, in 1997.⁹⁸ In a fifteen-month period starting July 1, 2001 (the 2002 Court Year), 164 cases were disposed out of 276 complex commercial litigation case-filings. In Bergen County, only one case went to trial out of the 26 cases disposed of from forty-eight filings. Compared to other types of cases which took a median time of two-years to disposal, Track IV cases took a median time of 218 days for disposal.⁹⁹ In Essex County half of the 22 cases filed were disposed within a median time of 190 days. In Court Year 2003, 300 complex cases were filed throughout New Jersey and 243 cases were disposed of state wide. In Bergen County, 38 cases were filed and 39 cases were disposed of in that year, with a median time of 362 days. In Essex County, 21 cases were filed under Track IV, with 13 disposed in a median time of 197 days.¹⁰⁰ The “caseload profile” for New Jersey Track IV cases in the period July 2006 – June 2007 demonstrates as follows: (1) 13,411 cases were added in the Court Year signifying an increase of 56% over the previous Court Year; (2) 4,269 cases were resolved in that Court Year, signifying a 10% change over the previous Court Year; (3) the total Track IV cases in inventory was 18,441 cases (82% increase) and a backlog of 2,903 cases (164% increase) totaling 21,344 cases active at the end of June 2007 (an increase of 90%).¹⁰¹

⁹⁷ *Id.* at 173.

⁹⁸ *Id.*

⁹⁹ *Id.* at 176.

¹⁰⁰ *Id.*

¹⁰¹ *See* New Jersey Judiciary Court Management, June 2007, p.50 (Exhibit NJ-8).

Although the Best Practices have ushered in Track changes and a more flexible case management system for complex commercial litigation cases, New Jersey has still not instituted dedicated and specialized business courts.¹⁰²

¹⁰² *See* Bach at 174.

Rhode Island

In 2001, Rhode Island, through an administrative order of the Presiding Justice of the Rhode Island Superior Court, established a “Business Court” in the form of a special Business Calendar for the Rhode Island Superior Court in Providence and Bristol Counties.¹⁰³ Matters involving breach of contract, breach of fiduciary duty, shareholder litigation and other business disputes may be assigned to the Business Calendar. Initially, a single judge was assigned to the Business Calendar. The Court emphasizes alternative dispute mechanisms as well. More recently, however, the presiding justice in that Court has suspended its operation because of a lack of judges for the Court’s caseload.¹⁰⁴

¹⁰³ Mitchell L. Bach & Lee Applebaum, *A History Of The Creation And Jurisdiction Of Business Courts In The Last Decade*, 60 Bus. Law 147 at 188 (2004).

¹⁰⁴ Presiding justice suspends business court calendar, Providence Journal (Feb. 26, 2009) at <http://newsblog.projo.com/2009/02/presiding-justi.html>.

South Carolina

In 2007, South Carolina, by administrative order, established a Business Court Pilot Program.¹⁰⁵ A single judge in Charleston, Greenville and Richmond Counties was assigned to that “Court.” To qualify for assignment to the Business Court, the litigation generally must involve a dispute in one of six categories, such as corporation law, securities law or trade regulation.¹⁰⁶ If the Chief Justice approves of an application to submit a case to the Business Court, it is assigned to a specific judge for the duration of the litigation.¹⁰⁷ Notably, the pilot program was created at the request of the business community.

¹⁰⁵ Pamela J. Roberts, Carmen Harper Thomas and Cory E. Manning, *South Carolina’s Business Court Pilot Program*, South Carolina Lawyer (January 2008).

¹⁰⁶ *Id.* at 37.

¹⁰⁷ *Id.* at 35.

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

)	
)	
Plaintiff,)	
)	
v.)	C.A. No.
)	
)	
)	
Defendants.)	

CASE MANAGEMENT ORDER

After consideration of the proposals of the parties, as well as the interests of justice, the Court hereby enters this Case Management Order.

I. GENERAL

A. Application

This Case Management Order shall apply to the presently pending action entitled:

B. Service of Case Management Order on New Parties

Upon the addition of any party to the Action, the party adding the new party to the Action shall serve a copy of this Case Management Order at the same time that it serves a copy of the pleading joining such new party.

C. Applicable Court Rules

Unless otherwise provided by the Initial Case Management Order, the Superior Court Civil Rules shall apply.

D. Discovery Master:

Upon application of any party, the Court may issue an Order of Reference to a Special Master or Commissioner, who shall thereafter handle all matters referred to in that Order of Reference.

