

BEST PRACTICES IN U.S. BUSINESS COURTS

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INTRODUCTION

Best practices in business courts throughout the United States are chosen based on alignment with stated goals and quantifiable improvements in the jurisdiction's case management and commercial legal culture. A single business court in any one state does not provide a complete "set" of best practices, because the judicial structure, underlying political framework, and business community goals vary widely across the states. The term "business court" refers generically to a wide array of business, chancery (equity), or complex litigation programs organized as courts, divisions of courts, or sections or tracks within a civil division.

Seventeen business courts and business court proposals were studied,¹ organized below by business, chancery, and complex civil litigation. Nine business courts have been in existence less than five years, two still remain in the planning stage, and one not listed (Wisconsin) was abandoned for lack of cases and interest. Only the three chancery courts or divisions have been in existence longer than 10 years. In many cases, not enough time has elapsed to statistically evaluate the overall impact on the business community or on the court as a whole and the business court in particular.

BUSINESS OR COMMERCIAL COURT, DIVISION, SECTION, SESSION, PROGRAM, OR CALENDAR

A business court program has concurrent jurisdiction over selected business case types — not always complex — and excludes assignment of any other case type. Most business courts, except in Illinois and New Jersey with separate equity divisions, are assigned both equity and law cases.

1. Colorado Business Court *Proposal* (Denver District Court)
2. Massachusetts, Suffolk County Business Litigation Session
3. Illinois, Cook County (Chicago) Law Division Commercial Litigation Section
4. Maryland, Business and Technology Case Management Program
5. Michigan Cyber Court *Proposed not implemented*
6. Nevada Business Court Divisions of the Second (Reno) and Eighth (Las Vegas) Judicial Districts
7. New Jersey Complex Commercial Program in Bergen and Essex Vicinages
8. New York Commercial Divisions of Erie, Monroe, Nassau, New York, and Westchester Counties
9. North Carolina Business Court

10. Orange County, Florida Business Sub-Division of the Circuit Court Civil Division
11. Pennsylvania, First Judicial District (Philadelphia) Commerce Program
12. Rhode Island Superior Court Business Calendar, Providence and Bristol Counties

CHANCERY COURT OR DIVISION

A chancery court or division has jurisdiction over equity case types, which include many business case types. The business caseload ranges from 25 percent (Delaware) to 40 percent (Illinois), but most of the complex and novel cases are business cases that need and receive the greatest amount of judicial attention.

13. Delaware Court of Chancery
14. Illinois, Cook County (Chicago) Chancery Division
15. New Jersey Chancery Division of the Superior Court

COMPLEX CIVIL LITIGATION DIVISION OR PROGRAM

A complex civil litigation court program has concurrent jurisdiction over complex civil cases, which generally include many types of business cases and, usually, mass torts and class actions. The size and impact of mass torts and class actions, though, tend to divert judicial and staff attention from business cases.

16. California Complex Civil Litigation Divisions of Alameda, Contra Costa, Los Angeles, Orange, San Francisco, and Santa Clara Superior Courts
17. Connecticut Complex Litigation Docket of New Britain, Norwich, Stamford, Tolland, and Waterbury Superior Courts

A multi-page chart (see pages 26-31) summarizes key information about each of these states' business courts. Attachment I provides a table listing the case types that are assigned to each court. Attachment II provides a list of business court interviewees from many of the jurisdictions.

Recommended best practices (see Summary of Best Practices on page 32) best fit with a state court without previous business court experience, which seeks to pilot a project in a metropolitan region, which may include multiple counties. They are not universal for every state or business court and are chosen, as stated above, based on alignment with stated goals and quantifiable improvements in the

BUSINESS, CHANCERY, AND COMPLEX CIVIL LITIGATION COURTS

	TYPE	YEAR STARTED	ORIGIN	STATUS STATE /COUNTY	\$ MINIMUM	GATEKEEPER
CALIFORNIA	DIVISION "Complex Civil Litigation" Includes business, housing, mass torts	2000 Pilot Orange County started a complex civil case track in 1992	California Judicial Council Complex Litigation Task Force	15 Judges total Alameda: 1 Contra Costa: 1 San Francisco: 1 Santa Clara: 1 Orange: 4 Los Angeles: 7	No dollar minimum	Presumptive assignment with judge and party review of severance/consolidation of issues or actions
CONNECTICUT	DIVISION Referred to as Division, called "Complex Litigation Courts" Includes business, housing, mass torts	1998	Chief Court Administrator of the State of Connecticut Superior Court Practice Book Rules	7 Judges total New Britain: 1 Norwich: 1 Stamford: 1 Tolland: 1 Waterbury: 3 3 years minimum assignment	No dollar minimum	Chief Administrative Judge of the Civil Division reviews cases and assigns to any judge statewide, usually by expertise
DELAWARE	COURT (Equity) Delaware Court of Chancery Specifically defined as an equity, not business, court	1792	Article VI, Section 14 of the Second Delaware Constitution	1 Chancellor + 4 Vice Chancellors 2 year rotations among 3 counties statewide: New Castle: 3 Kent: 1 Sussex: 1	No dollar minimum	No gatekeeper, presumptive assignment at filing by parties (Vice) Chancellor may transfer a case or issues without standing to Superior Court
ILLINOIS	DIVISION (Equity) Cook County Chancery Division hears equity (incl. Business) cases usu. without monetary awards DIVISION Law Division Commercial Litigation Section business cases with monetary awards	1871 Chancery Court 1964 as Division within unified Circuit Court	Judicial Article	Cook County (Chicago) Chancery Division 16 Chancellors + 4 Associate Judges Law Division Commercial Litigation Section 7 Judges	No dollar minimum, although administratively <\$50,000 heard in Municipal Department	No gatekeeper, presumptive assignment at filing by parties Chancellor (assigned judge) may transfer a case without standing out of the Division
MARYLAND	COURT Defined as a Business and Technology Case Management Program	2002	Maryland Business and Technology Court Task Force House Bill 15, Chapter 10 of the Maryland Acts of 2000	24 Judges in 8 Circuits Statewide (3 Judges each Circuit) with designation to sit in any County within a Circuit for trial or other hearings	No dollar minimum	Circuit Administrative Judge or his/her designee for each of 8 Circuits
MASSACHUSETTS	DIVISION Suffolk County Business Litigation Session	2000	Chief Justice of the Superior Court Order	Suffolk (Boston) 1 Full Time Associate Justice 1 Mixed Docket Associate Justice	No dollar minimum	Associate Justice of the Superior Court

