

**REPORT ON BUSINESS COURTS, RECENT DEVELOPMENTS,
AND RELATED ISSUES**

(AS OF MAY 2015)

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Introduction

Maryland's Business and Technology Case Management Program focuses on complex business, commercial, and technology cases that would benefit from a specialized tribunal. The program has been operational for over ten years, and it is among the growing number of state programs or courts dedicated to business-related disputes and litigation. This report first summarizes recent developments in certain jurisdictions with established, or emerging, business courts. The report then sets forth the results of targeted interviews with practitioners and judges in certain of these jurisdictions.

Summary of Existing or Emerging Business Courts

California

In 1996, the state of California created the Business Court Study Task Force and conducted a national and statewide review to determine the level of support for specialized business courts.¹ The task force did not recommend the implementation of a business court in California.² The task force found it better to develop complex litigation departments within the trial courts, rather than establish new business courts.³ The pilot program serves all types of complex litigation matters, not just commercial cases.⁴

In response to the task force's findings, a new task force was appointed to identify ways trial courts could better manage complex cases.⁵ The Complex Civil Litigation Task Force began its study in October 1999.⁶ In 2000, the Complex Civil Litigation Pilot Program began in the Superior Courts of Alameda, Contra Costa, Los Angeles, Orange, San Francisco, and Santa Clara.⁷

The pilot program provided grant funds to the participating courts.⁸ Courts used those funds to hire new attorneys, employ new staff, and improve court technologies.⁹ The Orange County Superior Court took the pilot program as an opportunity to expand its electronic document

¹*Fact Sheet: Complex Civil Litigation*, ADMINISTRATIVE OFFICE OF THE COURTS (Jul. 2008), <http://www.courts.ca.gov/documents/comlit.pdf>.

² *Id.*

³ *Id.*

⁴ Paula L. Hannaford-Agor, et al., *Evaluation of the Centers for Complex Civil Litigation Pilot Program*, NATIONAL CENTER FOR STATE COURTS vii (2003), <http://www.courts.ca.gov/documents/compcivilitpub.pdf>.

⁵ *Fact Sheet: Complex Civil Litigation*, ADMINISTRATIVE OFFICE OF THE COURTS (Jul. 2008), <http://www.courts.ca.gov/documents/comlit.pdf>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

availability and insert new technologies in courtrooms.¹⁰ The pilot program sought to provide specialized education to participating judges to help them better manage complex civil cases.¹¹ In 2007-2008, grant funds to the program were renewed and totaled \$3.958 million.¹² The program also provided for a specialized continuing education program for judges held twice a year.¹³

In a 2003 report on the evaluation of the pilot program, judges working in the program reported that there were fewer appeals of the complex cases.¹⁴ Additionally, when cases were appealed, the cases were better organized and judges had an easier time finding documents and making decisions.¹⁵ The pilot program changed California's practice of assigning judges to cases only when they reach trial.¹⁶ Instead, individual calendars were used and a single judge monitored all pretrial and trial matters for complex civil litigation cases.¹⁷

A 2004 National Center for State Courts (NCSC) study found that the pilot program was received well in California.¹⁸ Attorneys interviewed stated that judges exhibited a better understanding of the legal and evidentiary issues in complex civil matters, set better time limits for discovery, enforced case deadlines, and were helpful in pushing cases towards resolution.¹⁹

Delaware

Delaware's Court of Chancery was created in 1792 to establish a permanent equity court outside the courts of law.²⁰ Delaware in the colonial era did not have institutionalized chancery, and thus the animosity surrounding Chancery Courts in other states did not exist in Delaware, allowing for the Court of Chancery's establishment.²¹ The Chancery Court is a general jurisdiction court that hears cases of equity, including trusts and estates, fiduciary duties, guardianships, and civil

¹⁰ Ronald M. George, Chief Justice, *Remarks by Chief Justice Ronald M. George*, ORANGE COUNTY SUPERIOR COURT COMPLEX LITIGATION CENTER (Aug. 6, 2001), available at <http://www.courts.ca.gov/7587.htm>.

¹¹ *Fact Sheet: Complex Civil Litigation*, ADMINISTRATIVE OFFICE OF THE COURTS (Jul. 2008), <http://www.courts.ca.gov/documents/complit.pdf>.

¹² *Id.*

¹³ *Id.*

¹⁴ Paula L. Hannaford-Agor, et al., *Evaluation of the Centers for Complex Civil Litigation Pilot Program*, NATIONAL CENTER FOR STATE COURTS 12 (2003), <http://www.courts.ca.gov/documents/compcivilitpub.pdf>.

¹⁵ *Id.*

¹⁶ *Id.* at vi.

¹⁷ *Id.*

¹⁸ *Complex Litigation: Key Findings from the California Pilot Program*, 3 CIVIL ACTION 1, 1 (2004).

¹⁹ *Id.* at 2.

²⁰ William T. Quillen and Michael Hanrahan, *A Short History of the Delaware Court of Chancery*, DELAWARE STATE COURTS THE OFFICIAL WEB SITE OF THE DELAWARE JUDICIARY (1993), <http://courts.delaware.gov/Chancery/history.stm>.

²¹ *Id.*

rights actions seeking injunctive relief.²² Cases involving corporate governance disputes appear on the Chancery Court's docket because these cases involve questions of equity.²³ Corporate cases also typically involve requests for equitable relief.²⁴ The Chancery Court evolved into one of the country's most widely respected forums for resolving internal corporate disputes²⁵ because of, among other things, the large number of in-state incorporations relative to the small size of the state.²⁶

The Delaware Chancery Court offers two types of non-mandatory mediation: mediation in the course of an ongoing dispute, and mediation-only dispute resolution.²⁷ Parties in an ongoing dispute may request mediation. Parties who would like to resolve their dispute through mediation only may agree to mediation as long as one of the parties is a Delaware corporation and a consumer is not involved in the dispute.²⁸ As of 2003, section 347 of the Delaware Code permits the Chancery Court to mediate purely monetary business disputes.²⁹

Delaware began mandatory e-filing of all appeals in 2006.³⁰ This expanded the e-filing requirement, which previously required the e-filing of only certain appeals.³¹ The Chancery Court maintains an online database of its opinions and orders that can be easily reached from the Court's website.³² In 2012, the Register of Wills announced that it would begin e-filing.³³ This is the final area of the court to incorporate e-filing requirements.³⁴

In 1994, recognizing the appeal of specialized commercial courts, Delaware implemented an expedited summary procedure in the Superior Courts for resolving business disputes.³⁵ Between

²² Rochelle C. Dreyfuss, *Forums of the Future: The Role of Specialized Courts in Resolving Business Disputes*, 61 BROOK. L. REV. 1, 7 (1995).

²³ *Id.*

²⁴ *Id.*

²⁵ DELAWARE STATE COURTS THE OFFICIAL WEB SITE OF THE DELAWARE JUDICIARY, <http://courts.delaware.gov/Chancery/>.

²⁶ Dreyfuss, *supra*, note 22, at 28.

²⁷ *Mediation and Guideline Pamphlet*, COURT OF THE CHANCERY OF THE STATE OF DELAWARE (2011), <http://courts.delaware.gov/forms/download.aspx?id=15478>.

²⁸ *Id.*

²⁹ Mitchell L. Bach and Lee Applebaum, *A History of the Creation and Jurisdiction of Business Courts in the Last Decade*, 60 THE BUSINESS LAWYER 147, 221 (2004).

³⁰ *Supreme Court eFiling*, DELAWARE STATE COURTS THE OFFICIAL WEB SITE OF THE DELAWARE JUDICIARY, <http://courts.delaware.gov/Supreme/efiling.stm>.

³¹ Stephen D. Taylor, *Delaware Supreme Court Expands Efiling Initiative to all Appeals*, PRESS RELEASE (Dec. 6, 2006), <http://courts.delaware.gov/Supreme/docs/Efilingpressrelease120606.PDF>.

³² *Supreme Court Opinions and Orders*, DELAWARE STATE COURT THE OFFICIAL WEB SITE OF THE DELAWARE JUDICIARY, <http://courts.delaware.gov/opinions/list.aspx?ag=supreme%20court>.

³³ Carl Neff, *New E-Filing Procedure Announced by the Court of Chancery and Register of Wills*, DELAWARE CHANCERY LAW BLOG: CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE CHANCERY (Aug. 31 2012), <http://delawarechancery.foxrothschild.com/news/new-e-filing-procedure-announced-by-the-court-of-chancery-and-register-of-wills/>.

³⁴ *Id.*

³⁵ Chief Justice E. Norman Veasey, Administrative Directive No. 96, SUPREME COURT OF DELAWARE (Feb. 28, 1994), <http://courts.delaware.gov/Supreme/AdmDir/ad96.pdf>.

