

Guide To The Business Court Docket—Phase 2

Pursuant to the *Order Establishing the Davidson County Business Court Docket Pilot Project – Phase 2*, entered April 4, 2017, by the Supreme Court of Tennessee, this *Guide* shall be used in conducting proceedings in Phase 2 of the Pilot Project. The Business Court Docket is governed by the Tennessee Rules of Civil Procedure, the Tennessee Rules of Evidence and the Twentieth Judicial District Local Rules (Davidson County). Their application and adaptation to the Business Court Docket is covered below.

Introduction: Explanation of Updates of Guide From Phase 1 to Phase 2

Upon entry by the Supreme Court in March 2015 of the Order establishing the Business Court Docket Pilot Project (the “Pilot Project”) a Guide was prepared on the purposes, practices and operation of the Pilot Project.

With entry of the April 4, 2017 Supreme Court Order establishing Phase 2 of the Pilot Project, provided below is an updated Guide.

The primary change from Phase 1 to Phase 2 is in Section 2 of the Guide. This Section provides the criteria for designation of a case to the Pilot Project. The April 4, 2017 Supreme Court Order changes the monetary threshold for designation of a case to the Pilot Project from \$50,000 to \$250,000, and changes the criteria, of the claims which qualify a case to be designated to the Pilot Project, to hone in with particularity on complex disputes between businesses. These changes by the Supreme Court are the significant changes in the Guide.

The other changes in the Guide are not directives from the Supreme Court. They are changes made by the Pilot Project Court derived from the experience of business litigation in Phase 1. These changes include the requirement in Section 4 of the Phase 1 Guide that a party representative attend the Rule 16 Conference. That requirement has been removed in Phase 2 as it proved hard to schedule. Parties are welcome and encouraged to attend, but attendance is not required.

Another change by the Pilot Project Court is that Section 6 in the Phase 1 Guide, on “Trial On Stipulated Facts,” has been removed. This procedure was never requested by Counsel in Phase 1 and, therefore, does not appear to be a useful measure.

Additionally, Section 6 of the Phase 2 Guide (which was Section 7, “Videoconferencing and Telephone Appearances,” in the Phase 1 Guide) has been expanded to “Use of Technology.” Now that electronic filing has been implemented by Clerk and Master Maria Salas, it is being used by the Pilot Project Court, and is available for use by Counsel. Interim telephone conferences have also become a valuable part of the Pilot Project, and they are included in Section 6.

In addition in this Introduction to highlighting changes, the Pilot Project Court provides the following comments about transitioning from Phase 1 of the Pilot Project to Phase 2.

Phase 1 of the Pilot Project confirmed these key components of the Phase 1 Guides.

- Early Rule 16 Conferences—Convening a Rule 16 Conference right after the pleadings have closed to prepare a litigation plan customized to the case is very valuable and necessary. The Rule 16 Conference eliminates litigation activity that is not productive to disposition of the case and focuses the litigation.
- Prioritizing Disposition of Pure Issues of Law—Identifying in the Rule 16 Conference pure issues of law whose determination will significantly narrow or decide the case, or help with mediation, and setting a litigation schedule which prioritizes rulings on those issues, reduces and focuses the litigation.
- The Litigation Bottleneck of Rule 12 Motions—Bundling together and ruling on the papers on preliminary Tennessee Civil Procedure Rule 12 and 9.02 motions, which challenge the particularity of the facts or the absence of factual allegations for essential elements of the causes of action, combined with ordering on the papers an opportunity to amend without prejudice to the other side to reassert its Rules 12 and 9.02 objections, reduces the delay and expense in business cases of Tennessee’s liberal notice pleading standard. This method eliminates serial court appearances, and results in a more useful pleading.
- Customized Timing of Mediation—Identifying and scheduling in the Rule 16 Conference or subsequent interim telephone conference when mediation would be most meaningful and cost effective, e.g. immediately after exchange of contention interrogatories, after some

electronically stored information (“ESI”), after rulings on specific issues of law, increases the likelihood of settlement.

These practices will continue to be used in Phase 2 and refined as informed by more Phase 2 case experience.

With respect to developments planned for Phase 2, the Pilot Project Court provides the following.

Discovery—In addition to the Rules 12 and 9.02 bottleneck discussed above, the other bottleneck which derails a litigation plan is discovery. Making allowances for the fact that the nature of discovery is that it is inherently unknown, difficult to forecast and by its nature often must be adjusted during the process, the Pilot Project nevertheless intends to make some inroads.

