

# **MARYLAND BUSINESS AND TECHNOLOGY COURT TASK FORCE REPORT**

**Created by House Bill 15  
Chapter 10 of the Maryland Acts of 2000**

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## **BUSINESS AND TECHNOLOGY PROGRAM**

### **TASK FORCE REPORT**

#### ***I. EXECUTIVE SUMMARY***

This is a report of the Maryland Business and Technology Court Task Force created by the General Assembly to consider the feasibility of establishing a specialized court function within Maryland's Circuit Courts to adjudicate business and technology disputes. This blue-ribbon task force included appointees from the Maryland Judiciary, Maryland's House and Senate, the Maryland State Bar Association and members of the Maryland business and academic communities.

After hearing from the business community, judges, legislators, lawyers and representatives of other "business courts," the Task Force recommends establishing a statewide program with specially trained judges and mediators to resolve substantial disputes affecting business entities, including the unique and specialized issues involving technology. The Task Force considered a separate court division within only certain counties, but concluded that creating local specialized courts was not needed or desired by many judges and lawyers, and would unfairly discriminate against business entities located in other areas of the State.

The Task Force reviewed different models of "business courts" implemented in other jurisdictions. Recognizing the effectiveness of Maryland's Differentiated Case Management ("DCM") system, the Task Force concluded that a "program" based, in part, on different models of business courts in other states would best take advantage of the current DCM system, while providing a unique and specialized forum for handling business and technology disputes.

Establishing a business and technology dispute management program like the one detailed in this report provides Maryland with a unique opportunity to substantially improve its perception among the business and technology communities as a preferred place to do business. In the competitive national market for business, establishment of such a program will serve to increase Maryland's reputation as a place where disputes involving substantial business interests are effectively and efficiently resolved, thus increasing Maryland's reputation as a favorable forum.<sup>1</sup>

#### ***II. BACKGROUND***

Over the past decade, the Internet has grown at a tremendous rate. At the start of the Clinton administration, there were less than a dozen sites on the worldwide web. This number currently totals in the hundreds of millions. In light of the significant advances brought about by not only the Internet, but also the bioscience, aerospace, and information technology industries, to name only a few, the business environment is

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<sup>1</sup> Although providing great insight and perspective to the Task Force during its deliberations, Judge John Eldridge, Senior Judge of Maryland's Court of Appeals, respectfully abstained from participating in the recommendations and findings included in this report. Judge Eldridge believes that given his position as a Judge on the Court of Appeals, and the likely event that the Court of Appeals will be required to examine the adoption of rules to effect the recommendations contained herein, it is proper for him to abstain from inclusion in the report.

changing at light speed. Business models that couldn't have even been imagined a few years ago are now commonplace. These technological advancements have, however, created interesting dilemmas for all three branches of federal and state government.

In the legislative arena, elected officials must have a keen awareness of the significance of technological trends, as well as a healthy regard for the limits of their ability to control them. The executive branch is confronted with a similar dilemma. Regulations may prove necessary to protect the public and prevent the improper use of technology, while at the same time, efforts must be made to limit the breadth of such regulations so as not to chill creative thought.

The role of the judiciary is even more problematic since its role is by design more reactive than pro-active. Judges will be confronted with new and unique issues never before seen as a result of emerging technology and new business models. Judicial decisions will have to look forward to the potential impact of technology, as well as back to established legal precedent. The Judiciary can nevertheless take a leadership role in the development of new rules and enhancements in its functions to adapt to these new challenges. Just as our judicial system created the state wide District Court system and the nationally regarded DCM system, the pressure to change offers the Judiciary an opportunity to forge its own adaptive institutions.

Maryland is poised at the forefront of the technological revolution. Already, Maryland has one of the largest concentration of bioscience and aerospace companies in the country. Maryland is first in the nation of percentage of technological workers in the work force and can also claim top honors among states receiving research and development awards from the National Institutes of Health.

Today, information technology is Maryland's largest economic impact cluster. Maryland's information technology industry added over eighteen thousand new technology jobs between 1993 and 1998 bringing the total employment attributable to the information technology industry to well over 100,000. As of 1998, information technology firms employed 56 of every 1,000 private sector workers in the State, and it is believed that this number has significantly increased in the last two years. Maryland also has one of the highest percentage of on-line households in the country with forty-six percent of Maryland homes connected to the Internet.

Despite these impressive statistics, Maryland is still generally perceived by the business community as anti-business. Whether accurate or not, such perception is often viewed as reality. In an effort to change this perception, Maryland's General Assembly, as part of an overall plan to encourage technology companies to locate in the State (which includes, among other things, adoption of the Uniform Computer Information Transactions Act and the Uniform Electronic Transaction Act), passed House Bill 15 establishing this Task Force to consider the feasibility of the establishment of a specialized court function to effectively and efficiently administer business and technology disputes.

### ***III. HOUSE BILL 15 (Chapter 10 of the Maryland Acts of 2000)***

The General Assembly expressly stated its intent in passing House Bill 15 as follows:

**It is the intent of the General Assembly that:**

- (1) business and technology matters be treated efficiently and effectively in the judicial system; and**
- (2) the Chief Judge of the Court of Appeals consider the feasibility of the establishment of a business and technology court division in Maryland, based on a study to be completed by the Business and Technology Division Task Force, in order to enable the circuit courts to handle business and technology matters in the most coordinated, efficient, and responsive manner, and to afford convenient access to lawyers and litigants involved in business and technology matters.**

**In establishing the Task Force, the General Assembly mandated that it solicit input from both the Maryland business and legal communities, commence a review of the experience of other states in creating so called business courts, and prepare a report on its findings and recommendations to the Court of Appeals, the Governor, The Lieutenant Governor, the President of the Senate, the Speaker of the House of Delegates, the House Judiciary Committee, the Senate Judicial Proceedings Committee, and the General Assembly. The General Assembly required this report to include a consideration of all operational aspects of establishing a business and technology division, including:**

- (1) the benefits, costs, and potential negative impacts to the State and, in particular, the Judiciary that are associated with the establishment of a business and technology division in Maryland;**
- (2) the costs associated with and essential to the efficient operation of a business and technology division;**
- (3) the criteria for determining the type and monetary threshold of matters to be assigned and procedures for assignment of matters to a business and technology division;**
- (4) a case management plan for the prompt and efficient scheduling and disposition of matters assigned to a business and technology division, which shall identify those matters that are appropriate for assignment to a specific judge who shall be responsible for the entire case;**
- (5) the use of alternative dispute resolution;**
- (6) the feasibility of establishing an electronic filing system for pleadings and papers;**
- (7) the feasibility of establishing an expedited appeals process for matters assigned to a business and technology division; and**
- (8) the feasibility of either assigning technology-related criminal matters to a business and technology division or of establishing some alternative means of providing particular courts or judges with appropriate, specific training to deal with technology related criminal matters.**

#### **IV. INPUT FROM THE BUSINESS AND LEGAL COMMUNITIES**

The Task Force heard testimony from a number of business people, judges, lawyers, legislators and representatives of business courts established in other states including:

- (1) Hon. Robert Bell – Chief Judge, Maryland's Court of Appeals
- (2) Hon. Casper Taylor – Speaker of Maryland's House of Delegates
- (3) Hon. Ellen Heller – Administrative Judge, Baltimore City Circuit Court
- (4) Hon. Paul Weinstein – Administrative Judge, Montgomery County Circuit Court
- (5) Hon. James Smith – Judge, Baltimore County Circuit Court
- (6) Hon. William Chandler – Chancellor, Delaware Court of Chancery
- (7) Robert Haig, Esq. – Co-Chairman, New York Commercial Courts Task Force
- (8) William Clark, Esq. – Chairman, Business Law Section of the Pennsylvania Bar Association and the American Bar Association Committee on the establishment of Business Courts
- (9) James Thompson, Esq. – Past President, Maryland State Bar Association
- (10) Gregory Wells, Esq. – Chairman, Litigation Section of the Maryland State Bar Association
- (11) Roger Wolf, Esq. – Chairman, Alternative Dispute Resolution Section of the Maryland State Bar Association
- (12) Richard Lewin – Secretary, Maryland Department of Business and Economic Development
- (13) Philip Singerman – President, Maryland Technology Development Corporation
- (14) David Schwiesow, Esq. – Vice-President and Associate General Counsel, The Rouse Company
- (15) Henry Hopkins, Esq. – Chief Legal Counsel, T. Rowe Price and Spokesman, Maryland Securities Association
- (16) Leonard Moodispaw – President, Essex Corporation

Individual members of the Task Force also polled committees of the Maryland State Bar Association on which they are members, clients, constituents, and business people on their thoughts concerning the Task Force's charge. Also, as the Task Force was comprised of a diverse cross section of judges, legislators, lawyers, educators, and business people, each brought with them unique knowledge and experience to the Task Force's deliberations.

Although differences in opinion existed regarding the necessity of a separate business and technology division,<sup>2</sup> as well as the precise model and methodology for its

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<sup>2</sup> The Task Force heard testimony concerning the need of a specialized business and technology division, and indeed, engaged in its own spirited debate on the issue. Due to the unavailability of funds to engage in a thorough study of cases currently pending in the courts, the Task Force was reduced to relying on the experience of its members in determining the necessity of a specialized court function to hear such disputes.

It has been the experience of other states that despite initial concerns regarding the necessity of specialized procedures for the administration of business disputes, once such procedures were implemented, those concerns proved unfounded. Moreover, with the increasing use of technology in our society, and Maryland's efforts to encourage technology businesses to locate in the State, the Task Force

implementation, the Task Force determined that there exists a general consensus that if rules making Maryland's courts more efficient and effective can be drafted, such rules should be adopted. This report offers recommendations on the establishment of such rules concerning the handling of substantive business and technology disputes.<sup>3</sup>

#### **V. *EXPERIENCE OF OTHER STATES***

Ten Nine states currently have some form of an operational court function for the specialized handling of business disputes. With one exception (Wisconsin), jurisdictions instituting these functions have found that reaction has been enthusiastic. Businesses, as well as the lawyers handling business litigation, believe that disputes are handled in a more efficient, effective, and predictable manner. Moreover, the implementation of such procedures has generally resulted in the increased efficiency of the courts as a whole as complex business disputes requiring extensive court time are removed from the general docket allowing judges to concentrate their efforts on other matters.<sup>4</sup>

It is important to note, however, that none of the states that have created or are considering business courts have addressed specialization in technology. Just as Maryland was the first state to put the Uniform Computer Information Transactions Act into law, it is also the first state to consider a court with a special focus on technology matters that will use technological tools to administer these disputes more efficiently and effectively.

#### **VI. *FINDINGS***

From formal testimony heard by the Task Force, informal polling by its members with their constituencies in the Bar, the Senate, The House, the State and Federal Judiciary, and the Maryland business community, and review of the experience of other states, the Task Force finds as follows:

- (1) Both the Maryland business and legal communities desire an efficient, economical, and hospitable forum for the administration of business and technology disputes in the circuit courts of our State. The key to this forum is to assign judges who can handle cases involving complex business and technology issues competently and in a timely manner regardless of the geographic sites of the court, the dispute, or even the parties.
- (2) The experience of other states that have created business courts initially began with a perception that such cases were not being handled satisfactorily by the general jurisdiction courts in those states. These deficiencies gave impetus to the creation of specialized business courts in those states which have taken various forms. These specialized courts have significantly improved the efficiency with

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assumed that the number of disputes falling within the jurisdiction of the Business and Technology Case Management Program detailed in this report will only increase.

<sup>3</sup> A more detailed description of the testimony heard by the Task Force may be found in Appendix A.

<sup>4</sup> A more detailed description of the experience of other states in adopting special procedures for the handling of business disputes may be found in Appendix B.

which business cases have been disposed of in those states. None of these states, however, have created technology courts to specialize in the administration of disputes involving complex technology issues.

- (3) None of the states which have created specialized business courts had implemented a differentiated case management or other system similar to that already adopted in Maryland. Even the witnesses who testified before the Task Force from other states acknowledged the significance of Maryland's DCM system in which complex cases, including business and technology cases, may be given increased attention.
- (4) Although there is no crisis in the handling of business and technology cases in the Circuit Courts of this State, there are significant opportunities for improvement. The substance of that improvement is more important than the form it might take. Therefore, the benefits that have been documented from the experience of those states and localities which have instituted "Business Courts," "Business Divisions," or "Business Case Management Programs" were inventoried by the Task Force without reference to whether a division, as such, was required.
- (5) Potential benefits of special procedures for the handling of substantive business and technology disputes include:
  - (a) Specialized training and education for those judges with experience in business and technology issues, as well as the application of specialized case management techniques and technology for the handling of these cases.
  - (b) Greater efficiency resulting from the specialized training and education of judges, clerks, and staff, as well as the application of the most modern technology to the filing and processing of these cases.
  - (c) More timely, rational, legally correct, and perhaps most importantly, predictable rulings from judges who are better trained and educated in the relevant subject matter, and comfortable in handling these cases.
  - (d) A higher rate of settlement of business and technology cases because of the increased correctness and predictability of an identifiable group of judges whose competence is certified by the requisite degree of judicial education and training and whose written opinions are circulated on the Internet and other available media.
  - (e) Greater efficiencies in the disposition of other types of cases within the jurisdiction of the Circuit Courts because of the increased time available for them as a result of the removal of time consuming business and technology cases from the general court docket.

The Task Force further finds that the Judiciary of Maryland should forthrightly confront the fact that the trend toward voluntary professional specialization in western societies is likely to continue into the twenty-first century. This trend has already irreversibly manifested itself in the legal profession with the specialization of attorneys and expert

witnesses. The Judiciary, however, has, although not entirely,<sup>5</sup> declined to join this trend. The Task Force believes that the inefficiencies and the reductions in the timeliness and quality of judicial decision-making that will inevitably result from advocates with specialized knowledge presenting cases to generalist trial judges with neither the knowledge nor the time to devote to these cases will grow to a level which is intolerable.

The Task Force finds that, for the same reason it was not practical to establish Family Divisions in all of the circuit courts of this State (*i.e.*, those circuit courts having less than seven (7) judges), it would not be practical to establish "Business and Technology Divisions" in those same courts. The Task Force, therefore, concludes that it would not be possible or practical to establish a "Business and Technology Division" in every circuit court in this State.

The Task Force believes, however, it would neither be wise nor fair to provide specialized management of business and technology cases in some jurisdictions, but not others. This is particularly true since it is the public policy of the Executive and Legislative branches to encourage high-tech businesses to locate in all parts of the State. The Task Force, therefore, determines that it is neither necessary nor even the most efficient organization of judicial resources to establish formal business and technology circuit court divisions in certain limited jurisdictions in order to, in the words of the statute, "enable the circuit courts to handle business and technology matters in the most coordinated, efficient, and responsive manner and to afford convenient access to lawyers and litigants involved in business and technology matters."