1997 and 2004, only four cases had been filed as summary proceedings.³⁶ Further, the Chancery Court's jurisdiction was expanded to cover technology disputes in 2003.³⁷ This expansion permits the Chancery Court to decide purely monetary disputes.³⁸ Moreover, in 2010, Delaware created a Complex Commercial Litigation Division within its Superior Court.³⁹

Delaware also has worked to improve the discovery process in business litigation. For example, in December of 2012, Delaware incorporated several discovery rules to better guide practitioners.⁴⁰ These guidelines cover collection and review of documents in discovery, and discovery in advance of a preliminary injunction hearing.⁴¹ The new guidelines confirm parties' responsibility to confer on discovery issues early and often.⁴² Additionally, the court amended Rules 26, 30, 34, and 45 to modernize the discovery rules.⁴³

In March 2014, the U.S. Supreme Court declined to consider whether the Delaware Chancery Court's confidential arbitration process was constitutional.⁴⁴ The Third Circuit had declared the arbitration unconstitutional in *Delaware Coalition for Open Government v. Strine*.⁴⁵ In February of 2015, the court assembled a task force to determine how to establish a new, constitutional arbitration process.⁴⁶ To make the arbitration process more constitutional, sitting judges would not be permitted to act as arbitrators.⁴⁷

In 2013, the Chancery Court saw 1,064 civil cases, 2,476 estate cases, and 615 cases of other miscellaneous disputes.⁴⁸ The court had 4,155 filings in 2013 and 4,979 dispositions.⁴⁹ Every

³⁶ Bach and Applebaum, *supra* note 29, at 219.

³⁷ *Id.* at 220.

³⁸ *Id.* at 221.

³⁹ Report and Recommendations to the Chief Judge of the State of New York, The Chief Judge's Task Force on Commercial Litigation in the 21st Century 1, 1 (June 2012) <https://www.nycourts.gov/courts/comdiv/PDFs/ChiefJudgesTaskForceOnCommercialLitigationInThe21st.pdf.pdf>.

⁴⁰ Carl Neff, *Court of Chancery Issues Discovery Guidelines*, DELAWARE CHANCERY LAW BLOG: CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE CHANCERY (Dec. 25, 2012), <http://delawarechancery.foxrothschild.com/practice-pointers/court-of-chancery-issues-discovery-guidelines/>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Carl Neff, *Amendments to Chancery Rules 26, 30, 34, and 45*, DELAWARE CHANCERY LAW BLOG: CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE CHANCERY (Dec. 24, 2012), <http://delawarechancery.foxrothschild.com/local-counsel/amendments-to-chancery-rules-26-30-34-and-45/>.

⁴⁴ Carl Neff, *Delaware Mulling New Chancery Arbitration Process*, DELAWARE CHANCERY LAW BLOG: CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE CHANCERY (Feb. 28, 2014), <http://delawarechancery.foxrothschild.com/news/delaware-mulling-new-chancery-arbitration-process/>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *2013 Annual Report of the Delaware Judiciary*, ADMINISTRATIVE OFFICE OF THE COURTS 1, 1 (January 2013), <http://courts.delaware.gov/AOC/AnnualReports/FY13/2013AnnualReport.pdf>.

⁴⁹ *Id.* at 20.

year, the Delaware court system publishes an annual report, indicating its budget during the fiscal year, filings, dispositions, and information about each court.

Florida

Florida enacted Complex Business Litigation Courts in the Ninth, Eleventh, and Thirteenth Districts.⁵⁰ The Ninth Judicial Circuit Court sits in Orlando, Florida, and serves Orange County.⁵¹ The Eleventh Judicial District serves Miami-Dade, and the Thirteenth serves Hillsborough County.⁵²

Administrative Order No. 2003-17-05 made the Complex Business Litigation Court permanent in Orange County.⁵³ The Order lists specific cases the court has jurisdiction over, splitting them into cases requiring an amount in controversy and cases requiring no amount in controversy.⁵⁴ Cases in the Orange County court are subject to e-filing requirements, and if paper forms are submitted, the clerk of the court must convert them into electronic images and file them electronically.⁵⁵

The Miami-Dade Complex Business Litigation Court is governed by Administrative Order No. 11-04.⁵⁶ The Order lists cases subject to court jurisdiction and cases not subject to court jurisdiction.⁵⁷ The Order also includes a detailed explanation of the court procedures, covering everything from calendaring and motion practice to the final pretrial conference.⁵⁸ The procedures require fast timelines and enforce strict page maximums for documents.⁵⁹

The Orange County Complex Business Litigation Court was established in January 2004 and was modeled after federal courts.⁶⁰ The court saw 3,604 cases between 2004 and 2011.⁶¹ Business court cases are more streamlined than cases in the general state courts because Case

⁵⁰ *Business/Specialty Courts State Links*, NATIONAL CENTER FOR STATE COURTS, <http://www.ncsc.org/Topics/Special-Jurisdiction/Business-Specialty-Courts/State-Links.aspx?cat=Business%20Courts%20and%20Complex%20Litigation#Florida>.

⁵¹ *About the Court*, NINTH JUDICIAL CIRCUIT OF FLORIDA, <http://www.ninthcircuit.org/about>.

⁵² *Complex Business Litigation*, MIAMI, FLORIDA ELEVENTH JUDICIAL CIRCUIT OF FLORIDA (2010), <http://www.jud11.flcourts.org/SCSingle.aspx?pid=309>; THIRTEENTH JUDICIAL CIRCUIT HILLSBOROUGH COUNTY (2015), <http://www.fljud13.org/Home.aspx>.

⁵³ Administrative Order No. 2003-17-05, <http://www.ninthcircuit.org/sites/default/files/AO2003-17-05.pdf>.

⁵⁴ *Id.* § II.

⁵⁵ *Id.* § VI.

⁵⁶ *In re* Reaffirmation of the Creation of Section 40 (“Complex Business Litigation Section”), Eleventh Judicial Circuit Miami-Dade County, Florida (2011), <http://www.jud11.flcourts.org/docs/CBL%20Section%20Procedures%20and%20AOC-11-04.pdf>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

Management Orders and timelines are followed, and discovery is monitored, closely.⁶² Due to this success, proponents believe the quick and organized business court process makes Orange County a more attractive place to do business because it removes many of the uncertainties of complex business litigation.⁶³

Both the Orange County and Miami-Dade County business courts have websites that introduce the Complex Business Litigation Courts and provide helpful links to court procedures and forms.⁶⁴ These websites keep the public updated to changes in the policies and procedures governing the courts. The Hillsborough County business court does not appear to have any similar website dedicated to educating the public about the business court.⁶⁵ The business court is not listed as a specialty court on the County's website.⁶⁶

Georgia

In 2005, the Supreme Court of Georgia passed the Atlanta Judicial Circuit Rule 1004 governing the Business Court. Rule 1004 was amended in 2007, 2009, and 2010. The rule establishes the Business Case Division in Fulton County and outlines the procedures governing the Division.⁶⁷ In 2007, Geinnett County joined Fulton County and began a Business Court Pilot Program.⁶⁸

Rule 1004 sets out the specific subject matter of cases referred or transferred to the Division, but also allows for cases to be heard if they exceed \$1,000,000 in controversy and if the Court believes the case warrants attention from the Division.⁶⁹ The rule also only requires one judge to sit for the Division, although it allows for more than one judge to be appointed.⁷⁰ Division judges have the power to modify the case schedule after consulting with the parties, and the judges can order mandatory non-binding mediation or arbitration.⁷¹ These sections allow for faster resolutions to business disputes. Additionally, judges must be available at all times to quickly resolve any discovery disputes.⁷²

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Complex Business Litigation Court*, Ninth Judicial Circuit Court of Florida, <http://www.ninthcircuit.org/about/divisions/civil-circuit-courts/complex-business-litigation-court>; *Complex Business Litigation*, Miami, Florida Eleventh Judicial Circuit of Florida (2010), <http://www.jud11.flcourts.org/SCSingle.aspx?pid=309>.

⁶⁵ THIRTEENTH JUDICIAL CIRCUIT HILLSBOROUGH COUNTY (2015), <http://www.fljud13.org/Home.aspx>.

⁶⁶ *Administrative Offices of the Court*, Thirteenth Judicial Circuit Hillsborough County (2015), <http://www.fljud13.org/CourtPrograms.aspx>.

⁶⁷ *See generally, Order*, SUPREME COURT OF GEORGIA (Oct. 11, 2012), <http://www.fultoncourt.org/business/BusinessCourtRulesAmendedOctober2012.pdf>.