JURY	CASEFLOW TIME STANDARDS	CASE MANAGEMENT	CALENDARING	CASE DATA	TECHNOLOGY	FUNDING
Juries permitted where applicable by law	Time limit requirements on case by case basis (DCM)	Deskbook on the Mgmt of Complex Civil Litigation	Individual Calendaring mandated with no use of commissioners or other judicial officers, where possible	No separate complex litigation case data available from Annual Reports	Existing case management system E-filing Document management	California AOC \$2,854,800 annually \$190,320 per judge
Juries permitted where applicable by law	No caseload time standards	Statewide case management plan in production; Individual judge procedures, scheduling orders required	Individual Calendaring	Pending 992 Annual Applications 522 Annual Dispositions 200 Per judge Pending 142 Applications 75 Dispositions 29	Existing case management system No E-filing No document management	State funding No new judgeships Increase of staff from pooled staff to 1 secretary and 1 law clerk per judge
No right to trial by jury on equity cases Law issues transferred to Superior Court for resolution	Trial within 90 days from trial readiness date (i.e. ripe for trial: completion of discovery and pretrial motions)	All other caseload management at discretion of (vice) chancellor, based on case complexity Wide range of case types	Individual Calendaring	FY 2001 All Casetypes Filings 4,197 Dispos 3,868 Pending 13,648 FY 2001 Civil Filings 1,000 Dispos 978 Pending 1,088	Existing case management system E-filing (CLAD) Document management High-tech courtroom (New Castle)	\$2,052,900 2001 state appropriation + \$1,136,727 for 3 Registers in Chancery \$410,580 / \$637,925 per (vice) chancellor annually
Jury trials permitted on cases and issues permitted by law (e.g. most equity cases cannot be tried by a jury)	Scheduling Conference within 60 days per Supreme Court rule; no time standards to disposition	Caseload management at discretion of chancellor or judge, based on case complexity	Individual Calendaring	Active pending cases per chancellor 1,500 Approximate cases filed annually 22,500 Approximately 40% (9,000) of cases filed are equity business cases	Circuit Court case management system	State funding for Circuit Court
Jury trials permitted in original county of jurisdiction	Expedited Track 7 months Standard Track 18 months	Recommended case mgmt. plan based on existing statutes and rules, with further development of DCM to include expedited and standard tracks	Individual Calendaring	Not available	No additional legislative funding as of 2004	Three Phase Implementation No additional judge or staff costs No additional or designated funding or staff
Jury trials permitted	Individual case schedules	Rule 16 scheduling conference for discovery; pretrial motions; and trial date certain Individual Calendaring	Individual Calendaring	Annual filings 280 Current pending cases 288	No additional technology other than existing Superior Court CMS	No additional or designated funding or staff

BUSINESS, CHANCERY, AND COMPLEX CIVIL LITIGATION COURTS

	TYPE	YEAR STARTED	ORIGIN	NO. JUDGES	\$ MINIMUM	GATEKEEPER
NEVADA	DIVISION Business Court Division of the Eighth Judicial District	2001	Nevada Supreme Court and Rules of Practice of the Eighth Judicial District of the State of Nevada	Eighth Judicial District (Las Vegas) 2 Judges for 2 year terms Washoe County 1 judge for 2 year term	No dollar minimum	On plaintiff's application, automatic presumptive assignment; On defendant's application, random assignment and review for venue standing
NEW JERSEY, ESSEX, AND BERGEN COUNTIES	TRACK Complex Commercial Program DIVISION Chancery Division of the Superior Court	Commercial Program 1993 Essex Vicinage 1996 Bergen Vicinage Chancery Division 1964 Statewide Unification	Chief Justice of the Supreme Court	Commercial Division Judges Total Essex: Bergen:	No dollar minimum	Presumptive assignment
NEW YORK	DIVISION Commercial Division of the State of New York	1995	Chief Judge on recommendation of Commercial Courts Task Force and Commercial and Federal Litigation Section of the NY State Bar	12 Justices Total Erie: 1 Monroe: 1 Nassau: 3 New York: 6 Westchester: 1	\$125,000 minimum	Presumptive assignment
NORTH CAROLINA	COURT North Carolina Business Court TRACK Rule 2.1 allows an "exceptional" case to be tried by one judge, with that judge's agreement	1996	North Carolina Supreme Court Rules 2.1 and 2.2	Statewide, with a Business Court located in Greensboro, although cases are tried in the county of record 1 Judge + county individual assignment	No dollar minimum	Chief Justice of the Supreme Court Key factors include type, complexity, and broader legal or business implications beyond the outcome