Some of the bottleneck is electronically stored information (“ESI”). One method to reduce the disputes and push through is to convene a lengthy ESI session in court. Counsel bring their data, metadata, and native versions to court and their Tennessee Civil Procedure Rule 34.02 proposed “reasonably useable” form to demonstrate and argue. Even though this one court session is lengthy, it often eliminates or reduces attempts to confer by email and subsequent motions to compel. The session also educates the Court on the details of the case in preparation for a bench trial. In Phase 2 of the Pilot Project such sessions will be used more.

Additionally, from the experience in Phase 1 cases and from studying ESI protocols of other states and business courts, the Pilot Project Court is developing a menu of ESI protocols. These will be provided to Counsel in advance of the Rule 16 Conference for them to review, and then select and customize at the Rule 16 Conference, if Counsel does not already have a protocol.

Another method from Phase 1 is to sequence contention interrogatories with accompanying requests for production as a precursor to ESI to assist targeting information.

Discovery in trade secrets case—Using a method from Delaware and other states, the Pilot Project Court requires the Plaintiff to specify, in advance of discovery, the particular items which comprise the asserted trade secrets. “When the subject matter of a suit is a claim of misappropriation of trade secrets, ‘the plaintiff will normally be required first to identify with reasonable particularity the matter which it claims constitutes a trade secret, before it will be allowed (given a proper showing of need) to compel discovery of its adversary's trade secrets.’” *Magnox v. Turner*, No. CIV. A. 11951, 1991 WL 182450,

at *1 (Del. Ch. Sept. 10, 1991) (quoting *Engelhard Corp. v. Savin Corp.*, Del.Ch., 505 A.2d 30, 33 (1986)). Measures are devised to limit viewers of the information, and/or limit viewing to determine overlaps with the opposing party's trade secrets. These measures are taken to preserve the confidentiality of all parties' trade secrets and to eliminate fishing expeditions given the risk of exposure of trade secrets to competitors.

Rule 56.07 Summary Judgment Method—Prioritizing partial motions for summary judgment after some, but not all discovery, with use by the opposing party of Tennessee Civil Procedure Rule 56.07, will be developed more as another method to focus and reduce discovery, and to advance disposition of the case.

Bench Trials—Setting time limits on presentation of each side's case has proven effective. The time limits are determined by extensive consultation with Counsel prior to trial as part of the process of selecting trial dates and reserving weeks. During trial, the Court keeps the time. This tool enables the Court and Counsel to reserve sufficient time for lengthy, complex cases so that the cases can be completed at one time, accommodate and adhere to witnesses' schedules, and avoid piecemeal, trial days subject to intervening cases.

Section 1—Overview

- 1.1 Purpose. The Business Court Docket is a specialized docket established to (1) provide cost effective disposition of business cases and procedures adapted to the needs of each case; and (2) to develop a body of rulings from which lawyers and litigants can better predict and assess outcomes in business cases.
- 1.2 Design. The procedures, technology and dockets of the Business Court Docket are designed to maximize cost effective litigation which advances disposition of a case and to eliminate nonproductive litigation processes which consume resources.
- 1.3 Methods. The following shall be used in the Business Court Docket:
 - (a) Early Case Litigation Plan—After the transfer of a case to the Business Court Docket, the Business Court Docket Judge (“Judge”) shall promptly schedule a conference to design a Case Litigation Plan.
 - (b) Differentiated Plans—Case Litigation Plans shall be individualized, non-formulaic and structured differently depending upon the nature of the case, amount in controversy, and the relief requested. Included in the Case Litigation Plan shall be discovery schedules and methods proportionate to the case, and timing, grouping and extent of motions.

- (c) Forms, Filings, Hearings, Work of Business Court Docket Judge—In requiring Counsel and/or self-represented litigants (hereinafter collectively referred to as “Counsel”) to complete forms, prepare filings, attend hearings and provide oral argument, the Business Court Docket shall use attorney time prudently and efficiently. Advance analysis and preparation by the Judge; staggered dockets/appointed times for court hearings; electronic filing by the Clerk and Master; streamlined motion practice; planning with out-of-county attorneys to minimize travel by videoconferencing and other methods; expertise of Judge and staff in business law and business case procedures and methods; prompt written decisions and orders by the Judge on rulings, scheduling and all steps of the case; rulings on the papers when appropriate; and posting of decisions on the Business Court Docket website (TNCourts.gov/bizcourt) for predictability shall be implemented.
- (d) Court Monitoring—Regular review of case filings by Judge and staff attorney to assure the case is proceeding.