⁶⁸ Lee Applebaum, *The Steady Growth of Business Courts*, FUTURE TRENDS IN STATE COURTS 2011: SPECIAL FOCUS ON ACCESS TO JUSTICE 69, 71 (2011), <http://www.ncsc.org/~media/Microsites/Files/Future%20Trends/Author%20PDFs/Applebaum.ashx>.

⁶⁹ *Order*, SUPREME COURT OF GEORGIA, section 3, (Oct. 11, 2012), <http://www.fultoncourt.org/business/BusinessCourtRulesAmendedOctober2012.pdf>.

⁷⁰ *Id.* § 4.

⁷¹ *Id.* §§ 10, 12.

⁷² *Id.* § 16.

Technology is also addressed in Rule 1004. Parties are permitted to submit filings by facsimile or by court e-mail.⁷³ There is no mandatory requirement for e-filing. Section 11 of the rule states that parties must agree through written consent to file documents through facsimile or e-mail.⁷⁴ Additionally, parties are encouraged to utilize “technologically generated demonstrative evidence” to enhance the judge’s understanding of the issue.⁷⁵ However, no requirement or effort is stated for the court to incorporate technologies to allow for electronic presentations or other demonstrative evidence.⁷⁶ Section 17 states that with written consent of all parties, conferences may be held through videoconference or telephone conferencing.⁷⁷ The Division has embraced a movement towards posting opinions online. Business Division cases can be found on the Georgia State University College of Law’s online reading room.⁷⁸

A 2012 article in the *Atlanta Business Chronicle* cited attraction and retention of businesses in Georgia as a reason for establishing the Division.⁷⁹ In her article, Judge Wright states that the Division heard approximately 200 cases between 2005 and 2012.⁸⁰ The Division benefitted the 500 companies involved in litigation by providing swift resolutions to complex business matters and reducing high litigation costs.⁸¹ Due to this success, businesses chose to stay in Fulton County to litigate their disputes.⁸²

Illinois

On June 1, 2014, the Cook County Circuit Court issued a uniform standing order for the management of its new commercial calendar.⁸³ Cases are assigned to the commercial calendar if they involve a commercial relationship between parties, regardless of whether they are based in tort, contract, or otherwise.⁸⁴

⁷³ *Id.* § 1.

⁷⁴ *Id.*

⁷⁵ *Id.* § 14.

⁷⁶ *Id.*

⁷⁷ *Id.* § 17.

⁷⁸ *Georgia Business Court Opinions*, GEORGIA STATE UNIVERSITY COLLEGE OF LAW READING ROOM, <http://readingroom.law.gsu.edu/businesscourt/>.

⁷⁹ Cynthia Wright, *Business Court Helps Local Companies*, ATLANTA BUSINESS CHRONICLE, October 2012, available at http://www.gabar.org/committeesprogramssections/boardofgovernors/upload/30_Fall2012_boardbook.pdf.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ UNIFORM ORDER FOR ALL COMMERCIAL CALENDARS (Jun. 1, 2014), http://www.cookcountycourt.org/Portals/0/Law%20Divison/Standing%20Orders/Uniform%20Commercial_Calendar_Uniform_.pdf.

⁸⁴ *Commercial Calendar Section*, STATE OF ILLINOIS CIRCUIT COURT OF COOK COUNTY (2015), <http://www.cookcountycourt.org/ABOUTTHECOURT/CountyDepartment/LawDivision/CommercialCalendarSection.aspx>.

Nine judges currently manage cases assigned to the commercial calendars.⁸⁵ Judges overseeing the calendars are urged to dispose of cases quickly, and litigants must be aware that dates for hearings, motions, and trial will not be extended.⁸⁶

The Uniform Standing Order sets out timelines and requirements for motions, case management conferences, and the materials to provide at trial.⁸⁷ For specific motion dates and times, litigants must look at the calendar for the particular judge overseeing the case.⁸⁸ Each judge on the commercial calendar maintains his or her own calendar detailing when motions are heard, trials are scheduled, and times for pretrial conferences.⁸⁹

Maryland

The Maryland Business and Technology Case Management Program (BTCMP) was established after an investigation by a multidisciplinary task force. Specifically, the Maryland and Business Technology Court Task Force was established to examine the need for a specialized business court in Maryland.⁹⁰ The task force unanimously recommended the establishment of the BTCMP, which became operational in 2003.⁹¹ One objective of the BTCMP was to make Maryland more attractive to businesses and change the belief that Maryland courts were anti-business.⁹²

The BTCMP requires judges appointed to the program to receive specialized training in the management of complex business and technology cases.⁹³ The specialized training allows the complex cases to pass quickly and efficiently through the BTCMP.⁹⁴ The program aims to provide correct and predictable rulings on complex business and technology cases; notably, such an objective also can facilitate a higher rate of pretrial settlement.⁹⁵

⁸⁵ *Id.*

⁸⁶ UNIFORM ORDER FOR ALL COMMERCIAL CALENDARS (Jun. 1, 2014), http://www.cookcountycourt.org/Portals/0/Law%20Divison/Standing%20Orders/Uniform%20Commercial_Calendar_Uniform_.pdf.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Commercial Calendar Section*, STATE OF ILLINOIS CIRCUIT COURT OF COOK COUNTY (2015), <http://www.cookcountycourt.org/ABOUTTHECOURT/CountyDepartment/LawDivision/CommercialCalendarSection.aspx>.

⁹⁰ Honorable Steven I. Platt, *Remarks on Business and Technology Task Force*, MARYLAND STATE BAR ASSOCIATION LITIGATION SECTION COUNCIL'S REGIONAL MEETING WITH THE ADMINISTRATIVE JUDGES OF THE CIRCUIT COURTS 1, 2 (November 16, 2000).

⁹¹ *See id.* *See also* Judyth Pendell, *Maryland's Ground-Breaking Technology Court*, 5 CASE IN POINT, no. 2, 12 (2006).

⁹² *See* Pendell, *supra* note 91.

⁹³ *See* Platt, *supra* note 90.

⁹⁴ *Id.*

⁹⁵ *Id.* at 4.

The task force determined that it was an inefficient use of state resources to establish a completely separate court for business and technology cases.⁹⁶ Maryland encourages all judicial districts to offer the same resources so that businesses will locate in all parts of the state.⁹⁷ To make the BTCMP, judges were appointed to hear business and technology cases in every circuit.⁹⁸

The BTMCP website is easily accessible from the Maryland Courts website and provides a central location for all information relating to the BTMCP.⁹⁹ In general, Maryland uses e-filing and online case management systems to facilitate the resolution of cases on every docket.¹⁰⁰ The BTCMP posts opinions from 2009 through the present on its website, and an archive for older cases is hosted on a different page.¹⁰¹ However, finding the rule establishing the BTCMP on the LexisNexis host site is difficult.

Alternative Dispute Resolution and mediation are integral parts of the BTCMP.¹⁰² Parties are required to discuss these alternatives during the initial pretrial conference mandated by rule 16-205.¹⁰³ The mediators must be qualified in accordance with Rule 17-104, outlining the specific expertise in handling complex business disputes present in the BTCMP.¹⁰⁴

The Maryland BTCMP opened to high expectations. By 2006, all of the judges originally designated for the program had completed their specialized training, and more judges had opted to take specialized training to oversee a BTCMP docket.¹⁰⁵ The judiciary's interest in the program showed great promise and led to the expansion of the courses offered judges to hone their specialization in commercial and corporate governance matters.¹⁰⁶ The rules for the BTCMP were unanimously adopted and fit the needs of Maryland at the time the program was implemented.¹⁰⁷ Nevertheless, by 2013, some commentators were suggesting areas for improvement in the BTCMP.¹⁰⁸ For example, commentators observe that the operations and

⁹⁶ *Id.* at 7.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Maryland Business and Technology Case Management Program*, MARYLAND COURTS (2015), <http://www.courts.state.md.us/businesstech/index.html>.

¹⁰⁰ *E-filing Information*, MARYLAND COURTS (2015), <http://www.courts.state.md.us/mdec/efiling.html>.

¹⁰¹ *Published Opinions*, MARYLAND COURTS (2015), <http://www.courts.state.md.us/businesstech/opinions.html>.

¹⁰² *See* Platt, *supra* note 90.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Honorable Steven I. Platt, *REPORT ON STATUS/PROGRESS OF THE BUSINESS/TECHNOLOGY MANAGEMENT PROGRAM* (May, 2006).

¹⁰⁶ *Id.*

¹⁰⁷ Honorable Steven I. Platt, *Remarks to Section*, MBSA BUSINESS LAW SECTION COUNCIL MEETING (2014).