JURY	CASEFLOW TIME STANDARDS	CASE MANAGEMENT	CALENDARING	CASE DATA	TECHNOLOGY	FUNDING
Jury trials permitted	80% of civil cases within 24 months of filing 95% of civil cases within 36 months of filing 100% of civil cases within 60 months of filing + Individual case schedules	Rule 1.90 (b) Civil caseflow management Rules of Practice for the Eighth Judicial District Specifies scheduling orders, time limits on discovery, pretrial and trial matters	Individual Calendaring	FY 2001 Annual Filings: 165 Dispositions: 23	No additional technology other than existing District Court systems	No additional funding
Jury trials permitted for Complex Commercial Program Juries not permitted for Chancery Division and under 2001 Law Division Business Part legislative proposal	Track I: 12 months Track II: 18 months Track III: 24 months Track IV: 24 months	NJ Rules Governing Civil Practice In The Superior Court, Tax Court And Surrogate's Courts, 4.5b Case Management	Individual Calendaring	2001 Equity Filings Statewide: 4,954 2001 Equity Dispositions Statewide: 5,343 2001 Equity Active Pending Statewide: 2,326	Existing statewide case management system; no E-filing, document management, etc.	No additional funding. Divisions within trial courts.
Right to a jury trial for non-equity cases	Complex Cases Standard: 30 months from RJl (filing) and disposition	Rules of the Justices of the Commercial Division, Supreme Court Rule 16 revision New Rule 19a, April 1, 2002 Incl. ADR	Individual Calendaring	1998 Filings NYC: 10,224 Filings outside NYC: 13,000	Statewide Case Management System New E-Filing, Document Mgmt, Internet applications, although not specifically for Business Court	Existing budgets; no additional funding to county courts
Right to a jury trial in the county of record (filing) Rule 2.1	Time limit requirements on case by case basis, although case mgmt meeting required in 30 days and discovery within 9 months	General Rules of Practice and Procedure for the North Carolina Business Court, adopted March 9, 2000	Individual Calendaring both in Business Court and for "exceptional" cases in each county	Active pending cases 40-50 Cases filed annually +/- 50	New case management system; E-filing; and document management system exclusively dedicated to the Business Court	+/- \$290,000 state funding Judge \$107,000 + benefits Staff: \$72,000 + benefits Other costs: \$50,000

BUSINESS, CHANCERY, AND COMPLEX CIVIL LITIGATION COURTS

	TYPE	YEAR STARTED	ORIGIN	NO. JUDGES	\$ MINIMUM	GATEKEEPER
ORANGE COUNTY, FLORIDA	SUB-DIVISION Business Court Subdivision of the Civil Division of the Superior Court	January 2, 2004	Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.050	Orange County 1 Judge with shared civil caseload	No dollar minimum	Presumptive assignment by case type, with review and referral by Chief Judge of the Ninth Judicial Circuit
PHILADELPHIA	DIVISION "Commerce Program"	2000	First Judicial District	Philadelphia County 2 Judges	No dollar minimum, although <\$50,000 usu. assigned to Municipal Court	No gatekeeper; presumptive assignment at filing request by parties / attorneys Administrative Judge rules on assignment disputes between parties
RHODE ISLAND, PROVIDENCE, AND BRISTOL COUNTIES	TRACK Superior Court Business Calendar	April 17, 2001	Presiding Justice Rhode Island Superior Court; Administrative Order 2001-9	1 Justice	No dollar minimum	Business Calendar Justice at request of plaintiff or defendant

PROPOSED, BUT NOT IMPLEMENTED, BUSINESS COURTS

	TYPE	YEAR STARTED	ORIGIN	NO. JUDGES	\$ MINIMUM	GATEKEEPER
COLORADO	DIVISION	2000 Pilot proposed but not implemented	Colorado Governor's Task force on Civil Justice Reform	Denver District Court 1 Judge proposed in pilot project	\$100,000 minimum proposed although not clearly defined	Not applicable
MICHIGAN	COURT Defined as Michigan Cyber Court for business and commercial actions	Oct 2002 anticipated startup Suspended due to lack of funding	Michigan Legislature Bill PA 262 and HB 4140 of 2001 State Bar of Michigan Cybercourt Rules Workgroup	3 Judges + 1 Clerk statewide Supreme Court assignment to 3 year terms Totally electronic jurisdiction	\$25,000 minimum	By application of parties and presumptive assignment

JURY	CASEFLOW TIME STANDARDS	CASE MANAGEMENT	CALENDARING	CASE DATA	TECHNOLOGY	FUNDING
Right to a jury trial	Target Trial Dates from Complaint: Expedited 13 months Standard 18 months Complex 24 months	Case Management Conference (CMC) within 90 days of filing, followed by Case Mgmt. Order (CMO) for mediation and pretrial conf.	Individual Calendaring with mixed civil caseload Business Court Special Master assigned by Judge for case management and hearings, as required.	Approx. 3,000 cases = Existing civil cases that qualify for review by Chief Judge	Existing civil case management system No E-filing No E-filing related document management	Existing judge reassigned Additional assignment of staff
Right to a jury trial	Target Trial Dates from Complaint: Expedited 13 months Standard 18 months Complex 24 months	Case Management Conference (CMC) within 90 days of filing At CMC, a Case Management Order is issued for discovery, pretrial motions and trial dates	Hybrid Individual Calendaring Case Managers used for early conferences and parties may request a Commerce Judge Pro Tempore for discovery and pretrial hearings	Cases filed annually +/- 500	Existing civil case management system No E-filing No document management	Existing judges reassigned Additional assignment of staff
Right to a jury trial	"Expeditious a manner as possible"	Chambers Conference as "soon as practical" May mandate non-binding mediation	Individual Calendaring Removed from the standard civil master calendar	440 cases in 2 years + 3 months = 195 cases/year 261 pending cases on July 3, 2003		Existing justice reassigned Additional assignment of staff