Instead, the Task Force concludes that all of the benefits of the specialization of judges to hear business and technology cases previously set forth, as well as a fair and equitable allocation of judicial resources between different circuits, can be accomplished by the establishment of a statewide "Business and Technology Case Management Program" in circuit courts of this State by Maryland Rules of Procedure as follows:

#### A. Organization

The Chief Judge of the Court of Appeals of Maryland, after consultation with the various Circuit Administrative Judges, shall initially designate not less than three (3) judges to the statewide Business and Technology Case Management Program (the "Program"). The Chief Judge, consistent with the caseload of the Program, may thereafter adjust the number of judges assigned to the Program as needed. Pursuant to Maryland Rule 16-101a.1, the Chief Judge may assign any judge designated to the Program to sit temporarily in any other circuit court within the judicial system for the purpose of carrying out the mandate of the Program.

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<sup>5</sup> The judiciary has by Rule established "Family Divisions" in certain circuit courts in Maryland, and by direction of the Chief Judge, ordered that no judge may hear a capital case without first completing a specialized Judicial Institute education course.

**B. Assignment of Cases to the Business and Technology Case Management Program**

**1. Cases subject to Business and Technology Case Management Program**

The Task Force believes that any system for determining whether a case should be assigned to the Program must be flexible. It is recommended that the selection system be based upon a format that establishes that some cases be presumptively included, while others are presumptively excluded. As the legal and business worlds develop in the face of ever emerging technology, however, it is contemplated, and indeed expected, that such presumptions will be modified by judicial decision and/or rule.

If both parties agree to opt out of the Program, this should be permitted. In resolving presumptions, consideration should be given to the desire of both parties.

Assignment to the Program should be reserved for cases where there is a substantial amount in controversy. This will typically include significant monetary damages, but may also include consideration of potential future economic loss in cases where non-monetary relief is the primary relief being sought (*i.e.*, injunctive or declaratory relief).

The Program should be limited primarily to cases involving business entities, including individual sole proprietorships or individual partners where the claim is against the partnership. Individuals, however, should be permitted to take advantage of the benefits of the Program if involved in a dispute appropriate for Program designation.

Cases should present commercial and/or technology issues of such a complex nature that specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles which may be applicable.

Thus, the Task Force recommends that notwithstanding anything to the contrary in any Differentiated Case Management program, cases shall be assigned to the Business and Technology Case Management Program based on the following criteria:

- a. Only complaints seeking compensatory damages totaling \$50,000.00 or more, or complaints seeking primarily injunctive or other equitable relief, will be considered eligible for assignment to the Program if the other criteria identified below are met.
- b. Actions in which the principal claims involve the following should presumptively be assigned to the Program.
  - (i) Disputes arising out of technology development, maintenance and consulting agreements including software,

network and Internet web site development and maintenance agreements.

- (ii) Disputes arising out of the hosting of Internet web sites for business entities.
- (iii) Disputes arising out of technology licensing agreements, including software and biotechnology licensing agreements or any agreement involving the licensing of any intellectual property rights, including patent rights.
- (iv) Actions relating to the internal affairs of businesses (*i.e.*, corporations, general partnerships, limited liability partnerships, sole proprietorships, professional associations, real estate investment trusts, and joint ventures), including the rights or obligations between or among shareholders, partners and members or the liability or indemnity of officers, directors, managers, trustees, or partners.
- (v) Actions claiming breach of contract, fraud, misrepresentation or statutory violations arising out of business dealings.
- (vi) Shareholder derivative and commercial class actions.
- (vii) Actions arising out of commercial bank transactions.
- (viii) Declaratory judgement and indemnification claims brought by or against insurers where the subject insurance policy is a business or commercial policy and where the underlying dispute would otherwise be assigned to the Program.
- (ix) Actions relating to trade secret, non-compete, non-solicitation, and confidentiality agreements.
- (x) Business tort actions, including claims for unfair competition or violations of Maryland's Trade Secret or Unfair and Deceptive Trade Practices Acts.
- (xi) Commercial real property disputes other than landlord/tenant disputes.
- (xii) Disputes involving Maryland's Uniform Computer Information Transactions Act, including alleged breaches of the warranty provisions provided in such Act.
- (xiii) Professional malpractice claims in connection with the rendering of professional services to a business entity.
- (xiv) Claims arising out of violations of Maryland's Anti-Trust Act.

- (xv) Claims arising out of violations of Maryland's Securities Act.
- c. Actions in which the principal claims involve the following shall be presumptively not assigned to the Business and Technology Case Management Program.
  - (i) Personal injury, survival or wrongful death matters.
  - (ii) Medical malpractice matters.
  - (iii) Landlord/Tenant matters.
  - (iv) Professional fee disputes.
  - (v) Professional malpractice claims, other than those brought in connection with the rendering of professional services to a business enterprise.
  - (vi) Employee/employer disputes, other than those relating to matters otherwise assigned to the Program.
  - (vii) Administrative agency, tax, zoning and other appeals.
  - (viii) Criminal matters, including computer-related crimes.<sup>6</sup>
  - (ix) Proceedings to enforce judgments of any type.
- d. Commencement of an Action

All subject actions shall be commenced as provided by applicable statutes and the Maryland Rules. In all cases a copy of a Civil Non-Family Cover Sheet, including any Business and Technology Case Management Program addendum, shall be served with original process on the parties. It is recommended that the currently used Civil Non-Family Cover Sheet be modified to specifically address cases falling within the jurisdiction of the Program. These modifications should include designations to be filed by the parties indicating which presumptively included category or categories the party believes its case falls within so as to assist the judge assigned to the matter in determining applicability of the Program to the dispute.

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<sup>6</sup> The Task Force does not believe that technology and computer related criminal matters require assignment to the Program. Although involving new means of committing crime, such matters still involve fundamental principles of substantive and procedural criminal law that can be adequately resolved by members of the Judiciary experienced in the handling of such matters.

e. Case Management Procedures

1. Authority Over Business and Technology Case Management Program Status.

Where there is a dispute as to whether the case is properly assigned to the Program, such dispute will be resolved by the Administrative Judge of the County in which the case is filed or the Administrative Judge's designee as soon as practicable after the case becomes at issue (*i.e.*, the filing of an answer or other responsive pleading by the defendant).

2. Tracks within Program

A Business and Technology Case Management Program Expedited Track shall exist for matters in which the parties consent and minimal discovery is required. Such an expedited track shall provide for discovery to be completed and a trial date scheduled within ninety days of the defendant's filing of an answer. Other matters should presumptively be designated Business and Technology Case Management Program Standard Track. This standard track should provide for discovery to be completed and a trial date scheduled within nine months of the defendant's filing of an answer. Actions in which preliminary injunctive relief is sought may be appropriate for either track depending upon the circumstances.

3. Motion Practice and Discovery Motions

The Program Judge to whom the action is assigned shall hear all proceedings until the matter is concluded, except under exceptional circumstances where the Judge may make arrangements for certain discovery and other pretrial motions to be heard by one of the other Program Judges.

4. Rules to Show Cause and Emergency Motions and Petitions.

Unless there is a dispute as to Program applicability, show cause orders and emergency motions and petitions shall be referred to a Program Judge for immediate disposition. If there is any dispute regarding Program applicability, that dispute shall be referred to the Administrative Judge, or the designee of the Administrative Judge, of the County in which the case is filed for immediate disposition prior to hearing the emergency motion(s).