II. LEXIS/NEXIS E-FILING PROCEDURES

The filing and service of documents shall be in accordance with Rule 79.1 of the Superior Court Civil Rules and the Administrative Directive of the President Judge of the Superior Court of the State of Delaware, No. 2003-8, E-File Administrative Procedures, dated August 12, 2003, published by the Prothonotary, except that documents initiating discovery requests (interrogatories, requests for production of documents, and requests for admission) and responses to such discovery requests (excluding the actual production of documents) shall be served electronically through LEXIS/NEXIS.

III. DISCOVERY SCHEDULE

A. Document Production

1. Requests for production of documents shall be served on or before _____ with all documents to be produced on or before _____.

2. Privilege logs shall be produced in accordance with the Superior Court Civil Rules and Rule 502 of the Delaware Uniform Rules of Evidence so as to be completed on or before _____.

3. Inadvertent Production of Documents. In the event a party discovers that it has inadvertently produced a document that it considers privileged or confidential, or receives a document that it believes was inadvertently produced on the ground that it is privileged or confidential, the parties shall undertake to resolve the inadvertent disclosure issue through the

Protective Order entered in this case or, in the absence of such an Order, in the Protocol for the Inadvertent Production of Documents attached as Exhibit A hereto. The Court will determine any issues not resolved by the parties.

B. Fact Depositions

1. Each party will be limited to taking fact depositions, unless the Court for good cause extends that limit. Each deposition shall be limited to seven hours unless extended by agreement or Court order.

2. Depositions shall proceed as follows: (a) depositions of document records custodians may be noticed for deposition on and after _____ so as to be completed by _____ and (b) all other non-expert depositions may be noticed for deposition on or after _____ so as to be completed by: _____.

C. Fact Discovery Cut-off

The parties shall conduct fact discovery so that it is completed on or before _____
_____.

D. Expert Discovery

Expert Discovery shall commence on _____ and shall be completed no later than _____. Exhibit B hereto shall govern expert discovery.

IV. DISPOSITIVE MOTIONS

Dispositive motions may be filed on or before _____.

V. **PRETRIAL STIPULATION AND ORDER; TRIAL**

A. **Trial Date and Jury Selection**

The trial of this Action shall begin on _____ at _____ a.m., and continue for _____, if necessary. Jury selection will be conducted on _____ at _____ a.m.

B. **Jury Questionnaire**

To expedite the selection of jurors who will be able to serve for as long as _____ weeks, the parties will exchange proposed jury questionnaires on or before _____. The parties shall confer immediately upon the exchange of the questionnaires and submit a joint agreed upon questionnaire or a joint questionnaire that reflects areas of disagreement to the Court no later than _____.

C. **Pre-Trial Stipulation and Order, Jury Instructions, Special Interrogatories, and Pre-Trial Conference**

1. On or before _____, the parties collectively shall:
 - a. exchange drafts of a Pre-Trial Stipulation and Order that shall address the items set forth in Superior Court Civil Rule 16(c) to the extent not previously resolved; and
 - b. exchange proposed jury instructions and special interrogatories.

2. Immediately following the exchange of the proposed Pre-Trial Stipulation and Order, the parties shall meet and confer in an attempt to reach an agreement on a final Pre-Trial Stipulation and Order, jury instructions and any special interrogatories. On or before _____, the parties shall submit to the Court a proposed Pre-Trial Stipulation and Order. In the event the parties cannot reach agreement on all the terms of the Pre-Trial Stipulation and Order, jury instructions and special interrogatories, a single

proposed order shall be filed and any areas of disagreement shall be appropriately noted in the one proposed order submitted and plaintiff shall submit a set of jury instructions and special interrogatories that contain any party's proposal.

3. The Pre-Trial Conference with the Court shall take place on _____
_____ at _____.m.

D. Motions In Limine

All motions in limine shall be filed no later than _____ and all responses to those motions shall be filed no later than _____.

VI. MOTIONS

A. All motions shall be heard at the Court's convenience.

B. All motions shall be accompanied with an opening brief supporting the motion. Subject to the requirements of this Order, any defendant may file a separate joinder or brief adopting or supporting a motion or opposition of another defendant provided it is served within three (3) business days after service of the motion or opposition and does not exceed three (3) pages, exclusive of appendices.