¹⁰⁸ *See, e.g.*, Honorable Steven I. Platt, *Maryland or Delaware Best for Business Litigation*, THE PURSUIT OF JUSTICE 1 (2013).

rulings of the judges in the program vary, particularly across districts.¹⁰⁹ The BTCMP website hosts two opinions from 2014, nine opinions from 2013, and five opinions from 2012.¹¹⁰

New York

The New York business courts began as an experiment in 1993.¹¹¹ Four justices from the New York Supreme Court in New York County were assigned to hear commercial disputes.¹¹² The experiment in commercial courts led to the establishment of the Commercial Division in June 1996.¹¹³ The goals of the Commercial Division were to create a more favorable environment for attracting businesses to incorporate in New York.¹¹⁴ The Division would take time-consuming business and commercial cases out of the general jurisdiction dockets so that more time and attention could be provided to other pending cases.¹¹⁵ The Commercial Division now has courts in the Seventh District of New York, the Eighth District of New York, Albany County, Kings County, Nassau County, New York County, Onondaga County, Queens County, Suffolk County, and Westchester County.¹¹⁶

The Division developed and implemented case management software, now used widely across all New York courts, to maintain the complex commercial case dockets.¹¹⁷ The New York County court began using electronic filing, and all newly-filed cases in the Commercial Divisions in Erie, Kings, Nassau, New York, Suffolk, and Westchester Counties must use e-filing.¹¹⁸ Recent statewide decisions of the Commercial Division are provided on the Commercial Division's website, and a link to the State Reporter database is provided to find older cases.¹¹⁹ Links provided to Nassau County Decisions and the New York County Decisions are less helpful. The Nassau County Decisions link directs users to a database, and the New York County Decisions are stored on the Supreme Court Records On-Line Library.¹²⁰

¹⁰⁹ *Id.*

¹¹⁰ *Published Opinions*, MARYLAND COURTS (2015), <http://www.courts.state.md.us/businesstech/opinions.html>.

¹¹¹ Robert L. Haig, *Can New York's New Commercial Division Resolve Business Disputes as Well as Anyone?*, 13 TURO L. REV. 191, 193 (1997).

¹¹² *Id.*

¹¹³ *Id.* at 195.

¹¹⁴ *Id.* at 196.

¹¹⁵ *Id.*

¹¹⁶ *Commercial Division – NY Supreme Court*, NEW YORK STATE UNIFIED COURT SYSTEM (last updated May 4, 2015), <http://www.nycourts.gov/courts/comdiv/>.

¹¹⁷ *A Brief History*, NEW YORK STATE UNIFIED COURT SYSTEM (last updated April 1, 2014), <http://www.nycourts.gov/courts/comdiv/history.shtml>.

¹¹⁸ *Id.*

¹¹⁹ *Decisions*, NEW YORK STATE UNIFIED COURT SYSTEM (last updated May 4, 2014), <http://www.nycourts.gov/courts/comdiv/decisions.shtml>.

¹²⁰ NASSAU COUNTY SUPREME COURT DECISIONS, <http://decisions.courts.state.ny.us/10jd/nassau/decisions/search/supdecisions.htm>; *Supreme Court Records On-Line Library*, THE COUNTY CLERK AND SUPREME COURT OF NEW YORK COUNTY (2006), <http://iapps.courts.state.ny.us/iscroll/>.

The Commercial Division uses Alternative Dispute Resolution on a recommended basis, and the New York County court is currently experimenting with mandatory mediation for commercial litigation cases.¹²¹ In 2013, a permanent Commercial Division Advisory Council was established to advise Chief Judge Lippman on all matters in the Commercial Division.¹²² Within its first year of creation, the Commercial Division reduced the average time for the resolution of contract disputes by 29%, and reduced the number of pending contract cases by 26%; pre-trial settlement increased by 85%.¹²³ The Commercial Division continued to dispose of cases quickly and efficiently throughout the early 2000s.¹²⁴ In 2006, to improve the efficiency of the Commercial Division, the Statewide Standards for Assignment of Cases and Rules of Practice were adopted.¹²⁵ The new rules establish which cases are heard in the Commercial Division and implements uniform procedures and practices for the Commercial Division once cases are admitted.

The New York Commercial Division puts out the Commercial Division Law Report summarizing recent cases.¹²⁶ These cases summarize important precedent set by Commercial Court decisions.¹²⁷ The July 2013 report selected thirteen cases to report,¹²⁸ while the May 2013 report summarized 22 cases.¹²⁹

In 2012, the Chief Judge's Task Force on Commercial Litigation in the 21st Century published a report detailing recommended improvements to the New York business court system.¹³⁰ The task force addressed several issues facing the commercial courts. One recommendation was to increase the number of judges in the Court of Claims who sit specifically in the Commercial Division.¹³¹ The growing number of cases in the New York Business Court slowed down the efficiency once offered by the specialized system.¹³² A different option for easing the caseload by increasing the monetary threshold for cases heard in the Division to \$500,000 was also

¹²¹ *A Brief History*, NEW YORK STATE UNIFIED COURT SYSTEM (last updated April 1, 2014), <http://www.nycourts.gov/courts/comdiv/history.shtml>.

¹²² *Id.*

¹²³ Robert L. Haig, *Can New York's New Commercial Division Resolve Business Disputes as Well as Anyone?*, 13 TURO L. REV. 191, 204 (1997).

¹²⁴ Bach and Applebaum, *supra* note 29, at 154.

¹²⁵ *A Brief History*, NEW YORK STATE UNIFIED COURT SYSTEM (last updated April 1, 2014), <http://www.nycourts.gov/courts/comdiv/history.shtml>.

¹²⁶ *See generally*, Honorable Jonathan Lippman and Honorable A. Gail Prudenti, *A report on lading decisions issued by the Justices of the Commercial Division of the Supreme Court of the State of New York*, 16 THE COMMERCIAL DIVISION LAW REPORT 1 (2013), <http://www.nycourts.gov/courts/comdiv/lawreport/Vol16-No1/Vol%2016-1-all%20color2014.pdf>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *See generally*, *Report and Recommendations to the Chief Judge of the State of New York*, THE CHIEF JUDGE'S TASK FORCE ON COMMERCIAL LITIGATION IN THE 21ST CENTURY (June 2012), <https://www.nycourts.gov/courts/comdiv/PDFs/ChiefJudgesTaskForceOnCommercialLitigationInThe21st.pdf>.

¹³¹ *Id.* at 7.

¹³² *Id.* at 6.

recommended.¹³³ Subsequently, the monetary threshold was raised in January 2014.¹³⁴ Additionally, the Division judges requested more court clerks for support in the Commercial Division.¹³⁵ To increase accessibility of the Division to the public, the Task Force recommended creating a searchable database for all Commercial Division decisions.¹³⁶ The Task Force determined that a searchable database would allow litigants to better interact with Commercial Division case law.¹³⁷

The Task Force also recommended several procedural reforms to more efficiently serve litigants. The report emphasizes the need for judges to be assigned to Commercial Division cases before discovery begins.¹³⁸ An Administrative Order resolved this issue on July 1, 2014.¹³⁹ It was also urged that the Division adopt an expanded uniform rule for expert witness disclosures.¹⁴⁰ The Task Force found that cases would be litigated more smoothly if expert witnesses were disclosed earlier in the trial process.¹⁴¹ The court suggests a number of ways to improve courtroom efficiency, including conducting discovery conferences by telephone and staggering court appearance times.¹⁴² The report also notes that the use of more recent technologies is necessary for the expansion of the court.¹⁴³ Additionally, the report highlights the success of e-filing and the need to continue to incorporate more technological innovations into the Division.¹⁴⁴

The report also makes several suggestions for resolving more disputes prior to trial. The Task Force recommended a pilot program for mandatory mediation. The mandatory mediation pilot project was established by Administrative Order in June 2014, and was set to begin July 28, 2014.¹⁴⁵

¹³³ *Id.* at 8.

¹³⁴ *What's New*, NEW YORK STATE UNIFIED COURT SYSTEM (last updated April 20, 2015), <http://www.nycourts.gov/courts/comdiv/whatsnew.shtml>.

¹³⁵ *Report and Recommendations to the Chief Judge of the State of New York*, THE CHIEF JUDGE'S TASK FORCE ON COMMERCIAL LITIGATION IN THE 21ST CENTURY 1, 10 (June 2012) <https://www.nycourts.gov/courts/comdiv/PDFs/ChiefJudgesTaskForceOnCommercialLitigationInThe21st.pdf>.

¹³⁶ *Id.* at 11.

¹³⁷ *Id.* at 12.

¹³⁸ *Id.* at 14.

¹³⁹ ADMINISTRATIVE ORDER OF THE CHIEF ADMINISTRATIVE JUDGE OF THE COURTS (July 1, 2014), <http://www.nycourts.gov/courts/comdiv/NY/PDFs/AO-CD-RulesAmends73114.pdf>.