Section 2—Eligibility Criteria/Excluded Cases

- 2.1 Eligibility Criteria. A civil case is eligible for transfer to the Business Court Docket if:
- (a) the complaint was filed on or after May 1, 2017; and
 - (b) the complaint alleges at least \$250,000 compensatory damages, or asserts claims seeking primarily injunctive or declaratory relief; and
 - (c) the case meets one or more of the following criteria:
 - (1) relates to the governance or internal affairs of businesses (i.e., corporations, limited liability companies, general partnerships, limited liability partnerships, sole proprietorships, professional associations, real estate investment trusts, and joint ventures), including the rights or obligations of shareholders, officers, directors, partners, and members, or the liability or indemnity of officers, directors, managers, trustees or partners;
 - (2) involves claims of breach of fiduciary duty or statutory violations between businesses arising out of business transactions or relationships;
 - (3) involves a commercial class action;

- (4) arises from technology licensing agreements, including software and biotechnology licensing agreements, or any agreement involving the licensing of any intellectual property right, including patent rights;
- (5) involves antitrust, trade secrets, trademark law, or securities-related actions;
- (6) involves claims that present sufficiently complex commercial issues that would have significant implications for the larger business community, including but not limited to cases with subject matter that technically would render the case “Excluded” pursuant to Section 2 of the Business Court Docket Eligibility Criteria, as recommended by the Business Court Judge and as determined within the discretion of the Chief Justice.

2.2 Excluded Cases. The following cases are excluded from the Business Court Docket:

- (a) personal injury or wrongful death;
- (b) professional malpractice claims;
- (c) commercial property disputes, residential landlord-tenant matters and foreclosure actions;
- (d) employee/employer disputes, except where pendent or incidental to the matters listed in Section 2.1(c) above and sufficiently complex business issues are presented;
- (e) health care liability;
- (f) the sole claim is a professional fee dispute;
- (g) where the State of Tennessee or any other government or governmental agency is a party;
- (h) administrative appeals from a State or County Agency, including tax and zoning matters;
- (i) claims involving breach of contract, fraud, or misrepresentation, except when pendent or incidental to matters listed in Section 2.1(c) above and sufficiently complex business issues are presented;

- (j) actions for violation of or interference with noncompete, nonsolicitation, and/or confidentiality agreements, except when pendent or incidental to matters listed in Section 2.1(c) above and sufficiently complex business issues are presented;
- (k) commercial or residential contract construction disputes and/or commercial or residential construction defect claims; and
- (l) cases involving violations of the Tennessee Consumer Protection Act.

Section 3—Transfer To/Removal From The Business Court Docket

3.1 Case Assignment

(a) Request for Designation to the Business Court Docket

- i. Within 30 days of the date of service of a complaint on a defendant, any party may file with the Davidson County Chancery Court Part III a *Request for Designation* of the case to the Business Court Docket, with a copy served on all parties. Upon the recommendation of the Business Court Docket Judge as to eligibility, the Chief Justice shall determine whether a case meets the eligibility criteria set forth above and whether, in the discretion of the Chief Justice, the case is sufficiently complex to warrant transfer to the Business Court Docket. Upon making that determination, the Chief Justice may transfer the case to the Business Court Docket.
- ii. The filing of a *Request for Designation* certifies that the case meets the criteria for assignment to the Business Court Docket provided above in Sections 2.1 and 2.2 and shall be in a form approved by the Supreme Court.
- iii. The Chief Justice may designate one or more sitting Davidson County Chancellors, Davidson County Circuit Court Judges, or Senior Judges to hear and decide cases assigned to the Business Court Docket and/or serve as settlement conference judges, as needed.

- (b) Cases Outside of Davidson County – In addition to Section 3.1(a), cases filed in any other county in Tennessee that otherwise meet the eligibility criteria provided in Sections 2.1 and 2.2 above may be transferred pursuant

to Tenn. Code Ann. § 16-11-201 at the discretion of the Chief Justice to the Business Court Docket in Davidson County if all parties file with the Davidson County Chancery Court Part III a *Request for Designation* of the case to the Business Court Docket that includes a joint consent and waiver of venue in a form approved by the Supreme Court.