C. Subject to the requirements of this Order, any party may file an answering brief to a motion. Unless an alternative schedule has been agreed to by the parties or ordered by the Court, such answering brief shall be filed and served the later of _____ () days after any service of the motion, or _____ () days after any defendant files a separate joinder or brief adopting or supporting a motion or opposition of another defendant.

D. Reply briefs may be filed ten (10) days after responses are received, but no later than three (3) days before any hearing on the motion.

E. All briefs shall conform to the requirements of Superior Court Civil Rule 107, except that in the case of discovery motions, whether handled by the Court or the Special Discovery Master in the first instance, the timing of such discovery motion practice and the length of the briefs on discovery motions shall comport with the requirements in the Order of Reference to Special Discovery Master, dated _____. The Court may set page limitations that differ from Superior Court Civil Rule 107.

This Case Management Order may be amended by the Court or supplemented by additional Case Management Orders as deemed appropriate by the Court. Nothing herein shall prevent any party from seeking relief from any provision for good cause shown.

IT IS SO ORDERED this ____ day of _____, 200__.

Judge

EXHIBIT A

PROTOCOL FOR THE INADVERTENT PRODUCTION OF DOCUMENTS

In the absence of a Protective Order governing inadvertent production of documents, in the event a party discovers that it has inadvertently produced a document that it considers privileged or confidential, or received a document that it believe was inadvertently produced on the ground that it is privileged or confidential, the parties will undertake to resolve the issue by complying with the following protocol:

1. If a party produces privileged or confidential information or documents (“Privileged Material”) that the recipient believes were produced inadvertently, the recipient immediately shall either return such Privileged Material to the producing party or notify the producing party of the apparent inadvertent production.

2. If a producing party discovers that it inadvertently produced information or documents that it considers Privileged Material, in whole or in part, it may retrieve such Privileged Material or parts thereof as follows:

a. During the period within one hundred twenty (120) days after the date of the inadvertent production, the producing party may give written notice to all parties that the producing party claims said document, in whole or in part, to be privileged material and must state the nature of the privilege.

b. Upon receipt of such notice, all parties who have received copies of the produced documents shall promptly return them to the producing party or destroy them and shall certify that all copies of the documents in their possession, and in the possession of anyone who receives copies from them, have either been returned or destroyed. Moreover, all parties who have received copies of the produced documents shall not make any use of the

contents of the allegedly Privileged Material, unless and until a party challenges the privileged claim and the court determines the claim of the producing party is not well founded. In the event that only parts of documents are claimed to be Privileged Material, the producing party shall furnish redacted copies of such documents, removing only the part(s) thereof claimed to be Privileged Material, to all parties within ten (10) days of their return to the producing party or their destruction by the receiving party.

c. After timely service of such notice, no motion to compel the production of the inadvertently produced document may rely on an allegation that any protection as to the document was waived by its inadvertent production. Nothing in this paragraph shall preclude any recipient of such notice from promptly moving for an order compelling production of such document on the ground that the claim of privilege is not well founded.

d. During the period more than one hundred twenty (120) days after the inadvertent production, but in no event later than thirty (30) days prior to trial, the producing party may request the return of said document which it claims, in whole or in part, to be Privileged Material, pursuant to and in accordance with the following procedure:

- i. The producing party must give written notice to all parties that the producing party claims said document, in whole or in part, to be Privileged Material and must state the nature of the privilege;
- ii. Within ten (10) days of giving written notice pursuant to paragraph (1) above, the parties shall meet and confer to discuss the assertion of privilege. If the parties cannot reach agreement within ten (10) days of the giving of such written notice, the producing party shall file a Motion for Protective Order in accordance with the Superior Court Civil Rules that seeks the return or destruction of the inadvertently produced privileged document(s).

e. Inadvertent production of privileged material, the return of which is requested in accordance with this section, shall not be considered a waiver of any claim of privilege.

EXHIBIT B

PROTOCOL FOR EXPERT DISCOVERY

Expert discovery in this Action shall be conducted pursuant to the following protocol:

A. Identification of Expert Witnesses

1. On or before _____ the parties shall identify expert witnesses and submit Superior Court Civil Rule 26(b) statements. On or before _____, any party may designate additional expert witness(es) whose function shall be solely to rebut an opinion taken by a designated expert witness. At the same time a party designates a rebuttal expert witness, the party designating the rebuttal expert witness shall produce corresponding Rule 26(b) statements for that witness.