JURY	CASEFLOW TIME STANDARDS	CASE MANAGEMENT	CALENDARING	CASE DATA	TECHNOLOGY	FUNDING
Not addressed	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
No jury trials permitted; automatic waiver of jury trials	Not yet determined	Recommended case management plan based on existing statutes and rules, with further development of DCM to include expedited and standard tracks	Individual Calendaring	Not applicable	Recommended additional funding for technology No legislative funding added as of September 2002	Three Phase Implementation No additional judge or staff costs Additional funding required for technology and other resources

jurisdiction's case management and commercial legal culture. The best practices, which are detailed in the report, are organized by functional categories:

- Core Business Court Objectives
- State and County Structure
- Casetypes
- Dollar Minimums
- Gatekeeper
- Judge Assignment
- Juries
- Caseflow Time Standards
- Case Management
- Calendaring
- Technology
- Funding

SUMMARY OF BEST PRACTICES

Core Business Court Objectives

Assigns business cases to specialized judges in order to manage them more effectively and expeditiously and to more efficiently use judicial resources both within the business court and in the court system as a whole;

State and County Structure

Is sponsored by statewide initiative but is county-based. A pilot court is launched in a high business volume county or counties, and, only after review of the initial experience, the court is expanded to other counties. Statewide sponsorship drives the development of uniform statewide rules, casetypes, and the pooling of technology resources;

Casetypes

Assigns only complex business cases and business cases with novel legal precedents;

Dollar Minimums

Requires no dollar minimums on prayers or petitions for assignment of cases;

Gatekeeper

Authorizes a single judicial gatekeeper (state or countywide) to review and accept or deny applications for assignment;

Judge Assignment

Assigns judges from the civil division of the trial court for a sufficient term to support individual case assignment for the duration of a case or permanently. They receive specialized judicial education. The number of business court judges is determined by analysis of the potential business court caseload based on a set of casetypes and the jurisdiction;

Juries

Permits juries as defined by applicable law for business and equity cases;

Caseflow Time Standards

Sets caseflow time standards for non-complex cases and individual case schedules with active judicial case management for complex cases;

Case Management

Designs, implements, and publishes a case management plan with the participation of the judiciary, the Bar, and business stakeholders;

Calendaring

Assigns cases to individual judges from filing to disposition;

Technology

Ensures the availability, training, and use of sophisticated case management, e-filing, document management, in-courtroom presentation, and judicial legal resource technologies; and

Funding

Is supported by state funding.

A. CORE BUSINESS COURT OBJECTIVES

Best Practice

A business court assigns business cases to specialized judges in order to manage them more effectively and expeditiously and to more efficiently use judicial resources both within the business court and in the court system as a whole.

EXAMPLES:

New York Commercial Division, North Carolina Business Court

The Commercial Division of the State of New York is a good example of a business court that accepts only business or commercial cases with the goal of efficient and unique assignment and disposition of cases. In New York:

The Commercial Division was intended as a vehicle for resolution of complicated commercial disputes...Because disclosure in commercial cases can be difficult, protracted and expensive, the Division seeks to bring to bear in each case vigorous and efficient case management.²

This goal is reflected in the quantity (more than 2,000) of cases that each judge disposed in 1998 alone, as compared to North Carolina (below). Other features that support this goal include active judicial case management from filing to disposition of a case and an extensive court-managed alternative dispute resolution (ADR) program.

The North Carolina Business Court was instituted in 1996 with the following stated goal:

One of the key factors in assessing whether or not a case should be designated as complex business is whether the outcome will have implications for business and industry beyond the conflicts of the parties to the litigation. If a written decision on disposition of the case would provide predictability for others in the same business or industry in making their business decisions, the case will more likely be considered for designation.³

The goal of assigning cases with novel legal issues, though, has not precluded goals of specialization and efficient resolution of complex business cases. Attorneys actively seek assignment of cases to the North Carolina Business Court, even from adjacent states with difficult venue hurdles, because the court understands complex business issues and is predictable, fair, and impartial. The sole judge in the court manages approximately 40-50 active cases at one time (few by comparison to other business courts and divisions) and writes numerous opinions both on non-dispositive and dispositive motions and on bench rulings where the decision or case sets novel legal precedent.

Though the Delaware Court of Chancery⁴ resolves all types of equity cases and was not instituted with the goal of developing a body of commercial caselaw, the court has over time acquired considerable commercial expertise and a large body of commercial caselaw and encourages the writing of opinions and extensive deliberation where warranted by novel commercial cases. The court hears only equity cases, and these may include many non-commercial casetypes, but the business climate in Delaware has fostered the development of commercial caselaw. The Delaware Court of Chancery is not a best practice structure for an emerging business court, though, because an equity jurisdiction precludes many complex commercial law cases, which require specialized judicial training and expertise and increased judicial attention.

In Massachusetts' Suffolk County Business Litigation Session, only business cases are accepted, and, due to the burgeoning caseload (288 active pending cases), a second associate justice has been added to the program, although with a mixed docket. Massachusetts' stated goals, as described by Chief Justice Suzanne V. DeVecchio, include both caselaw expertise and efficient case management:

The goals are to develop a predictable body of law governing business disputes, and to provide a steady efficient forum for the resolution of business litigation."⁵

Two complex civil litigation divisions (California and Connecticut) include mass torts, class actions, and other complex civil casetypes in order to shift the focus of the court away from what interviewees referred to as "business elitism." These divisions have in effect become DCM complex tracks with dedicated, separate judges. The long-term assignment of judges to these divisions fosters judicial commercial expertise, except that both divisions have burgeoning mass torts and class actions, which dilute the commercial caselaw experience.