5. Publication of Written Opinions

Opinions of the trial court judges designated as Program Judges shall be published on the Internet in the same manner as the appellate courts of this State through the Maryland State Bar Association and the Daily Record. To the extent practical,

Program Judges should discuss these opinions with each other in an attempt to insure consistent decisions.

f. Additional Recommendations

1. The Task Force does not deem it appropriate to attempt to further specify the rules, regulations, policies, and procedures under which the recommended enactment of the statewide Program would operate. The operational rules are best left to Maryland's Standing Committee on Rules of Practice and Procedure to recommend and the Court of Appeals of Maryland to adopt. The Task Force notes that a number of states (*e.g.*, Pennsylvania, North Carolina and Wisconsin) have published business case management plans and procedures that may provide a useful framework for the development of rules, regulations, policies, and procedures for the Program.
2. The Task Force recommends the creation of a committee, either of the Conference of Circuit Judges or the Judicial Conference, to further develop and continually oversee the operational details of the Program, after consultation with and ongoing input from the appropriate Sections (*i.e.*, Business Law, Litigation, and Alternative Dispute Resolution) of the Maryland State Bar Association, as well as the business community.
3. The Task Force recommends that the Judicial Institute of Maryland, the entity charged with educating judges in Maryland, in consultation with the Maryland State Bar Association, MICPEL, and the Universities of Maryland and Baltimore Law Schools, develop a program for the training and continuing education of judges, clerks, and staff who will have duties associated with the Program.
4. The Task Force recommends that the Business and Technology Case Management Program be prominently displayed on the Judiciary's website. The utilization of the Judiciary's website is recommended because it would demonstrate the Maryland Judiciary's ability to be cutting edge. In addition, it is currently the research vehicle of choice, particularly for technology companies, and is the easiest option to update. The Task Force further recommends that the Program be similarly displayed on the Maryland Department of Business and Economic Development web site and linked to other State and legal web sites.

**VII. EXPEDITED APPEALS**

House Bill 15 further requires the Task Force to examine, and report on, a number of other issues relating to the establishment of a Business and Technology Program, including the establishment of rules regarding expedited appeals, the use of alternative

dispute resolution techniques, and the electronic filing of pleadings and other uses of information technology. As for the establishment of rules regarding expedited appeals, the Task Force believes that existing rules, statutes and case law provide all of the authority necessary for expediting appeals to Maryland's Appellate Courts in important cases presenting a real need for expedition. Thus, special rules to expedite such appeals for cases falling within the jurisdiction of the Program are unnecessary.

The principal rule providing for an expedited appeal is Rule 8-207(a). Although Rule 8-207(a) is limited to the Court of Special Appeals and to situations where all parties agree upon expedition, there are other rules which authorize both appellate courts to expedite cases even without the consent of the parties.

For example, Rule 8-206(b), dealing with prehearing conferences in the Court of Special Appeals, provides the parties and the court a mechanism for agreeing upon "the time or times for filing the record and briefs, and other pertinent matters." Rule 8-412, setting forth the times for transmitting the record, which is applicable to both appellate courts, provides in subsection (d) that, "[o]n motion or on its own initiative, the appellate court having jurisdiction of the appeal may shorten . . . the time for transmittal of the record." Expedition can also be effected under Rule 8-113(b), which states that the parties may agree on a "Statement of the Case in Lieu of Entire Record." If the parties so agree, there is no need to have the trial court record prepared and transmitted to the appellate court, as the agreed statement becomes the record on appeal.

Furthermore, Rule 8-521(b) authorizes either appellate court, either on motion or on its own initiative, to advance a case. There have been numerous instances, involving important cases which had to be decided promptly where the Court of Appeals has dispensed with the requirements for record extracts and briefs, has heard the case soon after the trial court's decision on the papers filed in the trial court, and has decided the case shortly after oral argument. In addition to the recent Public Service Commission electric deregulation case, some examples include *Save Our Streets v. Mitchell*, 357 Md. 237, 743 A.2d 748 (2000); *Stevenson v. Steele*, 352 Md. 60, 720 A.2d 1176 (1998); *Blount v. Boston*, 351 Md. 360, 718 A.2d 1111 (1998); *Hertelendy v. Board of Educ.*, 344 Md. 676, 690 A.2d 503 (1997); *State Election Bd. V. Election Bd. Of Balt.*, 342 Md. 586, 679 A.2d 96 (1996); *Roberts v. Lakin*, 340 Md. 147, 665 A.2d 1024 (1995); *Maryland Aggregates v. State*, 337 Md. 658, 655 A.2d 886, *cert. denied*, 514 U.S. 1111, 115 S.Ct. 1965, 131 L.Ed.2d 856 (1995).

In addition to the provisions of the Maryland Rules discussed above, some statutory provisions can be invoked to assist in expediting appeals. For example, Maryland Code § 12-201 of the Courts and Judicial Proceedings Article authorizes the Court of Appeals to issue a writ of certiorari prior to the decision by the Court of Special Appeals. The Court of Appeals may do this on petition of any party or on its own initiative. When a case involves an important issue which is likely to be resolved by the Court of Appeals eventually, the matter can be expedited by the issuance of a writ of certiorari soon after a notice of appeal is filed, thereby by-passing the Court of Special Appeals. The above-cited cases are also examples of this.

For all of these reasons, the Task Force does not believe it is necessary to establish new rules to expedite appeals of cases handled by a Business and Technology Case Management Program.

### ***VIII. ADR (Alternative Dispute Resolution)***

It has been proven in other states that the types of cases that the Task Force believes should be referred to the Business and Technology Case Management Program are particularly appropriate for resolution through the use of ADR techniques. In many cases the parties have worked together and may want to continue their association. Efforts should be made to build on these relationships rather than dissolving them as so often happens in the adversarial nature of litigation. Even if placed on an expedited track, litigation is going to be costly both in dollars and in executive and employee time – time that could more productively be directed toward running and growing the respective businesses. Additionally, there is the cost of having this unresolved issue weighing on the businesses and impairing their ability to move forward.

The currently existing DCM system generally encourages the use of ADR. While mediation is the process most frequently used, other processes such as non-binding arbitration and neutral case evaluation (NCE) should be considered in appropriate cases.<sup>7</sup> Many of the circuit courts already have in place DCM and ADR coordinators with a system in place to refer cases to ADR before a list of approved mediators (e.g. Anne Arundel County, Baltimore County, Baltimore City, Montgomery County, and Prince George's County), and a Business and Technology Case Management Program can simply build on the experience of these jurisdictions in implementing specialized ADR procedures.

It is recommended that all cases assigned to the Program be referred to ADR. Although Title XVII (§ 17-103) provides that either party can opt out of an ordered fee for service ADR process, experience has proven that this is rarely done, especially where business entities are involved. The earlier in the process ADR is used the greater the chance of cost savings. However, not all cases are ripe for ADR without some discovery. The practice of most Maryland Circuit Courts using ADR is to refer the cases to mediation as soon as the case is at issue with a deadline for when the ADR must be completed. The parties, their lawyers, and the mediator, arbitrator, or neutral case evaluator then determine the most appropriate time to use ADR.

Since many of the cases being considered for referral to the Program are currently being handled by persons already trained as mediators, it will not be necessary to require additional training with regard to mediation techniques. The Task Force believes, however, that specialized training for the mediators designated as qualified to handle cases in the Program must be provided. This would include specialized training in both business and technology issues.

The ADR referral orders in most circuit courts currently provide that mediators will be paid \$150.00 per hour for civil cases to be divided equally between plaintiffs and defendants. Some courts have specially assigned individual cases to specific persons and provided for higher reimbursement by the parties, with their consent. The fee structure may need to be reviewed as special expertise is being required. The fees should fairly compensate the ADR provider yet not be too expensive as to deter parties from engaging in the process.

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<sup>7</sup> Title XVII of the Maryland Rules, effective January 1, 1999, discusses the processes (§ 17-102) and the training required for a person to be eligible to be on a court approved referral list (§§ 17-104, 105). Amendments to these rules are currently before the Court of Appeals.

