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**New Jersey Judiciary's Complex Business Litigation
Program Goes Statewide**

By Michael L. Rich

Effective January 1, 2015, the New Jersey judiciary expanded its nearly two-decade old Complex Business Litigation Program to operate statewide. The program is designed to handle complex commercial and construction cases that have the potential for \$200,000 or more in damages.

The expanded program has an interesting history and purpose. In 1996, the late Chief Justice Wilentz instituted an experimental program to handle complex commercial litigation. A pilot plan for the creation of a complex commercial subtrack, limited to Bergen and Essex counties, was developed and implemented. Over the last decade or so, consideration was given to a business court being created as a separate statutory court. Ultimately, however, it was decided that essentially the same result could best be achieved through a separate track within the Superior Court, Law Division, as opposed to a separate statutory court. Thus, the determination was made to extend the pilot program statewide.

The program has a number of important purposes. They include: fostering a more favorable environment for maintaining business activities in New Jersey; a perceived need to accommodate the unique attributes of complex commercial and construction cases; addressing a degree of dissatisfaction, particularly in the business community, with the handling of certain business disputes; and, perhaps most importantly, the need for development of a clear body of law to guide both lawyers and businesses.



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The creation of specialized business or commercial courts in the United States began in the early 1990s, and has expanded in the past approximately ten years. A number of other states, mostly on the east coast, have adopted a business court or complex business litigation program. Business courts, or business programs or divisions within existing trial level courts, have been established and are operating to one degree or another in, for example, Delaware, Florida (Ft. Lauderdale, Miami, Orlando and Tampa), Maryland, Massachusetts, Maine, Michigan, New York, Nevada (Reno and Las Vegas), North Carolina, Ohio (Cleveland, Cincinnati and Toledo), Pennsylvania (Philadelphia and Pittsburgh), Rhode Island, South Carolina, and Wisconsin. While Delaware does not have a business court as such, its Court of Chancery has a nationwide reputation for business expertise, functioning as a business court of limited jurisdiction for a century. Its traditional equity jurisdiction more recently has evolved to include technology disputes and some purely monetary commercial disputes, and has expanded its use of mediation, arbitration, Masters in Chancery to adjudicate certain matters, and agreements to make decisions non-appealable.

Leading up to the decision to expand the New Jersey Complex Business Litigation Program statewide, a NJSBA Report on Business Courts considered the factors in favor of creation of a business court, as well as potential negative factors associated with such creation. The factors in favor noted in the Report include:

- the utilization of experienced, knowledgeable judges;
- the building of a body of precedent for guidance to the business and legal community (much like the Delaware Chancery Court);
- encouragement of companies to incorporate in New Jersey, resulting in commercial disputes being litigated in New Jersey state court rather than other forums;
- positive experiences from the New Jersey pilot program, as well as reported by other jurisdictions that have experimented with business courts or programs;
- individualized case assignment and management has often had excellent results;
- an experienced judge with good case management skills can enhance the

- prospect for prompt disposition and settlement, particularly in commercial cases;
- establishment of a specialized business program that effectively manages cases and promulgates reliable precedent will garner respect and build confidence in a more efficient and responsive court system; and
 - specialized case management could serve to level the playing field, and assist smaller companies or individual business persons in obtaining satisfaction of its or his/her business dispute.

The new statewide program in New Jersey calls for complex commercial and construction cases to be brought in the Superior Court, Law Division, with availability of a jury trial. Presently, there are fifteen Judges selected to hear these matters, with at least one covering each vicinage. Each Judge is expected to put forth at least two written opinions per year in order to develop a body of law to provide reliable precedent. To qualify for the program, the case must allege damages of \$200,000 or higher. If less than \$200,000, but there are still complex issues involved, application may be made for acceptance in and assignment to the program. To opt into the program, case type 508 must be designated on the Case Information Statement (CIS) for complex commercial, and case type 512 on the CIS for complex construction. Under the program, referral to mediation is presently optional, not mandatory. Generally, it is 2-year track to trial, with each case being individually assigned and case managed by the complex commercial judge assigned for that vicinage.

In 2014, there were 199 complex commercial litigation cases filed (designated as type 508), and 71 complex construction cases (type 512). One might anticipate an increase in the number of cases designated as complex commercial or complex construction as business parties and their counsel become more familiar with the program, and favorable results are reported. For practitioners, careful consideration will need to be given whether a case is still more suited for the Chancery Court, without availability of trial by jury, or in the Law Division pursuant to the Complex Business Litigation Program which may afford a jury right.

The Porzio Commercial Litigation Briefs is a summary of recent developments in litigation. This newsletter should not be relied upon for legal advice in any particular matter.