- (c) Objections to Transfer – All objections to assignment of the case to the Business Court Docket, except eligibility, must be filed with the Supreme Court, Appellate Court Clerk, Middle Section, Nashville, TN within 30 days of the entry of the order transferring the case to the Business Court Docket, with a copy served on all parties and the Business Court Docket judge.
- (d) Recusal – Should recusal by a Business Court Docket judge be necessary, the case will be re-assigned to another Business Court Docket judge by the Chief Justice.

Section 4—Case Litigation Plan

- 4.1 Order Setting Conference and Content. After transfer of a case to the Business Court Docket, the Judge shall promptly issue an order setting a conference to enter a Case Litigation Plan pursuant to Tennessee Rule of Civil Procedure 16. To minimize costs, Counsel will not routinely be required in advance of the conference to fill out forms or make filings. Instead, the Judge shall send Counsel a notice of the matters which shall be addressed and discussed at the conference. In some cases an exchange of limited discovery may be ordered prior to the conference.
- 4.2 Attendance At Conference. All lead trial counsel and local counsel shall attend the conference in person unless attendance by other means is authorized for any person by the Judge. Party representatives are encouraged to attend but are not required.
- 4.3 Known Problem Areas.
 - (a) Motions to Dismiss—Deficiencies in pleading with specificity and/or linking essential elements of claims to facts (as opposed to questions of law) are rarely susceptible to dismissal. *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426-27, 437 (Tenn. 2011). Additionally, leave to amend is to be freely granted under Tennessee Rule of Civil Procedure 15. Nevertheless, Counsel in defending against complaints or affirmative defenses have few mechanisms to obtain clarity in pleadings other than the tool of a motion to dismiss. Often the result is that resources

are expended and delays occur from the serial exchange of motions to dismiss and amendments to the pleadings. To avoid this expenditure, the Court, when appropriate, shall address in the Case Litigation Plan Conference pleadings to identify and clarify causes of action and affirmative defenses, and include the outcome in the Case Litigation Plan Order. The Court shall also bundle preliminary motions for briefing and ruling upon, and shall endeavor to rule on the papers.

- (b) Amendments and Additions of Parties—Because preparation of a lawsuit for trial is not scripted and evolves as information is uncovered, amendments and addition of parties may be necessary. These actions, however, can cause lengthy extensions and delays, especially if they come late in the proceedings when discovery is complete or nearing completion. Accordingly realistic deadlines regarding amendments and adding parties shall be covered at the conference.
- (c) Discovery—The conference shall include an assessment of the amount, sequencing and kind of discovery that is proportionate to the case. Protocols of ESI and production in reasonably useable form shall be covered.
- (d) Motions—Grouping of motions, instead of serial, individual motion hearings, and the timing of motions shall be addressed at the conference for efficient use of time in court.

4.4 Topic Examples. The following are examples of topics about which the Judge may notify Counsel to be prepared to discuss at the conference:

- (a) whether the case is the kind to divide into prioritized phases such as a preliminary accounting, dissolution, etc.; a secondary or in tandem phase for discovery and trial on liability; a subsequent remedy phase;
- (b) assignment of a trial date within 12 months of initial filing or identification of cases needing longer pretrial preparation;
- (c) pleadings issues;
- (d) determining whether additional parties are essential to the complete resolution of the case and setting a time limit for filing third party complaints or otherwise bringing in additional parties;
- (e) determining whether severance, consolidation or coordination with other actions is desirable;

- (f) the identity and number of any motions to dismiss or other preliminary or pre-discovery motions that have been filed or are anticipated, and the time period in which they shall be filed, briefed and argued;
- (g) setting a discovery plan and schedule, including the length of the discovery period, the number of fact and expert depositions to be permitted, as appropriate, the length and sequence of such depositions, and determining if protective orders or other limitations are appropriate;
- (h) an estimate of the volume of documents and ESI likely to be the subject of discovery from parties and nonparties and whether there are technological means that may render document discovery more manageable at an acceptable cost;
- (i) anticipated areas of expert testimony, timing for identification of expert witnesses, responses to expert discovery; exchange of expert reports, and timing of motions to exclude expert testimony under *McDaniel v. CSX Transportation, Inc.*, 955 S.W.2d 257 (Tenn. 1997);
- (j) the time period after the close of discovery within which post-discovery dispositive motions shall be filed, briefed and argued, and a tentative schedule;
- (k) the possibility of settlement and the timing of Alternative Dispute Resolution;
- (l) the use of technology: efilings, electronic service on counsel, videoconferencing and/or teleconferencing;
- (m) organizing a master list of contact information for Counsel; and
- (n) the scheduling of further conferences.