¹⁴⁰ *Report and Recommendations to the Chief Judge of the State of New York*, THE CHIEF JUDGE'S TASK FORCE ON COMMERCIAL LITIGATION IN THE 21ST CENTURY 1, 15 (June 2012) <https://www.nycourts.gov/courts/comdiv/PDFs/ChiefJudgesTaskForceOnCommercialLitigationInThe21st.pdf>.

¹⁴¹ *Id.*

¹⁴² *Id.* at 20.

¹⁴³ *Id.* at 22.

¹⁴⁴ *Id.*

¹⁴⁵ *What's New*, NEW YORK STATE UNIFIED COURT SYSTEM (last updated April 20, 2015), <http://www.nycourts.gov/courts/comdiv/whatsnew.shtml>.

Nevada

The Nevada business courts were initially established in two jurisdictions.¹⁴⁶ The business court for the Second Judicial District was established in November 2000, and the business court for the Eighth Judicial District became effective in January 2001.¹⁴⁷ The courts were established to efficiently and quickly dispose of complex commercial litigation and attract businesses to incorporate in Nevada.¹⁴⁸

The Nevada business court maintains no independent website. To find the business court docket, one must go to the Second or Eighth District's website and find judges that sit on the business court.¹⁴⁹ The lack of an independent website makes finding business court decisions incredibly difficult because they are either listed by the individual judge, or are grouped together with all other civil cases.¹⁵⁰ The lack of an independent website also makes finding the rules governing the business courts difficult because there is no single place to locate necessary resources.

In 2009, the two business courts were still informal, and debates were taking place concerning whether to establish formal business courts.¹⁵¹ Formal business courts would require a constitutional amendment in Nevada.¹⁵²

The judges taking on the business court docket were initially intended to take business court cases along with their regular docket.¹⁵³ However, the Nevada business courts quickly saw an influx of cases with attorneys and businesses eager to have expert judges adjudicate disputes quickly.¹⁵⁴ Counsel choose whether or not to be on the business court docket, and cases generally stay on the docket if one of the parties elects to have the case heard by a business court judge.¹⁵⁵

North Carolina

North Carolina's Business Court was established in 1995 in Greensboro.¹⁵⁶ In 2005, the court was expanded to Raleigh and Charlotte.¹⁵⁷ The business courts came after a recommendation

¹⁴⁶ Bach and Applebaum, *supra* note 29, at 184.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Department 9 Honorable Scott N. Freeman, SECOND JUDICIAL DISTRICT COURT STATE OF NEVADA WASHOE COUNTY, http://www.washoecourts.com/index.cfm?page=freeman&judge_id=D9.

¹⁵⁰ Rachel J. Anderson, *Researching Nevada Business Cases*, RACHEL ANDERSON'S LAW BLOG (Nov. 3, 2009), <http://rachelandersonsblog.blogspot.com/2009/11/researching-nevada-business-cases.html>.

¹⁵¹ John H. O. LaGatta, *Issue for Consideration by the Article Six Commidion: Is not the time to start the constitutional process for a business court?*, JOHN H.O. LAGATTA: PUBLIC POLICY, ECONOMIC DEVELOPMENT, ART, SCIENCE AND EDUCATION (2009), <http://www.johnholagatta.us/nevadabusinesscourt.html>.

¹⁵² *Id.*

¹⁵³ Bach and Applebaum, *supra* note 29, at 186.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 187.

¹⁵⁶ Bach and Applebaum, *supra* note 29, at 166.

that North Carolina take any necessary steps to “assure that North Carolina offers a legal environment which provides the flexibility and support to allow businesses to operate successfully in [North Carolina] and which will attract [businesses] to locate and incorporate in North Carolina.”¹⁵⁸ The Chief Justice of the North Carolina Supreme Court assigns complex issues of corporate and commercial law to a special superior court judge.¹⁵⁹

The Chief Justice assigns cases to specialized business court judges who oversee the entire case.¹⁶⁰ There is no dollar threshold to qualify as a complex business case, and parties do not need to relinquish their right to a jury trial.¹⁶¹ A key factor for assignment to the Business Court is “whether the outcome will have implications for business and industry beyond the conflicts of the parties in the litigation.”¹⁶² The court does have mandatory jurisdiction over some cases pursuant to NCGS § 7A-45.4.¹⁶³

Opinions of the court are posted on the court’s website,¹⁶⁴ and the public may access the court dockets online.¹⁶⁵ The Business Court also incorporates an e-filing system for the management of cases on its docket.¹⁶⁶ However, electronic filing is not mandatory in the Business Court.¹⁶⁷

The North Carolina Business Court established itself as a reliable place to litigate corporate and commercial disputes after its decision in the Wachovia/First Union/ SunTrust merger.¹⁶⁸ The court currently has three judges managing cases on the Business Court docket.¹⁶⁹

The rules governing the court mandate that attorneys actively participate in case management including filing reports, holding meetings and conferences, and discussing e-discovery issues.¹⁷⁰

¹⁵⁷ Kilpatrick Townsend, *Review and Analysis of the Decisions from 2013, and What to Expect in the Future*, 2014 NORTH CAROLINA BUSINESS COURT UPDATE 1, 3 (2014), http://www.kilpatricktownsend.com/en/Knowledge_Center/Events/All_Events/2014/03/~media/RAL%20NC%20Business%20Court%2032714.ashx.

¹⁵⁸ Carrie A. O’Brien, *The North Carolina Business Court: North Carolina’s Superior Court for Complex Business Cases*, 6 N.C. BANKING INST. 367, 375 n. 63 (2002).

¹⁵⁹ *About the Court*, NORTH CAROLINA BUSINESS COURT, <http://www.ncbusinesscourt.net/New/aboutcourt/>.

¹⁶⁰ Bach and Applebaum, *supra* note 29, at 167.

¹⁶¹ *Id.*

¹⁶² *Id.* at 168.

¹⁶³ Townsend, *supra* note 157, at 8.

¹⁶⁴ *North Carolina Business Court Public Access Portal*, NORTH CAROLINA BUSINESS COURT, <http://www.ncbusinesscourt.net/TCDDotNetPublic/>.

¹⁶⁵ *Court Opinions*, NORTH CAROLINA BUSINESS COURT, <http://www.ncbusinesscourt.net/New/opinions/>.

¹⁶⁶ *Electronic Filing Document Preparation*, NORTH CAROLINA BUSINESS COURT, <http://www.ncbusinesscourt.net/FAQ/document%20Preparation.htm>

¹⁶⁷ *The NC Business Court Frequently Asked Questions*, NORTH CAROLINA BUSINESS COURT, http://www.ncbusinesscourt.net/FAQ/business_court_frequently_asked_.htm.

¹⁶⁸ Bach and Applebaum, *supra* note 29, at 169.

¹⁶⁹ *North Carolina Business Court Public Access Portal*, NORTH CAROLINA BUSINESS COURT, <http://www.ncbusinesscourt.net/TCDDotNetPublic/>.

¹⁷⁰ Honorable Ben F. Tennille and Corinne B. Jones, *Developments at the North Carolina Business Court*, FUTURE TRENDS IN STATE COURTS 90, 91 (2010).

Attorneys must have a case management meeting within thirty days of filing a case.¹⁷¹ Additionally, “meet and confer” requirements state that the court will not decide any discovery motions or objections unless there was a conference between the parties during which any differences could not be resolved after diligent attempts.¹⁷²

In 2006, Elon University Law School opened the first technologically sophisticated court room for the North Carolina Business Court.¹⁷³ Elon and the court established one of the most technologically advanced court rooms in the country.¹⁷⁴ The Raleigh division of the court opened up its first court room on Campbell University School of Law’s campus in 2009. Attorneys have access to a wide range of media through a touch screen monitor.¹⁷⁵ The judge controls a second touch screen monitor at the bench that allows him or her to control which exhibits are visible at trial.¹⁷⁶

The North Carolina Business Court posts recent opinions on the home page of its website. On the home page are 47 cases from 2014.¹⁷⁷ In 2012, the court had 247 pending cases, closed 128 cases, and was assigned 119 new cases.¹⁷⁸ Fifty-one opinions were issued in 2013.¹⁷⁹ Further, in 2013, the Court of Appeals issued 8 opinions of appealed business court cases.¹⁸⁰

Ohio

Permanent rules to establish and develop a commercial docket in Ohio were adopted by the Ohio Supreme Court following the adoption of temporary rules.¹⁸¹ Commercial dockets were set up in Cuyahoga, Franklin, Hamilton, and Lucas counties following the temporary rules for commercial dockets in 2008.¹⁸² The Task Force on Commercial Dockets recommended permanent rules for the commercial dockets in 2012, finding that the program benefitted the state with accelerated decisions and expert judges.¹⁸³

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at 93.