The expanded use of ADR in the Circuit Courts of Maryland has been a great benefit to reducing costs as well as case backlogs. The Task Force strongly recommends that ADR be an integral part of any Business and Technology Case Management Program.

## ***IX. ELECTRONIC FILING***

The Task Force was also charged with evaluating the feasibility of establishing a system for the electronic filing, or "e-filing," of pleadings within a Business and Technology Case Management Program. In its basic form, e-filing simply allows law firms and courts to exchange documents electronically. In its more integrated form, it allows law firms to submit documents, view docket entries and submit filing fees directly into the court's workflow processes and systems. In turn, the court can conduct internal business with electronic routing of documents and activities. Courts can also submit electronic orders, opinions and administrative messages and actions to law firms in electronic formats.

Generally, law firms that represent businesses have automated practice management systems and create one hundred percent of their internally-generated documents using word processing and document management systems. It is now commonplace for business-oriented law firms to use e-mail extensively to exchange electronic documents with clients. Indeed, clients are demanding such exchange.

The courts in Maryland have a distinct advantage as they are, for the most part, already fully automated. The Judicial Information Systems (JIS) and case management systems in the Circuit Courts of Montgomery and Prince George's County provide one hundred percent coverage of all pending cases. The administrative office of the courts, JIS and county governments also provide microcomputers and word processing capabilities to every Circuit Court Judge's chambers throughout the state. A significant number of Circuit Court Judges have internal e-mail capabilities through courthouse networks, and a growing number have modem and even network based high-speed Internet connections.

### **A. Non-Use of E-Mail for e-filing**

Except in extremely limited circumstances, neither the courts nor the law firms in Maryland have used electronic mail for filing or service. This reluctance is well grounded. In spite of emerging standards for e-mail, there can be significant incompatibility between mail systems and substantial problems in exchanging documents created in incompatible word processing formats. Word and WordPerfect documents can have significant incompatibilities, particularly with paragraph numbering, tables of citations, and precise recreation of formats, such as headers, footers and footnotes. Indeed, this Task Force has experienced some problems in the exchange of meeting agendas and minutes between members.

Once filed it is frequently impossible to maintain public record level control over e-mail storage and computer directories. Finally, even if a document is "electronically delivered" by e-mail, the clerk's office has to post the receipt, create a docket entry and oftentimes print the document to get it to chambers, file it in permanent storage at the courthouse and even microfilm or image scan the document for back-up storage systems.

#### B. E-Filing's Secure and Compatible Formats

E-filing allows law firms to transmit electronic documents to courts and to each other in compatible formats, complete with an automatically generated docket entry and a permanent filing retrieval system and audit trail.

Instead of using e-mail, e-filing uses the Internet FTP or File Transfer Protocol to transmit the document and associated filing data to a neutral but highly secure web site. The court connects with this web site through a single, secure channel rather than allow thousands of lawyers to have direct access to the court's systems. The web site and underlying databases maintain a highly traceable audit and retrieval trail while the document is delivered to the court and to counsel designated for service in a format that eliminates incompatibility between word processing formats

#### C. E-Filing in Maryland (1995 – 2001)

In 1995 Prince George's County began one of the earliest successful e-filing pilot projects. The project was a demonstration initiated by the National Center for State Courts.

For the last three to four years the Circuit Court for Baltimore City has laid the foundation for an e-filing system for over 10,000 asbestos cases. Baltimore began its initial efforts to contract for a first generation e-file system called CLAD (Complex Litigation Automated Docket) offered by Lexis-Nexis. CLAD has been continuously in use in the Superior Court of Delaware and other jurisdictions since 1991 for asbestos, environmental, insurance, and tobacco cases.

#### D. E-File Costs

One of the prevailing e-filing systems, JusticeLink, involves no direct financial expenditure for software by the court. The business model for installation, data conversion, user training, maintenance and user support is built on transmission fees by the sender and access fees by those other than the receivers of the documents or the court. JusticeLink charges \$0.10 per page with a \$2.00 minimum for filing and a \$2.00 minimum for service. There is no charge for indefinite storage in a highly secure and redundant processing facility. Another prevailing system, WestFile, presently contemplates either a \$10 - \$15 delivery fee or a prepaid subscription plan, again, with no charge to the court. These delivery prices are either competitive with current manual costs for delivery or well below them. Although the law firms and parties financially support the system, they end up paying less than the same task in a manual system.

Courts and law firms will need to devote time and resources to the installation of certain software and training. Vendors will need access and some labor effort to examine equipment, set up the system, address any data conversion issues and coordinate training efforts. These costs are best absorbed by the larger law firms that traditionally represent businesses in their legal disputes. This proved true in New York where an e-filing system was initiated in its business court. Firms appearing before the business court were, in effect, made to be guinea pigs for establishment of an e-filing system that will soon be rolled out to the general docket.

There can be indirect costs for a court to upgrade its computers, printers and Internet connections. If a judge hears a case within the Program in a jurisdiction with insufficient

computing equipment or telecommunications facilities, there could be delays and costs needed to implement the needed upgrades or use a temporary facility with proper equipment.

#### **E. Feasibility of e-filing for a Business and Technology Court Function**

It is both feasible and cost effective for the Business and Technology Case Management Program to use e-filing. Lawyers and the court can exchange documents and conduct their work more productively, efficiently and effectively. There is considerable value in allowing a court devoted to the resolution of disputes between business and technology companies to use the dominant media by which the litigants and their lawyers create documents, exchange them and communicate with each other.

Based on experiences in other jurisdictions and the groundwork already in place from the efforts with the Baltimore asbestos cases, the Task Force has been told that e-filing can be made operational in less than two months. With relatively minimal costs, the Business and Technology Case Management Program can start its existence with its own statewide "virtual" docket and document exchange repository.<sup>8</sup>

### **X. CONCLUSION**

The Business and Technology Division Task Force was composed of a diverse cross section of judges, legislators, educators, lawyers, and business people. We have joined together in making these recommendations to graft a statewide business and technology

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<sup>8</sup> In addition to establishing electronic dockets, calendars and e-filing, the Business and Technology Case Management Program should consider using other technologies to conduct its business. By taking advantage of different technologies for publishing case data, exchanging information and electronic conferencing, the Program can improve its own productivity. These tools, which should be affordable and comply with open standards, include:

1. On-line repositories of evidentiary materials (digital images of documents, electronic transcripts, computer based and computer generated documents and other evidence) for use by parties and hearing officers.
2. Multimedia briefs – Business litigators are increasingly using presentation and desktop publishing software to compose briefs on CD-ROM disks and e-filing sites. These briefs not only include digital exhibits in the text, but also include links for references to the record, the case law and even high tech exhibits such as computer animations and video clips.
3. Double blind bid and offer software allowing parties to post double-blind settlement offers on a highly secure web-site. The applications analyze the spread between the bids and allow multiple rounds of bidding.
4. Whiteboards or Netmeeting – This technology uses a live Internet site for parties simultaneously review an exhibit or even mark-up an issue online. NetMeeting software comes free with Microsoft Windows while Internet-based services such as WebEx and PlaceWare allow anyone with a web browser to conduct on-line meetings by collaborating on documents, screen shows and "whiteboards" which function like a blackboard in which anyone can draw a diagram that appears on the screens of every participant's computer.
5. Video conferencing - This technology can be very effective in settlement conferences, remote examinations of expert witnesses and on-line court hearings.

court function onto the already successful DCM system in an effort to improve the efficiency of an outstanding Judiciary. We do not view these recommendations, as some have suggested, as a "slippery slope," leading to the unwarranted proliferation of specialty courts. Other jurisdictions have found that the establishment of so-called business courts, divisions or programs have succeeded in administering business disputes more effectively without leading to such a problem. Indeed, the realities that have guided our deliberations and driven our recommendations, *i.e.*, the increasing specialization of the world around us generally, and the legal profession, in particular, have compelled our conclusion and recommendation that an even better and more specially trained judiciary is required in order to efficiently serve the citizens of our State in the twenty-first century.