4.5 Case Litigation Plan Order. At the completion of the conference, the Judge shall enter an order containing the Case Litigation Plan. The order may thereafter be modified or revised as the Judge in her discretion deems necessary or appropriate to meet the purpose and goals of the Business Court Docket. The parties shall not deviate from deadlines and requirements established in the order or any modifications unless authorized by the Judge. Failure to comply with the order may result in sanctions.

Any scheduling orders entered prior to transfer of the case to the Business Court Docket shall be superseded by the Case Litigation Plan Order.

Section 5—Motions

- 5.1 Local Rules of Davidson County Apply. Unless otherwise ordered, motions shall be filed, processed, considered and decided according to the Twentieth Judicial District Local Rules (Davidson County) including, but not limited to, Rule 26.

For ease of reference Local Rule 26 is quoted as follows:

§ 26.01. Time to Schedule and Hear Dispositive Motions

Dispositive motions must be scheduled to be heard at least thirty (30) days before a trial date unless the court otherwise orders.

§ 26.02. Time for Hearings

- a. Motions will be heard at 9:00 a.m. on Fridays.
- b. Appropriate notice shall be published when a court will not have a motion docket on a Friday.
- c. Judges will endeavor to arrange their motion dockets to minimize delay for lawyers. [Remainder does not apply to the Business Court Docket.]

§ 26.03. Fourteen Day Minimum Notice of Hearing on Motions; Summary Judgment Motions Filed Thirty-Seven Days Before Hearing

- a. The notice of hearing as contained in Local Rule 26.05(b) shall be filed at least fourteen (14) days before the scheduled hearing date.
- b. A motion for summary judgment cannot be heard until at least thirty-seven (37) days after it is filed unless the parties otherwise agree.
- c. In Circuit Court, the moving party needs file no further notice if the motion hearing date is continued by agreement of all parties or by court order [inapplicable to the Business Court Docket].
- d. In Chancery Court, if a motion is reset by agreement, a written notice of the new motion hearing date must be provided the Clerk by faxed letter or otherwise. This notice must be provided by

the close of business on the Monday before the Friday on which the motion is to be heard.

§ 26.04. Motions, Responses, Replies and Briefs

a. Motions shall clearly state with particularity the grounds therefore, and shall set forth the relief or order sought as required by Tenn. R. Civ. P. 7.02.

b. Every motion or response which may require the resolution of an issue of law, and every motion or response in which legal authority is relied upon, shall be accompanied by a memorandum of law and facts in support thereof. Any motion, response, brief or memorandum of law that makes reference to a transcript or deposition shall make reference to the specific page(s) of the transcript involved. [Remainder does not apply to the Business Court Docket.]

c. When requesting leave to amend a pleading, the moving party must attach a copy of the proposed amended pleading to the motion so that it becomes part of the record. [Comment: Unless the record before the appellate court shows the substance of the proposed amendment, it cannot determine whether the court acted properly on the motion. *Taylor v. Nashville Banner Publ'g Co.*, 573 S.W.2d 476 (Tenn. Ct. App. 1978).]

d. If the motion is opposed, a written response to the motion must be filed and personally served on all parties. The response shall state with particularity the grounds for opposition to the motion, supported by legal authority, if applicable. If no response is filed, the motion shall be granted. [Remainder does not apply to the Business Court Docket.]

e. Responses to motions, including counter-affidavits, depositions, briefs or any other matters presented in opposition to motions, must be filed with the clerk's office by the close of business on the Monday before the Friday on which the motion is to be heard. The response must also be personally served upon all parties no later than 5:00 p.m. on the Monday before the Friday on which the motion is to be heard. If Monday falls on a holiday and the offices of the court clerks are closed, responses to motions must be filed with the clerk's office by the close of business on the Tuesday before the Friday on which the motion is to be heard. In case of a Monday holiday, service of the response on all parties must occur no later than 5:00 p.m. Tuesday.

f. Replies to responses, if any, must be filed with the clerk's office by the close of business on the Wednesday before the Friday

on which the motion is to be heard. The reply must also be personally served on all other parties no later than 5:00 p.m. on the Wednesday before the Friday on which the motion is to be heard.

g. IF NO RESPONSE IS TIMELY FILED AND PERSONALLY SERVED, THE MOTION SHALL BE GRANTED AND COUNSEL OR PRO SE LITIGANT NEED NOT APPEAR IN COURT AT THE TIME AND DATE SCHEDULED FOR THE HEARING.

