



Report from the Business Court

by: Chancellor Ellen Hobbs Lyle

Under the leadership of Chief Justice Sharon Lee, on March 16, 2015, the Supreme Court entered an order establishing the Tennessee Business Court Pilot Project in Davidson County. Based upon eligibility criteria stated in the Supreme Court order, business cases, at their option, can voluntarily seek transfer by the Chief Justice to the Business Court. The purpose of the Pilot Project is to gain data and information about the need, demand for, types of cases and relief, monetary amounts, practices and procedures, and disposition time of Tennessee business cases to inform decisions about the establishment of future Tennessee Business Courts. Presently, twenty-six states have specialized courts or commercial dockets dedicated to business cases.

Davidson County Chancery Court Part III Chancellor, Ellen Hobbs Lyle, has been assigned as the trial judge of the Pilot Project Business Court. From the opening of the Business Court on May 1, 2015, to the publication date of this issue:

- 25 cases have requested transfer to the Business Court
- 23 cases have been transferred by the Chief Justice
- 2 of 23 cases are in productive settlement discussions
- 2 of 23 cases have final orders
- 6 of 23 cases have sought expedited discovery/relief
- Of 23 cases, there are a total of 43 business entities as parties

The attorneys in the two cases that have final orders are ac-

credited for those dispositions. Those two cases resolved with no involvement by the Business Court. Likewise, counsel for the two cases in active settlement discussions and the twenty-one cases that are working through litigation receive the lion's share of credit for the productive management and efficiencies being achieved.

For example, in one case, upon having a preliminary ruling of law from the Court, counsel, themselves, conducted a settlement session with the parties, which resulted in resolution of most of the issues. Subsequent formal mediation narrowed down claims to just one unsettled matter. The quality of the work of counsel has been and continues to be high and professional. Briefs on litigated cases have been to the point, selective with case law, and analytical and explicit about the analogies.

Key to the start-up of the Business Court has been **Director Deborah Tate** of the Administrative Office of the Courts, and the experience and work ethic of the Business Court Staff: **Justin Seamon** (Staff Attorney), **Christy Smith** (Docket Control), and **Phyllis Hobson** (Judicial Assistant and Case Management).

Although it is difficult to generalize, many of the cases arise out of or relate to contractual provisions susceptible to differing meanings either on the face of the text or when applied to the circumstances of the dispute, with pendent or resulting claims of breach of fiduciary duty, fraud, interference with contract, etc. Also predominant are corporate, LLC governance disputes, and

issues regarding noncompete agreements. Additionally, many of the cases seek immediate court action in the form of expedited discovery, injunctive relief, and accounting.

The Business Court and counsel have been collaborating to develop efficient practices such as:

- Complaint reviewed immediately upon request for designation to the Business Court;
- Pre-discovery dispositive motions;
- Limited issue expedited discovery; and
- Upon Answer being filed, a court conference is convened to draft a litigation plan which can contain such items as (a) phasing (e.g., preliminary accounting, dissolution, etc.); a secondary or in tandem phase for discovery and trial on liability; a subsequent remedy phase such as buy-out, specific performance) and (b) pleadings issues (e.g., identifying and clarifying causes of action and affirmative defenses and listing those in the Case Litigation Plan).

The Tennessee Supreme Court has appointed an Advisory Commission to assist in evaluating the establishment of future Business

Courts in Tennessee. The present tasks of the Advisory Commission are creating a questionnaire/survey for counsel and parties to complete when a Business Court case is concluded and analyzing the eligibility criteria presently being used in the Pilot Project. The Advisory Commission Chairperson is **Judge Neal McBrayer** of the Tennessee Court of Appeals with these members: **Jef Feibelman** of Burch, Porter & Johnson PLLC, Memphis; **Charles Tuggle** of First Horizon National Corporation, Memphis; **David Golden** of Eastman Chemical Company, Kingsport; **Celeste Herbert** of Jones, Meadows, & Wall PLLC, Knoxville; **Scott Carey** of Baker, Donelson, Bearman, Caldwell & Berkowitz PC, Nashville; **Pat Moskal** of Bradley Arant Boult Cummings LLP, Nashville; **Bill Tate** of Howard Tate Sowell Wilson Leathers & Johnson PLLC, Nashville; and **Tim Warnock** of Riley Warnock & Jacobson, Nashville.

Chancellor Lyle passes on her thanks to the participating attorneys for the steady and productive start-up of the Pilot Business Court, and thanks to **Presiding Judge Joe Binkley** and the other chancellors and judges of Davidson County who have supported the Project. Samples of the work conducted in the Business Court can be found at TNcourts.gov/bizcourt near the bottom right under "Resources." ■



Ellen Hobbs Lyle is judge of Part III of the Chancery Court of Davidson County and has served as a chancellor since 1995.

Chancellor Lyle is a fifth generation Nashvillian, and she is the daughter of Jack and Jo Ann Hobbs. Chancellor Lyle attended Harpeth Hall School and the University of Tennessee, graduating with a Bachelor of Arts and Phi Beta Kappa distinction. Chancellor Lyle received her law degree from the University of Tennessee where she was a member of the Tennessee Law Review, the International Moot Court Team, the Moot Court Board and Secretary of the Student Bar Association.

Beginning her practice with the Texas law firm of Watergate prosecutor Leon Jaworski, Chancellor Lyle returned to Nashville in 1984 where she became a partner in the law firm of Trabue, Sturdivant & DeWitt.

Chancellor Lyle has a daughter and is married to Walter C. Kurtz, former Circuit Judge and Senior Judge for the State of Tennessee.

Designation forms to voluntarily transfer business cases to Business Court are available at <http://chanceryclerkandmaster.nashville.gov/wp-content/uploads/DavidsonCoRequestForDesignationForm.pdf>.