2. Depositions of expert witnesses shall take place during the period of _____ through _____.

B. Depositions of Expert Witnesses

1. As soon as practicable, the party taking a deposition will advise the other side of its good faith estimate of the amount of time it is anticipated that the testifying expert's deposition will take.

2. Each party will pay its testifying experts' fees and expenses incurred in connection with the deposition of such experts. All costs incurred in the production of documents discussed herein shall also be borne by the party producing the documents.

3. The parties will make a good faith effort to schedule testifying expert depositions at locations convenient for counsel and the experts. In the absence of any agreement, each deposition will take place in Wilmington, Delaware. If the deposition is taken in

Wilmington, Delaware, the deposition will be held at a location to be selected by counsel for the party taking the deposition.

4. Testifying expert witnesses will appear for depositions without the necessity of subpoenas.

C. Document Identification And Production Of Documents Relied Upon By Experts

1. On or before fourteen (14) calendar days before the expert's deposition begins, the party proffering the testifying expert shall provide the other side with a list of the documents reviewed by each testifying expert in his capacity as a testifying expert in this case. The list will include the Bates numbers (if any) or a deposition exhibit number (if any), the date, and a brief description of each document, such as the names of the author and addressee and the title or line reference.

2. On or before fourteen (14) calendar days before each expert deposition begins, the party proffering a testifying expert will produce to the party taking the testifying expert's deposition the following documents relied upon by a testifying expert in his capacity as a testifying expert in this case:

a. Documents relied upon by a testifying expert in his capacity as a testifying expert in this case that were obtained by one side from third parties and not produced to the other side in this action;

b. Documents relied upon by a testifying expert in his capacity as a testifying expert in this case that were produced in this action for which there is no common Bates numbering or a deposition exhibit number;

c. Documents prepared by a non-testifying expert that were relied upon by a testifying expert in his capacity as a testifying expert in this case;

d. All publications of any type relied upon by a testifying expert in his capacity as a testifying expert in this case, including by way of example only, documents considered to be “learned treatises” under D.U.R.E. 803(13). This subparagraph is not intended to include publications that merely form part of the basis of a testifying expert’s education, training and experience in a particular field, but rather, only those on which a testifying expert is relying or about which he will testify at trial. Further, if a publication otherwise required to be produced pursuant to this subparagraph is shown by the party proffering a testifying expert to be readily accessible in its entirety from other sources, then only the relevant portions thereof must be produced;

e. Notwithstanding any of the provisions set forth herein, no communications between counsel for a party and the party’s expert shall be produced; and

f. No party shall be required to produce any work product between the expert witness and the proffering parties’ counsel.

3. No later than ten (10) days after a party’s designation of a testifying expert, each party proffering a testifying expert will produce to the party taking the expert’s deposition: (a) the testifying expert’s curriculum vitae and (b) a list that will include, at a minimum, the cases, administrative matters or other proceedings in which the expert has given trial or other testimony in public within the last four (4) years, without prejudice to any party’s right to request such information for a period not to exceed ten (10) years. If the request for information exceeding four (4) years is opposed, the party seeking such additional information may apply to the Court for relief. The list also will include the name of the matter, the name of the court or other public body, the names of the parties and their attorneys, whether the expert or

the party for which he is testifying has a copy of the testimony, and a brief description of the nature of the proceeding.

4. The cost of producing documents, as required herein, for a party's testifying expert, shall be borne by the party designating the testifying expert.

APPENDIX C

E-DISCOVERY PLAN GUIDELINES

(a) *Meet and Confer Requirement.* Unless the parties otherwise agree or the Court otherwise orders, not later than 21 days before the first scheduling conference with the Court, all parties that have appeared in the proceeding shall hold a meet and confer session concerning discovery of electronically stored information (“ESI”) that is reasonably likely to be sought in the proceeding, and if so the parties shall discuss:

- (1) any issues relating to preservation of ESI;
- (2) the form in which each type of ESI will be produced and any problems relating thereto;
- (3) the scope of production, including the custodians, time period, file types and search protocol to be used to identify which ESI will be produced;
- (4) the method for asserting or preserving claims of privilege or of protection of ESI as trial-preparation materials, including whether such claims may be asserted after production;
- (5) the method for asserting or preserving confidentiality and proprietary status of ESI relating to a party or a person not a party to the proceeding;
- (6) whether allocation among the parties of the expense of preservation and production is appropriate; and,
- (7) any other issue relating to the discovery of ESI.