Illinois (Cook County) and New Jersey (statewide) have hybrid systems in which both have retained historical chancery divisions and have developed recent law division commercial litigation programs with dedicated judgeships. Unlike New York, two different divisions share responsibility for equity and law business cases, although in Delaware, many business law case types have over time come under the jurisdiction of the court of chancery, although with an automatic waiver of a right to a trial by jury. An Illinois Chancery Division chancellor noted that cases with law issues may be bifurcated or transferred to the Law Division Commercial Litigation Section. In New Jersey, a pilot Complex Commercial Program has been started in the Essex and Bergen Vicinages.

Maryland has recently (October 2002) implemented business and technology courts in eight circuits, the focus of which is the development of commercial technology caselaw.

B. STATE AND COUNTY STRUCTURE

Best Practice

A business court is sponsored by statewide initiative but is county-based. A pilot court is launched in a high business volume county or counties, and, only after review of the initial experience, the court is expanded to other counties. Statewide sponsorship drives the development of uniform statewide rules, casetypes, and the pooling of technology resources.

EXAMPLES:

California Complex Civil Litigation Division, Connecticut Complex Litigation Docket, Delaware Court of Chancery, New York Commercial Division, North Carolina Business Court

Statewide sponsorship promotes predictability of business case law and rulings across multiple counties. The appearance and reality of predictability and fairness enhance the business environment in a state. These goals are supported by common statewide rules and case management procedures. County-based filing and jury trials limit venue shopping from adjacent jurisdictions.

California began a complex civil litigation program with a year 2000 pilot in six counties, but it was based on a complex civil case track begun in Orange County in 1992. Orange and Los Angeles Counties are high business volume courts and assigned four and seven judges respectively to the new program. Though county-based, the complex civil litigation divisions were begun by a statewide initiative and use common case management rules.⁶

The best practice use of a statewide court does not require that the court be in one single location or that the judges be co-located. In Connecticut, the judges sit in five separate counties, but parties may apply for assignment to the business court from any county in the state. Conversely, Connecticut uses a gatekeeper, who is free to assign cases to any business court judge statewide. This is manageable, because the state is relatively small.

In Delaware, (vice) chancellors sit in and rotate among all three state counties. Because Delaware is even smaller than Connecticut, the court can afford to have a (vice) chancellor sit in every county. In addition, the (vice) chancellors meet once a month to discuss cases and procedural and legal issues. The Delaware Court of Chancery is famous for the sophistication of its deliberations and the (vice) chancellors' level of business and business law experience, expertise, and knowledge.

The New York Commercial Division was and continues to be a statewide initiative with specialized rules of procedure promulgated by the chief judge and implemented in all business court counties. The court was formally created in New York County in 1995 after three years as a local pilot project and quickly expanded to four other counties. More than 2,000 cases per judge are filed and assigned

annually to New York business divisions. The median time from filing to disposition for an average contract case in New York County was reduced from 648 to 412 days between 1992 and 1998. Robert L. Haig, litigation partner at Kelley Drye & Warren, LLP, co-chair of New York's Commercial Courts Task Force, stated that:

We have now gone...from a court system that often evoked frustration among businesses, to a business court that is the envy of other states.

Creation of a business court sends a message that a state cares about business. In an era when business is either hostile or indifferent toward court systems, business courts are one thing that helps.⁷

The North Carolina Business Court has only one judge, but he is required to set jury trials in the county of original jurisdiction. Similar to Delaware and Connecticut, parties can apply for assignment to the business court from any county in the state.

Massachusetts's Suffolk County Business Litigation Session also began in 2000 as a way of addressing backlog problems in the superior court's civil docket, which was resulting in the diversion of business litigation to private arbitration. By addressing this problem, the superior court had political concerns, not just the lack of commercial caselaw, in mind:

If the business community abandons the American court system, the judiciary may suffer in the political arena, especially on matters of support for necessary funding for improvements and enlargements of the judiciary.⁸

Paul T. Dacier, senior vice president and general counsel for Massachusetts-based EMC2 Corporation, emphasized the need for speedy resolution in hi-tech cases when dealing with intellectual property: "In the trade secret area if you lose a day, you may have lost your most valuable asset."⁹

C. CASETYPES

Best Practice

Only complex business cases and business cases with novel legal precedents are assigned to a business court.

EXAMPLES:

New York Commercial Division, Connecticut Complex Litigation Docket, North Carolina Business Court, Pennsylvania's First Judicial District (Philadelphia) Commerce Program

Casetypes within the business, chancery, or complex civil litigation programs vary considerably. Attachment I is a chart listing all business court casetypes included in the study. Best practice for a new business court is tight focus on only complex business cases and *selected* business cases with novel legal issues. Dilution of focus by expanding jurisdiction to equity or other complex civil cases undermines the court's primary purpose. Case complexity and other criteria for assignment are determined by a variety of factors.

The New York Commercial Division is presumptively assigned cases based on dollar minimums and case types. Philadelphia's Commerce Program is also presumptively assigned cases based on case types, but not dollar minimums. In both courts, the trial judge (justice) or the administrative judge may transfer the case out of the division if it does not meet the criteria.