¹⁷⁴ *Id.* at 92.

¹⁷⁵ *Id.* at 93.

¹⁷⁶ *Id.* at 92.

¹⁷⁷ NORTH CAROLINA BUSINESS COURT, <http://www.ncbusinesscourt.net>.

¹⁷⁸ Townsend, *supra*, note 157 at 20.

¹⁷⁹ *Id.* at 30.

¹⁸⁰ *Id.* at 44.

¹⁸¹ *Supreme Court adopts permanent commercial docket rules*, OHIO STATE BAR ASSOCIATION (Apr. 2, 2013), <https://www.ohiobar.org/NewsAndPublications/News/OSBANews/Pages/Supreme-Court-adopts-permanent-commercial-dockets-rules.aspx>.

¹⁸² *Id.*

¹⁸³ *Id.*

The commercial dockets were intended to promote efficiency and predictability in complex business cases.¹⁸⁴ After the pilot program, Cuyahoga, Lucas, and Hamilton counties voted to extend their commercial dockets.¹⁸⁵ Attorneys in Cuyahoga County found the commercial docket to be an asset to the business community and were impressed by the efficiency.¹⁸⁶ The two pilot judges were able to develop expertise to properly adjudicate complex business matters, making attorneys generally happy about the specialized docket.¹⁸⁷

The arguments for establishing specialized commercial dockets included observations that business litigation is postponed by criminal trials because of the defendant's right to a speedy trial and the need to develop a consistent body of law in commercial litigation.¹⁸⁸ Proponents of the dockets hoped that the complex cases would move through courts more quickly and ease the backlog of cases.¹⁸⁹ Additionally, it was believed that improving the expertise and efficiency in commercial cases would attract businesses to incorporate in Ohio.¹⁹⁰

Opponents to the commercial docket pointed out that approximately 600 cases qualified for the commercial docket in 2007.¹⁹¹ Opponents also worried that cases more fit for general dockets would begin migrating to the commercial docket.¹⁹² The jurisdiction must remain sufficiently narrow so that only business disputes are heard through the specialized dockets.¹⁹³

Despite its initial success and popularity amongst attorneys, the Cuyahoga County Common Pleas Court General Division voted to disband the court on January 21, 2015.¹⁹⁴ Cuyahoga County will join Franklin County, which disbanded its commercial docket after the initial pilot period.¹⁹⁵ The decision to disband the commercial docket in Cuyahoga County came after the chairman of the Supreme Court's Commercial Docket Subcommittee found that presiding Judge

¹⁸⁴ Richard L. Renck and Carmen H. Thomas, *Recent Developments in Business Commercial Courts in the United States and Abroad*, BUSINESS LAW TODAY (May 2014), http://www.americanbar.org/publications/blt/2014/05/01_renck.html.

¹⁸⁵ *Id.*

¹⁸⁶ *Cuyahoga County Extends Business Court*, POMERANTZ & CROSBY CO., L.P.A. (2015), <http://www.pomerantzandcrosby.com/Articles/Cuyahoga-County-Extends-Business-Court.shtml>.

¹⁸⁷ *Id.*

¹⁸⁸ Randy Roguski, *New business court aims to streamline disputes*, cleveland.com (Sept. 11, 2008), http://blog.cleveland.com/business/2008/09/_cuyahoga_county_hopes_to.html.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Jeremy Nobile, *Litigators are uniting to dispute court's elimination of commercial docket*, CRAIN'S CLEVELAND BUSINESS (Feb. 1, 2015), <http://www.crainscleveland.com/article/20150201/SUB1/302019970/litigators-are-uniting-to-dispute-courts-elimination-of-commercial>.

¹⁹⁵ Richard L. Renck and Carmen H. Thomas, *Recent Developments in Business Commercial Courts in the United States and Abroad*, BUSINESS LAW TODAY (May 2014), http://www.americanbar.org/publications/blt/2014/05/01_renck.html.

Cassandra Collier-Williams was unqualified to hear specialized and complex commercial cases.¹⁹⁶

In Cuyahoga County, 3,325 commercial cases were filed in the specialized docket between March 2009 and August 2014.¹⁹⁷ Of those, 2,966 were resolved or dismissed, averaging 50 cases filed and 45 cases resolved a month.¹⁹⁸

Supporters of disbanding the docket in Cuyahoga County believe business litigation should not receive priority over other cases and that the limited number of judges makes it easier for attorneys to persuade judges to the attorney's way of thinking.¹⁹⁹

Attorneys in Cleveland and other parts of Cuyahoga County are upset with the decision to disband the docket.²⁰⁰ Law firms would encourage companies to file cases specifically in Cuyahoga County in order to utilize the commercial docket.²⁰¹ And although there are no precise numbers, many believe the commercial docket was one of many reasons entities considered operating in Cuyahoga County.²⁰²

Pennsylvania

The Pennsylvania Commerce Case Management Program ("Commerce Court") began in 2000.²⁰³ The Commerce Court began as a program within the trial division of the Philadelphia Court of Common Pleas to handle complex commercial litigation and disputes over \$50,000 or more.²⁰⁴ In 2010, the program had received admiration for resolving business disputes efficient and predictable.²⁰⁵ The Commerce Court helped relieve an overburdened court system with over 28,000 civil cases backlogged.²⁰⁶

The program assigned a single judge to a complex commercial litigation case from the beginning and opinions were made available online.²⁰⁷ All opinions of the Commerce Court are posted on the court's website.²⁰⁸ The Third Circuit and lower federal courts have followed opinions of the court interpreting section 7.01(d) of the ALI Principles.²⁰⁹ Additionally, several other

¹⁹⁶ Nobile, *supra* note 194.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Kali Wyrosdic, *Commerce Court, 10 Years Later*, PHILADELPHIA BUSINESS JOURNAL (Dec. 22, 2010), available at <http://www.bizjournals.com/philadelphia/print-edition/2010/12/17/commerce-court-10-years-later.html?page=all>.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ Lee Appelbaum, *The Commerce Court's First Decade*, THE PHILADELPHIA LAWYER 20, 23 (2009).

²⁰⁹ *Id.*

Commerce Court cases have added useful explanations and interpretations to otherwise overly theoretical legal doctrines.²¹⁰

The judges assigned to the Commerce Court cases each schedule approximately 200 cases a year, but over half of those cases settle before trial due to mediation and other dispute resolution measures.²¹¹ Many business-to-business cases are subject to the Philadelphia Court System's mandatory arbitration program.²¹² Those not subject to arbitration are assigned to the Commerce Court.²¹³

The program has shown an increase of business cases filed in Philadelphia, increasing from 397 cases in 2000 to 685 cases in 2009.²¹⁴ The increase in cases indicates that litigants are more comfortable and willing to bring cases to the Commerce Court.²¹⁵ Confidence in the court is important because Commerce Court cases cannot be appealed.²¹⁶

Like most other business courts, litigants in Commerce Court must have a case management conference three months after the case is filed.²¹⁷ At the case management conference, assignment and scheduling are discussed and the case is assigned to a Case Management Track.²¹⁸ Mandatory settlement conferences are held after discovery.²¹⁹ Attorneys generally perceive the Philadelphia program as an efficient and positive system that is regarded as one of the go-to court for complex commercial litigation.²²⁰

South Carolina

The Supreme Court of South Carolina established the South Carolina Business Court pilot program in September 2007.²²¹ The court was established for a two-year pilot program.²²² The

²¹⁰ *Id.*

²¹¹ Kali Wyrosdic, *Commerce Court, 10 Years Later*, PHILADELPHIA BUSINESS JOURNAL (Dec. 22, 2010), available at <http://www.bizjournals.com/philadelphia/print-edition/2010/12/17/commerce-court-10-years-later.html?page=all>.

²¹² *Commerce Case Management Program*, THE PHILADELPHIA COURTS FIRST JUDICIAL DISTRICT (2015), <http://www.courts.phila.gov/common-pleas/trial/civil/units/commerce-program.asp>.

²¹³ *Id.*

²¹⁴ Wyrosdic, *supra* note 211.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Commerce Case Management Program*, THE PHILADELPHIA COURTS FIRST JUDICIAL DISTRICT (2015), <http://www.courts.phila.gov/common-pleas/trial/civil/units/commerce-program.asp>.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Applebaum, *supra* note 208, at 21.

²²¹ Charles Epps Ipock, *The South Carolina Business Court: What It is and Why It's Used*, BUSINESS LITIGATION BLOG (Nov. 12, 2014), <http://www.turnerpadget.com/south-carolina-business-litigation-blog/the-south-carolina-business-court-what-it-is-and-why-its-used/>.