(b) *e-Discovery Plan and Report to the Court.* The parties shall:

- (1) develop a proposed plan relating to discovery of ESI; and
- (2) not later than 14 days after the meet and confer session under subsection (a), submit to the Court a written report that summarizes the plan and states the position of each party as to any issue about which they are unable to agree.

(c) *Form of Court Order.* Following the submission of the discovery plan and any disputes over the plan, the Court will enter an order governing discovery of ESI that will address:

- (1) preservation of ESI;
- (2) the form in which each type of ESI is to be produced;
- (3) the scope of production, including the custodians, time period, file types and search protocol to be used to identify which ESI is to be produced;
- (4) the permissible scope of discovery of ESI;
- (5) the method for asserting or preserving claims of privilege or of protection of ESI as trial-preparation material after production;
- (6) the method for asserting or preserving confidentiality and the proprietary status of ESI relating to a party or a person not a party to the proceeding;
- (7) allocation of the expense of production; and
- (8) any other issue relating to the discovery of ESI.

(d) *Limitations On Discovery.*

In developing a discovery plan and in entering any discovery order, the plan or order shall provide that a party may object to discovery of ESI from sources that the party identifies as

not reasonably accessible because of undue burden or expense. In its objection the party shall identify the reason for such undue burden or expense. On a motion to compel discovery or for a protective order relating to the discovery of ESI, the objecting party bears the burden of showing that the information is from a source that is not reasonably accessible because of undue burden or expense.

The Court may order discovery of ESI that is from a source that is not reasonably accessible because of undue burden or expense if the need for proposed discovery outweighs the likely burden or expense, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

If the Court does order discovery of ESI under this subsection, it may set conditions for discovery of the information, including allocation of the expense of discovery.

The Court shall limit the frequency or extent of discovery of ESI, whether or not that ESI is from a source that is reasonably accessible, if the Court determines that:

- (1) it is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive;
- (2) the discovery sought is unreasonably cumulative or duplicative;
- (3) the party seeking discovery has had ample opportunity by discovery in the proceeding to obtain the information sought; or
- (4) the likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the

importance of the issues, and the importance of the requested discovery in resolving the issues.

(e) *Safe Harbors.*

The order governing e-discovery shall also provide that:

(1) A party that is subject to an order entered by the court to deal with e-discovery and who acts in compliance with the terms of that order may thereafter apply its regular document destruction procedures to any ESI that has not been ordered to be produced and shall not be subject to any sanction for the destruction of ESI that is not subject to its obligation to produce under such court order. The order entered by the Court may be modified upon application for good cause and shall thereafter be applicable to the preservation of ESI.

(2) The production of ESI shall not constitute a waiver of attorney-client privilege or work-product protection if the disclosure was inadvertent and the party making the claim of privilege or protection shall promptly take reasonable steps to recover the ESI.

APPENDIX D

SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS)

COUNTY: N K S

CIVIL ACTION NUMBER: _____

CIVIL CASE CODE: _____

CIVIL CASE TYPE: _____

<p>Caption:</p> <p align="center">Plaintiff,</p> <p>v.</p> <p align="center">Defendants.</p>	<p>Name and Status of Party Filing Document:</p> <p>Document Type: (E.G., COMPLAINT, ANSWER WITH COUNTERCLAIM)</p> <hr/> <p>JURY DEMAND YES ___ NO ___</p> <p>TRACK ASSIGNMENT REQUESTED:</p> <p>EXPEDITED STANDARD BUSINESS/COMPLEX</p>
	<p>(If the Plaintiff seeks an assignment to the Business/Complex Litigation Docket, attach explanation)</p>
<p>ATTORNEY NAME(S): _____</p> <p>FIRM NAME: _____</p> <p>ADDRESS: _____</p> <p>TELEPHONE NUMBER: _____</p> <p>FAX NUMBER: _____</p> <p>E-MAIL ADDRESS: _____</p>	<p>IDENTIFY ANY RELATED CASES NOW PENDING IN THE SUPERIOR COURT BY CAPTION AND CIVIL ACTION NUMBER INCLUDING JUDGE'S INITIALS:</p> <p>_____</p> <p>_____</p> <p>EXPLAIN THE RELATIONSHIP(S):</p> <p>_____</p> <p>_____</p> <p>OTHER UNUSUAL ISSUES THAT AFFECT CASE MANAGEMENT:</p> <p>_____</p> <p>_____</p> <p>(IF ADDITIONAL SPACE IS NEEDED, PLEASE ATTACH PAGES)</p>