In the North Carolina Business Court, a primary factor for assignment is business relevancy or novel legal issues. In addition, other procedural indicators in North Carolina include number of discovery disputes, time required for discovery and trial, complex legal and evidentiary issues, multiple parties and jurisdictions, and impact on the parties' business in both monetary and corporate governance terms.

Connecticut assigns cases that involve multiple litigants and that have legally intricate issues or claims for damages that could total millions of dollars.

Business cases, common to the business courts listed above, include disputes involving:

- Alternative entity litigation (LLCs, LLPs)
- Antitrust and trade regulations
- Corporate issues
- Fiduciary duties
- Formation and dissolution of business entities
- Injunctive and declaratory relief between business entities
- Liability of shareholders, directors, officers, partners, etc.
- Mergers, consolidations, sales of assets, issuance of debt, equity, and like interests
- Partnerships
- Securities claims
- Shareholder derivative claims
- Trademarks
- Unfair trade practices
- Uniform Commercial Code

Business cases common to these business courts, but not usually within the jurisdiction of an equity court or division, include disputes involving:

- Breach of contract or transactions between business entities
- Business accountant fees
- Business fraud (civil)
- Business torts
- Commercial bank transactions
- Commercial insurance policies

D. DOLLAR MINIMUMS

Best Practice

A business court requires no dollar minimums on prayers or petitions for assignment of cases.

EXAMPLES:

All business court states except New York

E. GATEKEEPER

A dollar minimum should not be required for cases to be assigned to a business court. Because the amount tends to be arbitrary, it may exclude some types of complex cases, and it is not a useful criterion for most cases involving injunctive or declaratory relief.

Three states (Delaware, Illinois, and New Jersey) have chancery courts or divisions that only accept equity cases, which may include a variety of non-business cases, and no dollar minimums or complexity requirements. Most other business courts or divisions use other mechanisms that often achieve the same effect as a dollar minimum. These mechanisms include:

- Complexity criteria, which is often defined by many of the same parameters as in a complex DCM track, such as anticipated trial length, discovery length and complexity, and number of parties and witnesses;
- A gatekeeper, who is the arbiter of acceptance into a business program, whether for reasons of legal precedence or complexity (see detail on the next page);
- Strict definitions of acceptable casetypes, including a parallel list of casetypes, which would be presumptively not accepted (Massachusetts, New York, and Philadelphia include both lists of accepted and not accepted casetypes); and
- De facto dollar minimums that equal the threshold for limited jurisdiction or small civil claims (varies from \$2,500 up to \$50,000 (Philadelphia)).

The only dollar minimum instituted as a criterion for assignment is in the Commercial Division of the State of New York (\$125,000). The commercial division has coped with a burgeoning caseload (more than 2,000 annual filings per judge) by adding new judgeships and expanding the initiative to counties surrounding New York City (Westchester and Nassau) and to Albany.

A Maryland task force originally recommended a \$75,000 minimum for a proposed business and technology court, but the recommendation has since been dropped. Michigan's cyber business court, still under formation, has proposed a \$25,000 minimum.

If a jurisdiction sets a minimum dollar requirement, it should be based on the anticipated caseload combined with the available resources and number of assigned judges. A dollar minimum should also be flexible to permit a three-year review and possible modification, without legislative mandate. Cases involving declaratory or injunctive relief should not be required to meet a dollar minimum.

Best Practice

A single judicial gatekeeper (state or countywide) reviews and accepts or denies applications for assignment to the business court.

EXAMPLES:

Connecticut Complex Litigation Docket, Massachusetts' Suffolk County Business Litigation Session, North Carolina Business Court

In each of the three business court examples, the gatekeeper:

- Reviews and confirms case standing in the business court;
- Ensures that assigned judges have appropriate caselaw expertise;
- Promotes the assignment of commercial and other cases with broader and potentially novel legal issues; and
- Manages the potential overload of cases given the available resources.

The North Carolina Business Court is the leading example of the use of a gatekeeper. The assignment of cases to the court is solely at the discretion of the chief justice of the North Carolina Supreme Court upon application by a trial judge or petition by the parties, or even in spite of the parties' objections. This procedure strengthens the court's primary goal of developing a body of commercial caselaw, because the chief justice has complete discretionary authority to accept or deny a case without appeal.

The Connecticut Complex Litigation Courts are assigned cases following local county application of parties and review by the state-wide chief administrative judge of the civil division. Cases are chosen for the complex litigation courts based on casetype restrictions and complexity and include mass torts and class action cases. Cases may be assigned to any of seven judges in five counties based on business or subject matter expertise. An appeal process has been instituted for review of application denials.

Massachusetts' Business Litigation Session is assigned cases for review and acceptance by the presiding judge, who is also the sole full-time associate justice. Plaintiffs may request on the civil cover sheet presumptive assignment for a case. Subsequently, defendants have a right to contest assignment for any or all issues. Presumptive assignment does not automatically qualify a case. In addition to review by the presiding judge, many cases are denied for lack of venue. As a pilot program, Massachusetts mandated that all cases have venue and jurisdiction in Suffolk County. Presiding Judge Allan van Gestel notes that "(t)his is deliberate, and will be carefully monitored, out of deference to those concerned that the session will swallow up the high-end business cases from all across Massachusetts."¹⁰ Superior court judges from counties surrounding Boston were concerned that many business cases outside of Suffolk County's jurisdiction would be filed in Boston because of the Business Litigation Session.