This proposal for a Business and Technology Case Management Program, we believe, is unique and innovative, and provides Maryland with the opportunity to shed its perception as having an anti-business atmosphere while not damaging the integrity of the Judiciary. Indeed, this report has already attracted extensive local and national attention. Having a court that has special business and technology competence and uses technology to administer its docket puts Maryland in the forefront of adaptation to the new realities of the Information Age.

**APPENDIX A**  
**INPUT FROM THE MARYLAND BUSINESS AND LEGAL COMMUNITIES**

Testimony heard by the Task Force from Maryland citizens can be broken into the following categories: (1) commentary from Maryland businessmen and women; (2) commentary from various committees and members of the Maryland Bar Association; and (3) commentary from Maryland's judiciary.

**A. Maryland's Business Community**

Commentary from the Maryland business community has been overwhelmingly favorable. Maryland has long been looked upon by the business community as having an anti-business atmosphere. The business people who testified before the Task Force uniformly agreed that implementation of a business and technology function within the State Circuit Court System would prove to be a significant step in changing this perception. Although not one witness testified that the implementation of such a function will prove to be the deciding factor in whether a business chooses Maryland as its state of incorporation or principal place of business, the establishment of such a division will certainly weigh in favor of Maryland being chosen. For example, one witness who testified before the Task Force testified that the entry of what his organization perceived to be a misguided and incorrect judgment in another state has led his company to re-evaluate its holdings and operations in that state. Establishment of a division in the State Circuit Court System that specializes in business and technology issues would, in the mind of this witness, greatly reduce the chance of such a judgment being entered here.

The business people who testified before the Task Force all believe that the establishment of a specialized court function to handle business and technology disputes will provide a number of benefits to not only the business community, but to the judicial system as a whole. For instance, businesses will be able to receive quick and efficient decisions from the court in cases where every day that the case remains undecided costs the parties significant sums of money. Decisions of such a specialized court, in the eyes of the business community, will also be more predictable in that decisions will be made by judges that are educated in business and technology issues. Parties will also be able to rely on written decisions from the trial court which will not only prove helpful in litigating disputes, but will also guide corporate officers and directors in making everyday decisions. Such guidance may actually reduce the number of disputes filed. The business community believes that the issues raised in cases of these types typically involve complex issues at every stage, including discovery, and need the focus and attention of experienced judges. The establishment of a specialized court function would improve the quality of judicial and business administration and generally improve the overall business climate.

Finally, the business people who testified before the Task Force focused on their experiences in other states where specialized divisions for the administration of business disputes have already been established. Other states, particularly New York, have found that all parties are benefited by the establishment of a separate division for complex business cases because of the removal of such cases from the general civil docket rotation. By removing these cases from the general rotation (which although typically

involve a small percentage of the total cases in the system, occupy a disproportionately large amount of judges' time), the overall efficiency of the system is greatly increased. For all of these reasons, the business community seems uniformly in favor of the establishment of a Business and Technology Case Management Program.

#### **B. Maryland's Judiciary**

Maryland's judiciary takes a somewhat different view of the establishment of such a function. Although the judiciary firmly supports the efficient and effective resolution of all matters pending before it, as well as the establishment of any procedures which can improve the overall efficiency and effectiveness of the courts, the judiciary questions the need for a separate division and is concerned that the establishment of a separate Business and Technology Division will lead to the unwarranted proliferation of other specialty courts. The judiciary (as well as other groups who question the necessity of the establishment of a Business and Technology Division) point to the establishment of Maryland's DCM program and note that none of the other states which have created specialized business courts had implemented a similar system prior to creation of its business courts. This is an important distinction between Maryland and these other states as there was no evidence presented to the Task Force that there is any substantial problem in the handling of complex cases in Maryland's Circuit Court System. Indeed, even the witnesses from other states that have created business divisions acknowledged the significance of Maryland's DCM system in which complex cases, including business and technology cases, can be given increased attention.

For example, in the Circuit Court for Baltimore City, cases receive a computerized scheduling order when the case becomes at issue, which sets forth a trial date, a mandatory settlement conference, and deadlines for completion of pre-trial discovery and the filing of dispositive motions. Moreover, the Court provides for a customized scheduling order upon written request by any party. Finally, complicated cases, upon request of the parties, may be specially assigned to a particular judge so as to reduce the amount of time necessary to educate the judge hearing the various issues, and hopefully insuring consistent rulings.

Notwithstanding these concerns, the judiciary is firmly in favor of specialized training and education in all areas of the law, including business and technology law, as well as the application of specialized case management techniques and technology for the handling of these cases. Greater efficiency will result from this specialized training and education of judges, as well as the application of the most modern state of the art technology to the filing and processing of these claims. More timely, rational, legally correct, and predictable rulings will result from the handling of these cases by better trained and educated judges whose written opinions are made available to the public.

#### **C. Maryland State Bar Association**

Lastly, the opinion of the committees and members of the Maryland State Bar Association, not surprisingly, runs according to the type of law engaged in by the practitioner. The Business Law and Law Practice Management Sections of the Maryland State Bar Association are supportive of the establishment of a Business and Technology Division or Case Management Program. The Litigation Section, on the other hand, has expressed opposition to a separate division, instead preferring to address business and technology litigation with modifications to the existing DCM system.

The Business Law Section believes that the establishment of a separate business division could substantially improve the quality of decisions in business cases, as well as the efficiency with which Maryland courts decide these cases. By specially assigning business cases to a particular judge who has interest, experience and specialized education in business matters, the quality of decisions in such cases will be significantly improved. Moreover, having one judge assigned to a case to hear and decide all issues arising in that case could improve judicial efficiency by eliminating the need to repeatedly educate different judges on the often extensive and complex facts of a business case.

The Business Law Section also points to the experience of other states wherein the burdens on the court system have been reduced by removing complex business and technology cases from the general docket. Experience shows that business litigation is typically far more complex than other forms of litigation and as a result, business cases often require the courts to spend a disproportionately large amount of time on a relatively small number of cases. As a business court could be designed to accommodate these cases and facilitate their resolution, the overall efficiency of the court system could be improved. Where complex business cases are given special attention, the experience in other states has proven that such cases typically resolve more quickly thereby improving the overall efficiency of the entire court system. Thus, the Business Law Section contends, a specialized Business and Technology Division would help to process all Maryland cases, civil and criminal, faster and more efficiently, thus providing Maryland's over-crowded dockets some relief.

The Business Law Section further contends that the establishment of a Business and Technology Division within the State Circuit Court System could increase the number of business entities incorporated and headquartered in Maryland which improves the State's overall economy. The Section believes that the quality of the State's court system can have a significant impact on the selection of the state of incorporation of a business because of the increased likelihood that legal action involving that company will be brought in that selected state. Having a business and technology court in Maryland may make incorporation and headquartering of businesses in Maryland more attractive.

The Litigation Section believes that the current DCM program, with some modification, should be able to handle the concerns relating to complex business and technology cases. The Litigation Section further believes that the creation of a separate division solely for business and technology cases may, in a myopic effort to attract more businesses to Maryland, lead to the view that the State's judiciary is "pro-business." Although certainly attractive to business owners, such a perception (whether real or illusory) could prove harmful to the public perception of the court system for the administration of justice, no matter who the parties may be.