Counsel or pro se litigant shall then submit the proposed order consistent with Local Rule 33. The order shall recite that no response was timely filed or personally served. See Rule 39 for exceptions to this Rule in certain Probate matters.

§ 26.05. Docketing Motions for Hearing and Disposition

a. Docketing Motions for Hearing and Disposition--Docketing of a motion will be complete upon filing the motion with the Chancery, Probate and Circuit Court Clerks, provided it contains notice of a hearing date. If no hearing date is requested upon the filing of the motion, either counsel may file a notice of hearing for a previously filed motion and serve opposing counsel and/or party.

b. Notice of Hearing and Disposition--Any party filing a motion in Chancery, Probate or in Circuit Court shall serve written notice of the date and the time of the hearing upon all other parties. The notice shall advise all other parties that failure to file and serve a timely written response to the motion will result in the motion being granted without further hearing.

c. Domestic Relations Motions--Domestic relations motions are exempted from this rule and are governed by § 37.05 [inapplicable to the Business Court Docket].

§ 26.06. Personal Service Defined

For purposes of this Rule, personal service means delivery, mailing or transmission of a facsimile (i.e., “fax” or “telecopier”) such that the document served is physically received by the specified date and time. In the event personal service is affected by facsimile, an original copy of the document shall follow by delivery or mail.

§ 26.07. Special Setting of Motions

Where special circumstances warrant, motions may be specially set with the Calendar Clerk of each court at times other than on the

regular motion docket. A motion to set an expedited hearing shall be accompanied by an attached proposed order.

§ 26.08. Failure to Appear at a Motion Hearing; Late Appearance

If any party does not appear at a scheduled hearing on a motion or any other matter scheduled to be heard on the motion docket, the court may strike or adjudicate the motion. Counsel who will be late for a motion hearing shall notify the Calendar Clerk of the assigned court in advance of the hearing or have an announcement to that effect made at the call of the motion docket. If the movant fails to appear, and the court strikes the motion, the court may tax, as costs, reasonable fees and expenses in favor of the opposing party who did appear at the scheduled hearing.

§ 26.09. Striking or Postponement of Motions

After a motion has been docketed, the movant may strike or postpone a motion upon timely notice to all parties. If a motion is to be stricken or postponed by agreement, counsel shall timely notify the Calendar Clerk of the assigned court. If any party strikes or postpones a motion without giving notice the court may tax, as costs, reasonable fees and expenses in favor of any party who appeared at the scheduled hearing.

§ 26.10. Agreed Orders

If an agreed order is to be submitted disposing of a motion, counsel shall advise the Calendar Clerk of the assigned court prior to the hearing or may so announce at the hearing.

§ 26.11. The Hearing

- a. Oral Argument. Motions with responses shall be orally argued unless waived by agreement, excepted by order of the court [Remainder does not apply to the Business Court Docket].
- b. No Witnesses. The motion hearing shall be upon the pleadings, affidavits or depositions unless a party requests and obtains permission of the court for the introduction of oral testimony before the time of the hearing.

§ 26.12. Motions In Limine

Motions in limine are governed by Local Rule 30.

§ 26.13. Motions to Compel Discovery

Special requirements related to motions involving discovery disputes are addressed by Local Rule 22.08--22.12.

§ 26.14. Class Action Determination

Within sixty (60) days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a determination under Rule 23.03(1) Tenn. R. Civ. P. whether the case is to be maintained as a class action. In ruling upon such a motion, the Court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary under the circumstances. Whenever possible, where it is held that the determination shall be postponed, a date shall be fixed by the Court for the renewal of the motion.

§ 26.15. Default Judgment Motion With Certificate

All motions for default judgment seeking a judgment for liquidated damages shall specifically state the amount sought and be accompanied by a certificate which shall substantially comply with the default judgment certificate in the appendix. A request for non-liquidated damages will require a damages hearing.