In each court that does not use a gatekeeper, business court casetypes and non-business court casetypes are clearly identified and listed on the civil cover sheet at filing. The Delaware Court of Chancery Court and Illinois (Cook County) and New Jersey Chancery Divisions are assigned all non-family equity cases as a matter of jurisdiction. The Delaware Chancery Court is an equity non-jury trial court but has because of expertise taken on complex commercial laws. Illinois and New Jersey Chancery Divisions may conduct a jury trial but often attempt to resolve all equity matters first and may transfer or bifurcate a case with law issues. Illinois' Cook County Commercial Litigation Section, New Jersey's Complex Commercial Program, New York Commercial Litigation Divisions, and Philadelphia's Commerce Program presumptively assign business cases based on civil cover sheet check offs. These business courts transfer cases out of the business court for lack of jurisdiction based on the excluded casetypes, but NOT as a review process by a single person with discretionary and/or final authority prior to the assignment of cases to a judge.

F. JUDGE ASSIGNMENT

Best Practice

Business court judges are assigned permanently from the civil division or for a sufficient term to support individual case assignment for the duration of a case. They receive specialized judicial education. The number of business court judges is determined by analysis of the potential business court caseload based on a set of casetypes and the jurisdiction.

EXAMPLES:

Connecticut Complex Litigation Docket,
North Carolina Business Court

Assignment of trial judges from a civil division ranges from two years (Nevada Business Court) to permanent (Chancery Courts or Divisions), governed also by elections in some jurisdictions. In the Delaware Court of Chancery, Illinois' Cook County Chancery Division, and North Carolina Business Court, judges are elected or assigned specifically to the court or division. In all other business courts nationwide, business court judges are assigned from the civil division of the trial court.

In Connecticut, where the assignment is for a minimum three-year term, some judges have been able to maintain jurisdiction over their cases after transfer, while others have had cases reassigned. In all business courts, except for one judge in Massachusetts's Suffolk County Business Litigation Session, judges are assigned exclusively to business cases and are removed from any rotations through trial divisions, sections, or across counties or circuits.

Robert Haig, a New York attorney, believes that a crucial element for a successful business court is "interested, experienced and expert judges."¹¹ Alternatively, specialization may also increase monotony. Primary reasons for judge rotations include providing variety and an opportunity for the entire bench to experience a wide range of cases and disputes. Judges will maintain a high level of interest if their time is preserved for complex and challenging disputes and issues

that demand judicial attention. Many jurisdictions provide additional judicial training and continuing education for business court judges.

Caseloads have been difficult to estimate in advance. In most states, data about prayers or case complexity have historically not been kept electronically. Some surprises have resulted. In the New York Commercial Division, a high-dollar minimum has not kept the caseloads from climbing to more than 2,000 annual filings per judge. As a result, the program has expanded to other counties, and judges have been added in the pilot counties. On the other hand, in Philadelphia, where it was estimated that the caseload would exceed 1,500 cases annually per judge, the first year approximately 750 cases per judge were filed.

G. JURIES

Best Practice

A business court permits juries as defined by applicable law for business and equity cases.

EXAMPLES:

All business court states except Delaware

Right to a trial by jury for most law cases is sacrosanct in our legal system. Automatic waiver of a jury trial for business cases would also exacerbate the populist view of business courts as elitist. Though some states have discussed the automatic waiver of a jury trial for acceptance into a business court, all business court states currently permit a jury trial for all non-equity cases.

The Delaware Chancery Court has a presumptive waiver of any jury trials, because only equity cases are accepted, although the Illinois Cook County Chancery Division does permit jury trials on some types of equity cases.

The North Carolina Business Court Web site includes explicit notices that jury trials are permitted, because initially the Bar and business community were confused about the issue. Many attorneys assume that because the Delaware Chancery Court does not permit jury trials (because of equity court status), the rationale applies to business cases generally.

H. CASEFLOW TIME STANDARDS

Best Practice

A business court or division sets caseflow time standards for non-complex cases and individual case schedules with active judicial case management for complex cases.

EXAMPLES:

All business court states and specifically New Jersey's Complex Commercial Program and Philadelphia's Commerce Program

New Jersey's Complex Commercial Program and Chancery Division are governed by statewide civil time to disposition standards based on anticipated trial duration and other factors determined at the beginning of a case:

Track I	12 months
Track II	18 months
Track III	24 months
Track IV	24 months

Philadelphia's Commerce Program is governed by time to disposition "targets" developed exclusively for the business program:

Expedited	13 months
Standard	18 months
Complex	24 months

These two and all other U.S. business courts or divisions also emphasize the use of early scheduling orders, the management of time between events and for discovery and pretrial motions, and the setting of an early trial date for complex cases. In most instances, the Bar and civil attorneys participated in the development of the business program and enthusiastically support active judicial time management.

Differentiated case management (DCM) principles state that complex cases should take the longest and be individually managed; in other words, they should receive the judicial attention that they warrant even if the necessary time is beyond civil caseflow time standards (i.e. the top 2 percent). Conceptually, DCM case management goals for all simpler casetypes are to achieve earlier dispositions to allow more judicial attention and time devoted to complex cases.

Ironically, several states (California, New York, among others) have stated goals that include more efficient and **rapid** resolution of business and complex civil cases. These states have by definition restricted their specialized business caseload to complex or high dollar-value cases. For other business programs that do not restrict acceptance to complex or high dollar-value cases, such as in New Jersey and Philadelphia (see above), a time standard has been set for Track IV or complex cases.

A better practice would be to implement time standards for all non-complex case types. Procedural rules should provide latitude to the assigned judge to determine case duration for complex cases, such as in California, Illinois, and North Carolina.

I. CASE MANAGEMENT

Best Practice

A business court or division designs, implements, and publishes a case management plan with the participation of the judiciary, the Bar, and business stakeholders.