The Litigation Section recognizes, however, that technology cases are relatively new to the judicial system and may require specialized procedures. This Section believes that the DCM system provides a ready solution of the "problems" brought on by these cases and could serve to make Maryland more "business friendly" without a misconceived perception of bias on the part of the judiciary. Towards that end, the Litigation Section proposes that a track be established within the DCM system that would facilitate the fair, prompt and efficient disposition of technology and business cases. Further, the Litigation Section proposes specialized training and education for judges handling these matters and

the establishment of a panel of trained mediators who could help resolve technology cases. The Litigation Section further recommends:

1. Establishment of an Maryland State Bar Association program offering training to officials in the Maryland Department of Business and Economic Development on the unique benefits of the Maryland court system in resolving technology and business disputes.
2. Encouraging the General Assembly to approve increased spending for the courts to upgrade electronic information and filing systems.
3. Establishment of an Maryland State Bar Association committee to monitor developments concerning business and technology litigation and make recommendations for future changes within the court system to keep pace with this rapidly changing area.
4. Use of the trained mediators to prepare a memorandum of law highlighting technology issues for the trial court in the event matters are not resolved in mediation.

The Litigation Section believes that all of these recommendations will effectively address the issues that arise with complex business and technology cases.

## **APPENDIX B**

### ***EXPERIENCE OF OTHER STATES***

A state by state survey was conducted by the Task Force to determine the status of business courts in other states throughout the country. The following is a summary of this survey:

1. Ten states have operational business courts or tracks – Delaware, Illinois, Massachusetts, Wisconsin, Nevada, New Jersey, New York, North Carolina, Pennsylvania and Virginia.<sup>9</sup>
2. Two states have established complex litigation courts which hear, among other types of cases, complex business litigation – California and Connecticut.
3. Fourteen states have had some form of discussion about establishing a business court, with some states creating task forces to study the feasibility – Arizona, Colorado, Florida, Georgia, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, Ohio, Oklahoma and Texas.<sup>10</sup>
4. Twenty-four states have no current plans to propose establishment of a business court.

Of the states that have some sort of specialized court to hear complex business litigation, Delaware is the best-known, most highly respected, and long-standing. Delaware's Court of Chancery has existed for over two hundred years and has traditional equitable jurisdiction. Its business specialization is not the result of a formal decision to specialize, but rather the incorporation of a large number of companies in Delaware due to its favorable corporate statutes, and the equitable nature of so many of the disputes in which those companies are involved.

The Court of Chancery has five members who each handle approximately two hundred to two hundred twenty-five cases per year. Each member of the Court is responsible for overseeing each case assigned to him until resolution. Members typically draft approximately sixty opinions each year, half of which are published.

The Court's Chancellor, William Chandler, testified before the Task Force that business litigation makes up approximately ninety-five percent of the Court's docket and that the effectiveness of the Court, as well as its national reputation, is brought on by a thorough understanding of corporate issues. Members of the Court of Chancery often discuss complex issues among themselves, and review opinions prior to release to the parties and the public to insure consistency.

Upon request, cases may be expedited with discovery and trial completed in as little as three months. Parties may also seek expedited appeals to the Delaware Supreme Court.

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<sup>9</sup> Wisconsin's business program, although rarely used, is still operational.

<sup>10</sup> As previously set forth, the states that have adopted business courts or are considering adoption of such a court, only Maryland has proposed a division of its general jurisdiction court that focuses on both business and technology issues.

In New York, the movement toward establishment of a business court began in January 1993, when New York County established four specialized "Commercial Parts" to hear complex commercial and business cases. Four experienced judges were assigned to staff this court which led to a thirty-five percent increase in the disposition of business cases in 1993 as compared to 1992.

In January 1995, the Commercial and Federal Litigation Section of the New York State Bar Association issued a comprehensive report recommending establishment of a formal commercial court. The Commercial Division began hearing cases on November 6, 1995, and five New York State Supreme Court judges were assigned to hear exclusively commercial cases in New York County, with an additional commercial division judge designated in Monroe County (Rochester).

By the end of 1996, The Chief Administrative Judge in New York County reported that the business court resulted in a 29% reduction in the average time to dispose of cases assigned to it. Further, there had been an 85% increase in the number of cases settled before trial, and a 26% decrease in the volume of pending cases. By 1998, the court reported a 36% reduction in the average time to dispose of cases, reducing the average time a case spends on the docket from 648 days to 412. These decreases in the number of cases on the docket allowed New York County to reassign one of the business court judges to the general docket as the amount of business cases formerly handled by four judges could now be handled by three. As a result, one full judge's time became available to address and dispose of other cases on New York's civil and criminal docket creating judicial efficiency for all cases, not simply those pending before the business court.

New York's Commercial Division has been widely acclaimed by business people throughout the country as a success. Robert Haig, Co-chair of the Commercial Courts Task Force in New York and advisor to nine states and five countries on the establishment of specialized courts to administer business litigation, testified before the Task Force that establishment of the Commercial Division has had a positive impact on New York's economy and that the business community is extremely enthusiastic about its continued operations.

Equally important, the Commercial Division takes advantage of technological advances such as Courtroom 2000, which uses computers, display monitors and multimedia equipment to increase the speed and effectiveness in which attorneys can try their cases. A digital evidence presentation system allows instant retrieval and quick display of digitized documents. Real-time court reporting allows parties to view the transcript of the proceedings as it is being created. Litigants no longer need to rely on notes to cross-examine, but instead can highlight appropriate passages of testimony for use later. Jurors are able to follow along because the jury box has been equipped with monitors. All of these features have served to shorten trials by up to forty percent, create livelier proceedings, and improve jury retention.

Additionally, the New York County branch of the Commercial Division includes a court-annexed alternative dispute resolution program, in which parties can obtain the services of a mediator from a roster of specially trained professionals experienced in commercial matters. By November 1999, the program had handled close to one thousand cases and achieved settlements in approximately fifty-eight percent of these cases. The success of

the New York County ADR program led to the expansion of the program, with West Chester County<sup>11</sup> becoming the second county to create an ADR program. There are further plans to expand the program to other counties. Also, the New York County program itself was expanded to accept smaller commercial cases heard outside the Commercial Division, usually involving smaller businesses, which are especially appropriate for cost-effective ADR.

Finally, Philadelphia recently established a business division of its own. This division went into effect on January 2, 2000 and unlike the New York Commercial Division, only accepts new filings (no cases pending in the court prior to establishment of the business division were transferred to the business division).

Like Maryland, opponents of the establishment of a business division questioned whether there existed a sufficient number of cases to warrant its implementation. This concern has proven illusory as over three hundred cases have been filed in Philadelphia's business division since its creation at the beginning of the year. The division has two judges dedicated full time to handling cases assigned to it, and opinions are placed on a web site for distribution to the public.

William Clark, Chairman of the Business Law Section of the Pennsylvania Bar Association and the American Bar Association Committee on the establishment of Business Courts, testified before the Task Force that a major concern in establishing Philadelphia's business division was that a perception would develop that the judiciary was pro-business. Mr. Clark testified that although it is too early to conclusively determine, it does not appear that this concern has proven true.

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<sup>11</sup> Buoyed by the overwhelmingly positive response in New York County, the Commercial Division has been expanded and now operates in New York, Monroe, Nassau, West Chester, and Erie Counties.

## **APPENDIX C**

### **MEMBERS APPOINTED BY THE PRESIDENT OF THE MARYLAND STATE BAR ASSOCIATION, INC.**

**Wilbur D. Preston, Jr.** is Chairman of the Business and Technology Division Task Force, appointed as the designee of the President of the Maryland State Bar Association, Inc. (MSBA). Mr. Preston is Chairman of the law firm of Whiteford, Taylor & Preston L.L.P. with practice areas in banking, government, municipal law and housing law. He was admitted to the Maryland Bar in 1948 and is a graduate of Western Maryland College (A.B.) and the University of Maryland (L.L.B.)

