

**Session 3:**  
**The Case for Creating a Special Complex  
Commercial Litigation Court in Missouri**

**Panel Members:**

**Hon. Mary R. Russell**, *Chief Justice, Missouri Supreme Court*

**Jan Robey Alonzo**, *Senior Vice President & General Counsel,*

*UniGroup Inc.*

**Richard Sher**, *Partner, Sher Corwin Winters LLC*

**Moderator:**

**Lucy T. Unger**, *Partner, Williams Venker & Sanders LLC*

10:10 am - 11:00 am

## Making the Case for Establishing A Special Court in Missouri for Complex Litigation

May 15, 2014

**Panelists:** Justice Mary Russell  
Chief Justice of the Missouri Supreme Court

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Senior Vice President & General Counsel  
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In 1996, the ACCA urged states to “consider wherever appropriate the advantages of specialized procedures for resolution of business disputes. ACCA believes that the most effective way to realize such advantages is for states to create business courts or specialized court divisions or parts dedicated to business litigation.”

Nearly half of the country’s states now operate a specialized court for complex commercial cases.<sup>1</sup> Should Missouri do the same? If so, what should such a court do to maximize its effectiveness and efficiency? Should the goals of Missouri’s special court for complex litigation have the same goals as those of other states? And how can the proponents of establishing such a specialized court gain popular support for it?

The 200-year-old Delaware Chancery Court has traditionally been the nation’s best known business court. The Chancery Court has no jurisdiction over criminal and tort matters, so it is able to act quickly in important corporate governance matters. The business of incorporation is obviously big business for Delaware, and its courts have responded by developing the expertise their constituents want. In similar measure, New York inaugurated a new division of its State Supreme Court dedicated to commercial litigation in 1995. In the first year of its operations, 5024 new cases were filed in the Commercial Division in New York County alone.

The impetus for the creation of these courts has been a desire for more efficient handling of complex litigation. This desire has only grown in immediacy with the proliferation of e-discovery and MDLs. The goals are to shorten case disposition time, improve judicial management of dockets, and improve both the quality and consistency of judicial decision-making through repeated exposure to business issues. In turn, such a court system is designed to improve the state’s reputation for being “business-friendly” such that more businesses will choose to move or establish themselves here. By gearing themselves towards faster dispute resolution, these courts are also designed to provide a less expensive alternative to traditional state court dockets.<sup>2</sup> In turn, they should be able to remove such time-consuming complex cases from the general docket, thereby allowing judges in general circuits to move their own dockets with greater alacrity.

The volume of cases handled by these complex litigation courts in the states that have established them is significant. They have diverted cases -- including class actions -- from federal courts. They handle business matters plus a broader array of disputes involving novel or complicated issues requiring more intensive judicial oversight and management. Cases susceptible to being accepted by these courts are evaluated on a number of factors, including:

- Number of parties;
- Number of expert witnesses;
- Complexity and/or novelty of subject matter;
- Number of documents in discovery/required e-discovery protocol parameters;
- Anticipated trial length;
- Amount in controversy;
- The need of the community that will be impacted by the dispute resolution process for a quick resolution;
- Jury demand; and
- Number and nature of pretrial motions expected to be filed that might dispose of the matter.

Though varying in detail, the jurisdictional requirements of other specialized state courts generally include a minimum amount in controversy of \$150,000, at least one business litigant, and some additional indication of legal or factual intricacy. The hallmark of such a court system is that it provides for a single judge to preside over the matter from Day #1. This helps to maximize consistency as well as efficiency in that the parties tend to have a better understanding of what the judge expects of them at each stage of the process. Specific case management procedures are meant to supplement and complement state and local court rules. Scheduling orders are strictly enforced to provide a uniform and streamlined approach to case development. The court's judicial website is often equipped with a standing or projected case management order, and cases tend to proceed to trial within a year of filing.

In addition, these courts often provide quick and maximum transparency by providing written decisions on state judicial websites upon final disposition of a case. Indeed, these court often likewise act as leaders in requiring all pleadings to be e-filed, all exhibits and jury instructions to be submitted electronically, and all discovery to account for e-discovery proportionality concerns. In turn, these courts demand that practitioners have a member on their case team that is technologically savvy and informed.

The judges assigned to these specialized courts are of the utmost importance. Criteria for their inclusion often include their educational background, their willingness to submit to additional, specialized training, their willingness to serve for a good number of years (as opposed to 1-2 years), their experience with complex cases, and their desire to remain in service to this specialized court as long as they are needed. There will presumably be a presiding judge among them that will answer to the Missouri Court administration just as other presiding judges do and who will decide once a new judge is needed to replace a sitting judge or to add a new jurist to the specialized court.

The main concerns weighing in opposition to creating another specialized court include the potential for undue insularity, decreased accountability, the potential inferiority of specialist judges compared to their generalist peers, the cost of creating and supporting this new court, and the cumbersome nature of establishing and enforcing jurisdictional boundaries.<sup>3</sup> Yet almost none of the complex court systems in other states have been dismantled. To the contrary, the reports of these other states indicate that these new courts move complex cases to resolution more quickly. Perhaps more importantly, they tend to force cases to resolve without requiring them to go to trial. In California, only a fraction of the number of complex cases that used to go to trial actually went to trial in the complex litigation court. Other states have seen similar results. Evaluators point to the court's increased number of case management conferences, motion hearings, settlement conferences, and mandatory ADR as tools to encourage more interim dispositions.

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<sup>1</sup>For a thorough history of the creation of these courts, *see*, Mitchell L. Bach and Lee Applebaum, "A History of the Creation and Jurisdiction of Business Courts in the Last Decade," *Business Lawyer* (Nov. 2004).

<sup>2</sup>*See*, Diane P. Wood, "Generalist Judges in a Specialized World," 50 *SMULR* 1755 (July-August 1997).

<sup>3</sup>*See*, Chad M. Oldfather, "Judging, Expertise, and the Rule of Law," 89 *WAULR* 847, 853 (2012); and Ember Reichgott Junge, "Business Courts: Efficient Justice or Two-Tiered Elitism?" 24 *WMLR* 315 (1998).