- 5.2 Decision on the Papers. Where appropriate, the Judge will notify Counsel that oral argument is unnecessary, and the motion shall be considered and decided on the pleadings, admissible evidence, the court file, and memoranda.

Section 6—Use of Technology

- 6.1 Leave of Court. By leave of the Pilot Project Court, Counsel may arrange for any proceeding or conference to be held via video-conference or telephone conference call by coordinating either such hearing with the Business Court Docket Clerk. Counsel and other participants shall be subject to the same rules of procedure and decorum as if all participants were present in the courtroom.

- 6.2 Electronic filing. For speed, the Judge efiles orders and court generated documents, followed, as required by law, with a mailed copy. Counsel are encouraged to efile. Information on efilng can be obtained from the Davidson County Clerk and Master's webpage at chanceryclerkandmaster.nashville.gov.
- 6.3 Telephone Conferences. Brief telephone conferences shall be scheduled throughout the litigation instead of court appearances for status conferences and planning.
- 6.4 Electronic Service of Papers. Upon agreement of Counsel, electronic service of papers can be used in the litigation.

Section 7—Pretrial Conference In Jury Trials

- 7.1 Pretrial Conference Purpose. In all cases in which a jury has been demanded, Counsel are required to attend a pretrial conference to assure that the case is organized and ready to try to a jury, and thereby avoid wasting juror time and to avoid poor public perception of the legal system.
- 7.2 Advance Filings. In addition to motions in limine, and designation of deposition excerpts and objections thereto, Counsel are required to file, prior to the pretrial conference, the following:
- (a) A list of pattern instructions Counsel anticipates requesting the Court to provide to the jury at the conclusion of the proof;
 - (b) Proposed jury instructions which vary from the pattern instructions, along with citations to statutory or case authority; and
 - (c) A proposed verdict form.

Although these will not be finalized until the charge conference at the close of proof, extensive comparison of the variations in submission by each side identifies issues of law for the Court to clear up prior to the trial. This enables Counsel to plan and lessens evidentiary disputes on relevancy during the trial.

- 7.3 Pretrial Conference Topics. The pretrial conference shall cover evidentiary issues, logistics of presenting evidence (e.g., use of evidence presenter, juror evidence notebooks, etc.), number of challenges, jury instructions, motions in limine, and any issues presented by Counsel.

Section 8—Posting of Decisions

The March 16, 2015 and April 4, 2017 Supreme Court Orders, respectively establishing and expanding the Pilot Project, require that substantive decisions selected by the Business Court Docket Judge shall be posted on the Business Court Docket website maintained by the Administrative Office of the Courts. This posting is to assist lawyers and litigants in assessing and predicting outcomes. This is being done regularly and is updated.

Decisions of trial courts have no precedential value. This applies to the Pilot Project Court. Its decisions are under the same appeal process as other trial courts and are susceptible to reversal or remand. The purpose, however, of posting some of the Pilot Project Court decisions, then, is not to “make law” but to identify areas of developing Tennessee business law and to share analysis and information, thereby fostering predictability and certainty in Tennessee commercial law.

APPENDIX A

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

PART III – BUSINESS COURT DOCKET

)	
)	
Plaintiff(s),)	
)	
VS.)	No.
)	
)	
)	
Defendant(s).)	

REQUEST FOR DESIGNATION TO THE BUSINESS COURT DOCKET

[PARTY], through Counsel or self-represented, requests that the above styled Case filed on [INSERT DATE] in the Chancery Court of Davidson County be transferred by the Chief Justice of the Tennessee Supreme Court to the Business Court Docket.

Counsel or self-represented party, in good faith and based on information reasonably available, has completed and filed herewith the attached checklist certifying that the Case meets the eligibility criteria set forth in the Tennessee Supreme Court *Order Establishing the Davidson County Business Court Docket Pilot Project - Phase 2*.

Counsel or Self-represented Party

FOR BUSINESS COURT DOCKET JUDGE USE ONLY

I Recommend Decline to Recommend that this Case is eligible for transfer to the Business Court Docket.

Signature of Business Court Docket Judge

Date

REQUEST FOR DESIGNATION TO THE BUSINESS COURT DOCKET

CHECKLIST

In certifying that this case meets the eligibility criteria for transfer to the Business Court Docket, please check below the applicable boxes. To be eligible, the case must fit within items 1 and 2, and one or more subsections of item 3.

