

STATE BAR OF MICHIGAN BUSINESS LAW SECTION

BUSINESS COURT AD HOC COMMITTEE

ABSTRACT: A BUSINESS COURT IN MICHIGAN

April 26, 2002

Formation and Charge of the Business Court Ad Hoc Committee. In December 2001, the Business Law Section Council established a Business Court Ad Hoc Committee (“Committee”) to study and make recommendations whether Michigan, like a number of other jurisdictions, should establish some form of business court. On January 2, 2002, all members of the Section received an invitation to join the Committee. Since then, over 170 Section members have either joined or expressed interest in working with the Committee. Due to the size of the group an Executive Committee was established.

The Executive Committee gathered information about business courts around the country, reviewed the literature discussing business courts, consulted with nationally recognized experts, made preliminary contacts with some organizations that may have an interest in a business court and prepared a Report of Business Court Executive Committee.

On April 22, 2002, the Committee held a general meeting and has prepared this abstract of its preliminary views on a business court. The Committee also determined that it is crucial to seek the input of all constituencies who may have an interest in a business court so that the Committee’s ultimate proposal to the Business Law Section Council will be based on the needs and concerns of all who may be affected by the establishment of a business court.

Purposes for a Business Court. Presently, some form of a business court has been established in most of the major industrial states including California, Delaware, Illinois, North Carolina, Maryland, Massachusetts, Nevada, New Jersey, New York, Pennsylvania, Rhode Island and Wisconsin. Other states presently considering a business court include Arizona, Colorado, Georgia, Maine, Ohio and Minnesota.

While forms of business courts vary, all business courts have certain overriding purposes.

1. **Enhancing the consistency, predictability and accuracy of decisions in business cases.** All business courts seek to improve the quality of decisions made in business litigation by enhancing the consistency, predictability and accuracy of the application of principles of business law to specific disputes. Generally, this is achieved by assigning business cases to specific judges who have particular interest and expertise in business law issues and litigation.

2. **Enhancing efficiency through pro-active case management, technology and early ADR.** All business courts seek to enhance the efficiency with which all litigation, including commercial litigation, is resolved. Business court judges generally become familiar with the specific facts, claims, defenses, theories and issues in a case at a very early stage. This allows

prompt and often effective exploration of ADR possibilities, and business courts around the country report an increased number of settlements in business court cases. It also allows proactive case management and significant narrowing of the issues before the parties engage in substantial and costly discovery and motion practice. Business courts also achieve efficiency by encouraging the use of technology where appropriate, and the Committee has met with the sponsor of the Cyber Court statute to explore ways in which the Cyber Court and a business court can complement each other. This may be particularly attractive for business litigants, who are likely to be familiar with new technology. Further, particularly in states where business court judges are required to publish written opinions, a body of business law develops that provides valuable guidance for litigants and their counsel. Parties may, for example, file fewer motions when they can review how the business court judge has decided similar issues in the past.

Assigning commercial cases to business court judges also improves the efficiency of the entire court system because commercial cases can be unwieldy and sometimes require an inordinate amount of a judge's time in order to deal with significant motion practice, discovery disputes and sometimes massive document production. When cumbersome commercial cases are assigned to a business court judge, other judges are able to devote more attention to other cases on their dockets.

3. Attracting and retaining businesses. States with business courts report that they have successfully used the existence of a business court to persuade businesses to locate or remain in that state because it shows that the state is receptive and responsive to the needs and concerns of businesses.

Cost of Business Courts. Business courts generally do not require additional resources. Rather, business courts focus on reassigning business cases to business court judges, thereby simply reallocating case loads. Some jurisdictions, particularly those that require business court judges to publish written opinions, provide those judges with additional assistance from law clerks.

Exploration of a Pilot Business Court in Michigan. The Committee has concluded that the possibility of establishing a business court in Michigan merits further study. The Committee therefore is seeking the advice and input of a wide range of individuals and groups, including businesses, industry and trade organizations, chambers of commerce, bar organizations and the judiciary. In particular, the Committee is considering whether a pilot business court division or docket should be established in one or more circuit courts through an administrative assignment of a judge or judges to hear business cases. The Committee is seeking input on issues such as how to define a business or commercial case, how a case would be assigned to a business court and whether that assignment would be voluntary, whether jury trials would be permitted, the relationship to the Cyber Court, how the Michigan Court Rules should apply to proceedings in a business court, what approaches to case management should be employed, whether a business court judge should be required to issue written opinions on certain matters, what concerns there are about a business court and how those concerns can best be addressed.

For More Information For more information about the Business Court Ad Hoc Committee and its activities, contact Committee Chairman Diane L. Akers at Bodman, Longley & Dahling LLP, (313) 393-7516, dakers@bodmanlongley.com.