²²² *See generally* REPORT ON SOUTH CAROLINA'S BUSINESS COURT PILOT PROGRAM 1 (Sept. 8, 2009), <https://apps.americanbar.org/buslaw/committees/CL150011pub/materials/reports/SouthCarolinaBusinessCourtReport2009.pdf>.

program has since been extended in 2009 and 2011.²²³ In 2014, the program was both expanded and made applicable in all South Carolinian counties.²²⁴

In order to increase transparency, all orders from the court are released online.²²⁵ In addition, judges must write opinions for summary judgment and motion to dismiss decisions.²²⁶

During the initial pilot program between 2007 and 2009, 46 cases were filed in the business courts.²²⁷ Overall, both attorneys and clients were pleased with the first two years of the business court pilot program.²²⁸ Similarly, judges found the program to be effective and an overall success.²²⁹ However, new technologies were not mandated for use in the courts and that aspect showed little, if any, improvement.²³⁰

To get into the business court, a party can make a motion even if not all parties agree to be subject to the court.²³¹ The court hears a wide range of business-to-business and individual-to-business cases.²³²

At the commencement of an action in the business court, a single judge is assigned and follows the case until its resolution.²³³ This practice lends a special level of consistency to the cases in the business court.²³⁴ Additionally, the judges hearing cases for the business court develop a high level of specialization, making decisions more consistent and providing better rationalized rulings.²³⁵

Summary of Proposed Business Courts

Arizona

On February 18, 2015, the Arizona Supreme Court authorized the establishment of a commercial court program in Maricopa County.²³⁶ The Business Court Advisory Committee established in

²²³ Ipock, *supra* note 221.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ REPORT ON SOUTH CAROLINA'S BUSINESS COURT PILOT PROGRAM 1, 3 (Sept. 8, 2009), <https://apps.americanbar.org/buslaw/committees/CL150011pub/materials/reports/SouthCarolinaBusinessCourtReport2009.pdf>.

²²⁷ *Id.* at 6.

²²⁸ *Id.* at 7.

²²⁹ *Id.* at 13.

²³⁰ *Id.* at 15.

²³¹ Carmen Harper Thomas, *Reopen for Business: South Carolina's Business Court Expands Statewide*, SC LAWYER, 37, 38 (2015).

²³² *Id.* at 39.

²³³ Ipock, *supra* note 221.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ In the matter of Authorizing a Commercial Court Pilot Program in the Superior Court of Maricopa County, No. 2015-15 (2015), <http://www.azcourts.gov/Portals/22/admorder/Orders15/2015-15F.pdf>.

2014 advised that a commercial court pilot program be established for three years in Maricopa County, after which, the Supreme Court will determine whether or not to adopt a commercial court permanently.²³⁷ The court will begin operation in July 2015 and continue through June 2018.²³⁸

The experimental rule sets out cases that may be heard in the commercial court with no amount in controversy requirement, cases that must have an amount in controversy above \$50,000, and ineligible cases.²³⁹ The rule also includes the procedures for assigning cases to the commercial court and reconsideration of assignments to the court.²⁴⁰

Arizona already has a special arbitration process for cases below a certain dollar amount, and the Supreme Court has adopted federal rules to govern complex cases.²⁴¹ However, for cases above a certain dollar amount, but not complex enough to be governed by the federal rules, the process of general civil courts leads to delays and increased costs of litigation.²⁴² In approving the 16-member advisory committee, Supreme Court Chief Justice Rebecca White Berch stated that business cases often drag on, become increasingly expensive, and monopolize the court system's resources.²⁴³

Indiana

In early January 2015, Chief Justice Loretta Rush announced that the judiciary is working to develop a business court model specialized in handling complex commercial litigation cases.²⁴⁴ She also announced that Indiana would be introducing e-filing in 2015.²⁴⁵

The purpose of introducing a specialized business court and e-filing is to encourage entities to do business in Indiana.²⁴⁶ Chief Justice Rush hopes the move to establish business courts and e-

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Arizona Court May Create Special Court for Business Disputes*, HORNE SLATON, <http://www.sslawaz.com/Articles/Arizona-may-create-special-court-for-business-disputes.shtml>.

²⁴² *Id.*

²⁴³ Associated Press, *Arizona panel to study idea for business courts*, ABC 15 (May 13, 2014), available at <http://www.abc15.com/news/state/arizona-panel-to-study-idea-for-business-courts>.

²⁴⁴ Dave Stafford, *Rush Proposes Business Court, Makes Pitch for e-Filing Funding*, THE INDIANA LAWYER (Jan. 14, 2015), available at <http://www.theindianalawyer.com/rush-proposes-business-court-makes-pitch-for-e-filing-funding/PARAMS/article/36134>.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

filing will modernize the Indiana court system.²⁴⁷ However, little information has been released regarding the potential business courts at this time.²⁴⁸

Texas

Texas boasts a robust specialized court system. It has six types of specialized trial courts, fourteen separate courts of appeal, and two courts of last resort.²⁴⁹ House Bill 1603 filed on February 18, 2015 seeks to create a Chancery Court in Texas for the purpose of adjudicating complex business litigation cases.²⁵⁰ The Chancery Court of Texas would serve as the seventh specialized trial court and the Chancery Court of Appeals would be the fifteenth intermediate appellate court serving a specialized field.²⁵¹

Representative Jason Villalba (R – Houston) who introduced the bill believes the specialized Chancery Court of Texas will incentivize corporations to incorporate in the state.²⁵² Texas already fosters a business-friendly environment and hopes to further improve the culture for businesses.²⁵³ Despite garnering significant support, some opponents express concerns that the jurisdiction will not be limited enough and the Chancery Court would take cases more suited for the district courts out of the hands of the judiciary.²⁵⁴

Villalba acknowledges that the district courts are capable of handling complex business litigation matters, but are often slow and clogged up by other cases.²⁵⁵ As a partner at Haynes and Boone LLP, Villalba says he finds most businesses operate in Texas because of its business-friendly atmosphere, but they incorporate in Delaware to take advantage of the expertise of the Delaware Chancery Court.²⁵⁶ Section 24A.051 lists the limited matters that may be heard in the Chancery Court.²⁵⁷ The section also lists two types of cases the Chancery Court may not oversee: a civil

²⁴⁷ Dan Carden, *Rush ready to lead Indiana courts into future*, NWI.COM (Jan. 14, 2015), available at http://www.nwitimes.com/news/local/govt-and-politics/rush-ready-to-lead-indiana-courts-into-future/article_44f4a7a4-8073-5f19-9712-a7bbef7076db.html.

²⁴⁸ Loretta H. Rush, Chief Justice, Indiana Supreme Court, *Indiana Courts: Working to Fulfill the Promise of Justice* (Jan. 14, 2015), available at <http://www.in.gov/judiciary/supreme/2502.htm>.

²⁴⁹ Bill Raferty, *Adding to Texas' unique court structure and organization: brand new Chancery trial and appellate court system introduced; Governor would select judges*, *Gavel to Gavel* (Feb. 20, 2015), available at <http://gaveltogavel.us/2015/02/20/adding-to-texas-unique-court-structure-and-organization-brand-new-chancery-trial-and-appellate-court-system-introduced-governor-would-select-judges/>.

²⁵⁰ H.B. 1603, 84th Leg., Reg. Sess., (Tx. 2015).

²⁵¹ Raferty, *supra*, note 249.

²⁵² Jim Forsyth, *Bill Would Create New Level of Courts in Texas*, 1200 NEWS RADIO WAOI (Feb. 19, 2015), available at <http://www.woai.com/articles/woai-local-news-sponsored-by-five-119078/bill-would-create-new-level-of-13267368/>.

²⁵³ Paul DeBendetto, *Texas Chancery Courts Bill Would Help Businesses*, *Pol Says*, LAW 360 (Feb. 24, 2015), available at <http://www.law360.com/articles/624546/texas-chancery-courts-bill-would-help-businesses-pol-says>.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ H.B. 1603, 84th Leg., Reg. Sess., (Tx. 2015).

action brought by or against a governmental entity; and a civil action in which monetary damages are claimed for personal injury or death.²⁵⁸

To ensure the expertise of the judges presiding over the Chancery Court of Texas, the judges must have practiced complex civil business litigation or complex business transactions for a minimum of ten years.²⁵⁹ A case filed in the district court can be transferred to the Chancery Court, but the Chancery Court has the power to remand the case if it falls outside the court's jurisdiction.²⁶⁰ The Governor with the advice of the State Senate will appoint seven judges to the court.²⁶¹ Pursuant to section 24A.064, Chancery Court judges will remain in their county seats and may hold the Chancery Court in any jurisdiction convenient for the litigation.²⁶²

The court may use "the most advanced technology feasible" to facilitate the expedient adjudication of a complex business litigation matter.²⁶³ Use of technology includes appearances before the court through use of Internet-based devices rather than in-person appearances.²⁶⁴

Subchapter C of HB 1063 outlines the establishment of a specialized court of appeals for the Chancery Court of Texas.²⁶⁵ The appellate court is also made up of seven judges appointed by the governor.²⁶⁶ Additionally, the justices serving in the appellate court must meet the same requirements as the judges serving at trial level.