**Wesley D. Blakeslee** is a member of the Business and Technology Division Task Force, appointed on the recommendation of the MSBA Special Committee on Technology. Mr. Blakeslee is Associate General Counsel with Johns Hopkins University. He was admitted to the Maryland Bar in 1976, and is a graduate of Pennsylvania State University (B.S.) and the University of Maryland Law School (J.D.)

**The Honorable Charles B. Day** is a member of the Business and Technology Division Task Force, appointed on the recommendation of the President of the MSBA to bring a federal perspective to the panel's proceedings. Mr. Day is U.S. Magistrate. He was admitted to the Maryland Bar in 1985, and is a graduate of the University of Maryland (B.A., J.D.)

**Alan R. Duncan** is a public member of the Business and Technology Division Task Force. Mr. Duncan is the President and CEO of Dynamic Access Systems, LLC, which was formed from the merger of Duncan Technologies, LLC, providing technology services to businesses and government in the planning and management of computer technology and computer security programs. He is a graduate of Fairmont State College (B.S.) and The Wharton School, University of Pennsylvania (Information Systems Program).

**Nariman Farvardin** is a public member of the Business and Technology Division Task Force. Dr. Farvardin is the Dean of the A. James Clark School of Engineering at the University of Maryland, College Park (effective August 2000). He is a graduate of Rensselaer Polytechnic Institute (B.S., magna cum laude, M.D., Ph.D.)

**Michael Hickman** is a public member of the Business and Technology Division Task Force. Mr. Hickman is the co-founder of Blue Lobster Software which was acquired by SEGA Software. He is presently Global Product Manager for General Electric responsible for global exchange services.

**Robert D. Kalinoski** is a member of the Business and Technology Division Task Force, appointed on the recommendation of the MSBA Section of Business Law. Mr. Kalinoski is a partner at the law firm of Kalinoski & Riordan, P.A. with practice areas in business law, corporate law, probate and estate planning, contract law, taxation, real estate, intellectual property, and employment law. He was admitted to the Maryland Bar in 1990, and is a graduate of Harvard University (A.B., cum laude) and the Boston University School of Law (J.D.)

**James I. Keane** is a public member of the Business and Technology Division Task Force. Mr. Keane is the Chief Legal Officer of Data West Corporation (CourtLink/JusticeLink, an Internet company that permits secure electronic filing of court pleadings in many state courts, and

computer access to court dockets at the federal, state and local levels. He was admitted to the Maryland in 1971, and is a graduate of Marquette University (B.A., magna cum laude), and the Georgetown University Law Center (J.D.)

**Ava E. Lias-Booker** is a member of the Business and Technology Division Task Force, appointed on the recommendation of the MSBA Section of Judicial Administration. Mr. Lias-Booker is a partner at the law firm of Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC with practice areas in commercial institutions, financial institutions, litigation and banking law. She was admitted to the Maryland Bar in 1986, and is a graduate of Duke University (B.A.) and the University of Maryland (J.D.)

**Christopher R. McCleary** is a public member of the Business and Technology Division Task Force. Mr. McCleary is the Chairman and CEO of Usinternetworking, Inc., an Application Service Provider (ASP) outsourcing business applications over the Internet. He is a graduate of the University of Kentucky (B.S.)

**Susan M. Souder** is a member of the Business and Technology Division Task Force, appointed on the recommendation of the MSBA Section of Litigation. Ms. Souder is a sole practitioner with an emphasis on commercial litigation. She was admitted to the Maryland Bar in 1982, and is a graduate of the University of Maryland (B.A., cum laude) and Georgetown University (J.D., cum laude).

**John C. Weiss, III** is a public member of the Business and Technology Division Task Force. Mr. Weiss is the Executive in Residence for Innovation and Entrepreneurship at the University of Baltimore, Merrick School of Business, and Special Consultant to the Board of Trustees of the Maryland Venture Capital Trust. He is a graduate of Towson University (B.S.) and Loyola College (M.B.A.), with graduate certificates from Harvard University and the American Institute of Banking.

#### **MEMBERS APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS**

**The Honorable John C. Eldridge** is a judicial appointee to the Business and Technology Division Task Force. Judge Eldridge has been a member of the Maryland Court of Appeals from the 5<sup>th</sup> Appellate Circuit (Anne Arundel, Calvert, Charles & St. Mary's counties) since 1974. He was admitted to the Maryland Bar in 1960, and is a graduate of Harvard College (B.A.) and the University of Maryland School of Law (L.L.B.)

**The Honorable Steve I. Platt** is a judicial appointee to the Business and Technology Division Task Force. Judge Platt has been a member of the Prince George's County Circuit Court since 1990. He was admitted to the Maryland Bar in 1975, and is a graduate of the University of Virginia (B.A.) and the American University Law School (J.D.)

**The Honorable Marielsa A. Bernard** is a judicial appointee to the Business and Technology Division Task Force. Judge Bernard has been a member of the District Court of Maryland, District 6, Montgomery County since 1998. She was admitted to the Maryland Bar in 1981, and is a graduate of Loyola College (B.A.) and the Catholic University of America (J.D.)

### **MEMBERS APPOINTED BY THE PRESIDENT OF THE STATE SENATE**

**The Honorable Leo E. Green** is a State Senate appointee to the Business and Technology Division Task Force. Senator Green was first elected to the State Senate in 1982 and presently is serving as Vice-Chair of the Senate Judicial Proceedings Committee. He was admitted to the Maryland Bar in 1963, and is a graduate of Mount St. Mary's College (B.S.) and the Georgetown University School of Law (L.L.B., J.D.)

**The Honorable Leonard H. Teitelbaum** is a State Senate appointee to the Business and Technology Division Task Force. Senator Teitelbaum was first elected to the State Senate in 1994 and presently is serving on the Senate Finance Committee. He is a graduate of Rensselaer Polytechnic Institute (B.Mgt.Eng.)

### **MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF DELEGATES**

**The Honorable Anthony G. Brown** is a House of Delegates appointee to the Business and Technology Division Task Force. Delegate Brown was elected to the House of Delegates in 1998 and serves on the Economic Matters Committee. He was admitted to the Maryland Bar in 1994, and is a graduate of Harvard University (A.B.) and the Harvard University Law School (J.D.)

**The Honorable John Adams Hurson** is a House of Delegates appointee to the Business and Technology Division Task Force. Delegate Hurson was first elected to the House of Delegates in 1990 and presently is House Majority Leader and serves on the Environmental Matters Committee. He was admitted to the Maryland Bar in 1979, and is a graduate of Georgetown University (B.A.) and the Georgetown University Law Center (J.D.)

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**Steven E. Tiller** is the Reporter for the Business and Technology Division Task Force. Mr. Tiller is with the law firm of Whiteford, Taylor & Preston L.L.P. with practice areas in intellectual property, commercial law, computers and software litigation. He was admitted to the Maryland Bar in 1992, the United States Patent Office in 1995, and is a graduate of James Madison University (B.S.) and the University of Kentucky School of Law (J.D.)

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**Eric G. Orlinsky** is a consultant to the Business and Technology Division Task Force. Mr. Orlinsky is with the law firm of Saul Ewing LLP with practice areas in business planning, mergers, acquisitions and reorganizations. He was admitted to practice law in Maryland in 1992 and is a graduate of Johns Hopkins University (B.A.) and the University of Maryland School of Law (J.D.)