- 1. This lawsuit was filed on or after May 1, 2017; and
- 2. Compensatory damages of at least \$250,000 are alleged, or this lawsuit seeks primarily injunctive or declaratory relief; and
- 3. This lawsuit:
 - Relates to the governance or internal affairs of businesses (i.e., corporations, limited liability companies, general partnerships, limited liability partnerships, sole proprietorships, professional associations, real estate investment trusts, and joint ventures), including the rights or obligations of shareholders, officers, directors, partners, and members, or the liability or indemnity of officers, directors, managers, trustees or partners.
 - involves claims of breach of fiduciary duty or statutory violations between businesses arising out of business transactions or relationships.
 - involves a commercial class action.
 - arises from technology licensing agreements, including software and biotechnology licensing agreements, or any agreement involving the licensing of any intellectual property right, including patent rights.
 - involves antitrust, trade secrets, trademark law, or securities-related actions.
 - involves claims that present sufficiently complex commercial issues that would have significant implications for the larger business community, including but not limited to cases with subject matter that technically would render the case “Excluded” pursuant to Section 2 of the Business Court Docket Eligibility Criteria, as recommended by the Business Court Judge and as determined within the discretion of the Chief Justice.

APPENDIX B

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

PART III – BUSINESS COURT DOCKET

IN RE: REQUEST FOR DESIGNATION)
TO THE BUSINESS COURT DOCKET IN)
[INSERT STYLE OF CASE INCLUDING)
NAMES OF PARTIES, CASE NUMBER,)
AND COUNTY WHERE FILED]_____)

REQUEST FOR DESIGNATION TO THE BUSINESS COURT DOCKET

Counsel and self-represented parties (hereinafter referred to collectively as “Counsel”) request that the above referenced Case filed on [INSERT DATE] in [INSERT COUNTY WHERE LAWSUIT ORIGINATED] be transferred by the Chief Justice of the Tennessee Supreme Court to the Business Court Docket located in the Twentieth Judicial District, Davidson County, Tennessee.

Counsel agree and consent to waive venue in the above referenced case.

Counsel, in good faith and based on information reasonably available, have completed and filed herewith the attached checklist certifying that the Case meets the eligibility criteria set forth in the Tennessee Supreme Court *Order Establishing the Davidson County Business Court Docket Pilot Project - Phase 2*.

Please check that a copy of the Complaint in the above referenced case is attached.

Signature of Counsel for Plaintiff(s)

E-Mail of Counsel for Plaintiff(s)

Signature of Counsel for Defendant(s)

E-Mail of Counsel for Defendant(s)

Signature of Counsel for Other Parties

E-Mail of Counsel for Other Parties

FOR BUSINESS COURT DOCKET JUDGE USE ONLY

I Recommend Decline to Recommend that this Case is eligible for transfer to the Business Court Docket.

Signature of Business Court Docket Judge

Date

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CHECKLIST

In certifying that this case meets the eligibility criteria for transfer to the Business Court Docket, please check below the applicable boxes. To be eligible, the case must fit within items 1 and 2, and one or more subsections of item 3.

- 1. This lawsuit was filed on or after May 1, 2017; and
- 2. Compensatory damages of at least \$250,000 are alleged, or this lawsuit seeks primarily injunctive or declaratory relief; and
- 3. This lawsuit:
 - Relates to the governance or internal affairs of businesses (i.e., corporations, limited liability companies, general partnerships, limited liability partnerships, sole proprietorships, professional associations, real estate investment trusts, and joint ventures), including the rights or obligations of shareholders, officers, directors, partners, and members, or the liability or indemnity of officers, directors, managers, trustees, or partners.
 - involves claims of breach of fiduciary duty or statutory violations between businesses arising out of business transactions or relationships.
 - involves a commercial class action.
 - arises from technology licensing agreements, including software and biotechnology licensing agreements, or any agreement involving the licensing of any intellectual property right, including patent rights.
 - involves antitrust, trade secrets, trademark law, or securities-related actions.
 - involves claims that present sufficiently complex commercial issues that would have significant implications for the larger business community, including but not limited to cases with subject matter that technically would render the case “Excluded” pursuant to Section 2 of the Business Court Docket Eligibility Criteria, as recommended by the Business Court Docket Judge and as determined within the discretion of the Chief Justice.