Summary of Practitioner Interviews

As part of this review of specialized business court, we identified and spoke with several individuals concerning their experiences in business courts in various jurisdictions.²⁶⁷ Unfortunately, many individuals contacted did not participate in the interviews; consequently, the interviews proceeded primarily as a means to supplement the information uncovered in the literature and on the dockets. Although the pool of participants was small, the information summarized below is very useful.²⁶⁸

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ David Yates, *Texas House bill aims to create chancery court for business litigation*, SETEXAS RECORD (Feb. 26, 2015), available at <http://setexasrecord.com/news/301906-texas-house-bill-aims-create-chancery-court-business-litigation>.

²⁶¹ H.B. 1603, 84th Leg., Reg. Sess., (Tx. 2015).

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ We identified twenty individuals; only six were willing or available to participate in an interview. The six participants included both practicing lawyers and judges.

²⁶⁸ Each of the participants provided valuable insights based on their own experiences and their knowledge of specialized business courts generally.

Two Key Themes: Judges and Structure

A. Judges (Sophistication, Exclusivity, Continuity)

All participants agreed that much of the success of business courts is tied closely to the judges presiding over the cases. Both the identification of judges and the procedure for assigning cases is relevant.

The quality of the judges assigned to the court is vastly important. In most jurisdiction judges in the specialized court systems listen exclusively to business and commercial cases. They are chosen based on business acumen and sophistication, which, in conjunction with their full immersion in the specialized court system, makes the judges extremely savvy and competent to rule on complex commercial fact patterns. Many of the practitioners emphasized that this type of consistency regarding judges hearing the cases as well as their business sophistication has created trust in the system, which they cite as a crucial element to the success of a specialized court system. One participant also opined that an appointment process (as opposed to other selection methods) is critical to ensure sophistication and willingness of the judges on the business court.

Many of the practitioners felt strongly that one of the most important characteristics of a successful specialized business court system is to have a case assigned to the same judge from beginning to end. Practitioners identified delay, costs, and frustrations that occur when a case is passed through several judges from the time it is originally filed to the time a settlement is reached or a decision is made. Some participants, including judges, also underscored that consistency in the presiding judge fosters familiarity with the parties and the facts and facilitates an effective and efficient result.

B. Model for Case Acceptance on the Business Court Specialized Docket/Program

One participant set out two main options for structuring the selection of cases for the business program or court docket, with a recommendation that matched most of the other practitioners. The first option was described as a formulaic classification, where a list of case types that go into that system are statutorily mandated.²⁶⁹ Another participant noted the efficiency in having some category of cases that automatically go to the business court (e.g., cases involving mergers and acquisitions), but warned that a safety valve is still necessary to screen inappropriate cases and include cases referred by judges. Most practitioners agreed that this first model for case selection, involving automatically accepted categories, produces predictability that allows practitioners to anticipate and prepare cases for the specialized system. This kind of anticipatory trust was described by all of the practitioners as a highly important element of an efficient specialized court system.

The second, arguably less optimal, model described is a subjective, complexity-based division. Under this model, cases are evaluated on a case-by-case basis and must involve “complex” commercial or technology issues, typically possessing five or six different characteristics

²⁶⁹ Participants specifically noted North Carolina’s mandatory acceptance categories, and Pennsylvania’s “black and white” test for mandatory groupings of cases that automatically go to the business docket.

identified to gauge complexity. This selection method is very subjective and less transparent, resulting in less consistency or trust for the attorneys.

Interview Questions and Selected Responses

Each interview developed organically, and the duration of the calls varied from 30 to 60 minutes. Nevertheless, each participant was asked the questions attached at Appendix A. Representative responses from certain of these questions also are set forth below.²⁷⁰

1) Are there any specific driving forces that have been particularly influential in the development of the business courts?

“Great dissatisfaction by the business community with the court system that culminated in the 1990s that led to the general belief that New York companies would do anything to stay out of state courts (ADR, removal to fed court, etc.).”

“Lack of predictability with decisions, process-oriented rather than business like and no cost of efficiency.”

“The need for a more efficient system where the judges were more business/commercial savvy and the desire to create more consistent case-law for business/commercial litigation.”

2) What aspects of specialized business courts make them particularly effective?

“Critical that cases get assigned to one judge and stay with one judge through the end.”

“Specialization is crucial because results become more predictable. The most important characteristic is to have a case assigned to the same judge from beginning to end.”

“Doesn’t necessarily agree that a business court judge needs a background in business.... It is important to be immersed in it and willing to become fluent/sophisticated which is impeded by the rotational docket.”

“There are 21 states that have (pure business courts) 3-4 others with (complex litigation-tort and business- combined).”

“In sum, I would say the two most important aspects are the consistency of the judges, retaining cases from beginning to end, and the sophistication of the judges hearing the cases to make consistent and equitable rulings.”

“The judges are crucial—cautionary tale—look at Ohio because they had a commercial court that appointed a judge that the bar didn’t think was worthy and system imploded.”

²⁷⁰ Practitioners interviewed practiced in a number of jurisdictions, including New Jersey, New York, North Carolina, Pennsylvania. Maryland practitioners and judges were specifically excluded, as they are subject to a different study project.

3) Is there anything you would like to change or see improved regarding the business court's operation? (Caveat here is that most of the practitioners were hesitant to criticize their own jurisdiction's system.)

“In 2012 it was determined that the court was becoming a victim of its own success, detrimental to the pro-active hands-on case management, because of too large case loads.” [Resulting changes: raised minimum suit controversy, limited number of depositions and interrogatories, required comprehensive case-management and scheduling order.]

“Downside of mandatory case acceptance leads to too many cases and overwhelmed judges/court systems and as a result you lose out on case management systems/conferences early in the case between opposing counsel and judges.”

4) How has implementation and use of new technologies improved the business court's operation?

“Electronic filings (particularly in M&A litigation) make the system more efficient because within seconds of electronic filing everyone can see documents...can save days or weeks by shaving days off each filing and allows judges to be more efficient by not being confined to the office.”

“Cost savings, because everything is electronically stored rather than using warehouses.”

“Using the court's website to see the court's calendar and the allocation of time has increased efficiency as has electronic filing.”

“Mainly electronic discovering and e-filing systems, videoconferencing....”

“Electronic filing and storage has greatly increased the efficiency in case management from a judge's perspective.”

5) If a business were starting a business or commercial specialized court, what recommendations or advice would you offer?

“Full-time judges, commit to staying there (ten-year commitment) for body of work and expertise.”

“Most difficult question is determining which cases belong in docket.”

“Specialization is crucial because results become more predictable. The most important characteristic is to have a case assigned to the same judge from beginning to end.”

“Selection of judges is crucial. They need to be sophisticated enough to produce equitable and consistent decisions and willing to commit the time to the business docket that is necessary to ensure that consistent case law (and business sophistication) can be developed.”

6) If you know, approximately how many cases are filed in, or assigned to your business courts?

“For calendar year 2013 [in North Carolina], 147 cases were closed in 2013; 134 new cases were assigned.”

“Varying between 500-600 cases per year divided by three judges [in Pennsylvania].”

“In ten counties [in New York], approximately 5,000 cases per year.”

“Senior judge hears more complex cases [in Pennsylvania], ... approximately 200 on docket per year.”

Appendix A

General Questions²⁷¹

What stands out to you as a driving force behind, or particularly influential in, how the business courts [in your jurisdiction] have developed?

What aspects of your business courts make them particularly effective? [OR What aspects of various jurisdictions' business courts make them particularly effective?]

How has the implementation and use of new technologies improved the operations of your business courts? [OR How do you believe further implementation of advanced technologies could improve the operations of your business courts?]

What would you change or like to see improved in how your business courts operate? [OR What weaknesses or potential improvements do you see in various jurisdictions' business courts?]

What recent changes has your jurisdiction made to rules or processes applicable to the business courts and why were these viewed as necessary or helpful? [OR What recent changes have jurisdictions made to rules or processes applicable to the business courts and why were these viewed as necessary or helpful?]

What trends are you seeing in business and commercial courts in [your or] various jurisdictions?

If a jurisdiction were starting a business or commercial court, what recommendations or advice would you offer?

If you know, approximately how many cases are filed in or assigned to your business courts?

²⁷¹ Participants also were asked jurisdiction-specific questions in many cases.