EXAMPLES:

California Complex Civil Litigation Division, New York Complex Commercial Divisions, North Carolina Business Court, and Philadelphia's Commerce Program

The four states listed above have designed, implemented, and published a case management plan. Most importantly, the Bar was involved from the inception, and attorneys know and adhere to the plan and enthusiastically support active judicial case management. A case management plan is especially useful in California and New York, where a commercial division has been implemented in multiple counties, and case management procedures are uniform across the state. In addition to predictability, a case management plan reduces venue shopping among attorneys, where permitted.

North Carolina has designed and published rules related to E-filing, document management, public access, and security. This is especially important in a high-tech court that manages most data and documents electronically.

The characteristics of a good case management plan include:

- Statement of court principles
- Early and continuous individual judicial assignment and case management
- Procedures for judicial selection and assignment
- Role of judicial and clerk staff and attorney/client communications throughout the case
- Policies regarding the establishment of time limits (case-by-case recommended)
- Civil cover sheet template with casetype, anticipated discovery, number of issues, number of witnesses, and trial duration included
- Service and E-filing
- E-filing and document management procedures, including case identification and authorization
- Mandatory use of an early scheduling conference (2-4 weeks after filing where permissible or after service and answer)
- Mandatory use of a scheduling order based on cover sheets and attorney/client preparation addressing (depending on the nature of the case): Limits on length of discovery and interrogatories; possible limits on the number of law, equity or other issues; rules regarding the use of telephonic or chambers conferences vs. in-courtroom hearings; and date certains for settlement conferences and trials.
- Appointment of liaison counsel
- Rules of discovery and application of general civil rules
- ADR and mediation requirements or expectations
- Expectations of preparation for pretrial hearings and trials
- Document management, security, and public access
- Docket management, security, and public access
- Trial preparation
- Trial procedures, including juries
- Use of in-courtroom presentation and video-conferencing technology
- Procedures related to judgment order preparation by the parties
- Court reporting and access to transcripts
- Web site and publication of opinions
- Appellate procedures and record considerations

Most of the other states utilize existing and/or modified rules of civil procedure. Delaware will be publishing in the near future the rules of procedure for the court of chancery.

J. CALENDARING

Best Practice

A business court assigns cases to individual judges from filing to disposition.

EXAMPLES:

All business courts with slight variations

All business courts in the United States assign cases to individual judges very early in the case process. Individual assignment fosters active judicial case management and control over times between events and from filing to disposition. Cases in the New York Commercial Division are assigned to a judge at filing. Assignment to a judge is made after service and answer (when a case is "at issue") or after acceptance into a business court following application and review by a gatekeeper (North Carolina and Connecticut) in most jurisdictions.

In North Carolina, under Rule 2.1, a judge can be individually assigned to an "exceptional" case in any county upon agreement by the judge following application by the parties. This arrangement is a considerable deviation from the North Carolina six-month county rotation system within a district.

To be accepted to the North Carolina Business Court, one or both parties, or a presiding county judge, must petition the chief justice of the supreme court for acceptance. A petition may be made in spite of the opposition of the two parties. Once accepted to the business court, a single judge manages the case through trial and disposition. Though the North Carolina Business Court judge¹² sits in Greensboro, he is required to preside over a jury trial in the original county of record. The business court has, on occasion, "packed up the entire hi-tech courtroom and set it back up again in a local county court with wiring and equipment."¹³

Philadelphia utilizes case managers and other possible judicial assignments for mediation and pretrial motions:

- a. Presiding Officer: Unless otherwise ordered, the case management conference shall be conducted by a civil case manager designated by the court, acting on behalf of the assigned commerce program judge.
- (3) Potential Use of a Commerce Program Judge Pro Tempore
 - a. On stipulation of all parties for supervision of discovery
 - b. For mediation
 - c. Identification of a particular commerce program judge pro tempore acceptable to all parties
 - d. The choice of a particular judge pro tempore for these purposes must be approved by the court
 - e. Use of a pro tempore judge for purposes of discovery of mediation cannot affect the deadlines set forth in the case management order¹⁴

California's complex civil litigation division has published clear statements of court policy with regards to judge assignment and case management:

- (a) [Judicial management] In complex litigation, judicial management should begin early and be applied continuously and actively, based on knowledge of the circumstances of each case.
- (b) [All-purpose assignment] Complex litigation should be assigned to one judge for all purposes. If such an assignment is not possible, a single judge should be assigned to hear law and motion and discovery matters.¹⁵

Connecticut utilizes an individual calendar system, but judges sit in the complex litigation courts for only three-year terms. Though the complex litigation courts have only been in existence since 1998, three-year rotations result in occasional changes in judge assignment for the same case.

K. TECHNOLOGY

Best Practice

A business court ensures the availability, training, and use of sophisticated case management, E-filing, document management, in-courtroom presentation, and judicial legal resource technologies.

EXAMPLES:

California Complex Civil Litigation Division, Delaware Court of Chancery, New York Complex Commercial Divisions, North Carolina Business Court

Good case management is unlikely in the absence of good technology. All four business court states listed above utilize case management, E-filing, document management, in-courtroom presentation, and judicial legal resource technologies. Each provides Internet access to its business dockets, non-secure case documents, and opinions.

Delaware and Connecticut capitalize on the use of advanced technologies that permit electronic filing, document management, docketing, calendaring, and public access to records, in addition to a high-tech courtroom. These technology tools allow judges and staff in both states to conduct cases more efficiently and to mitigate the amount of travel required of remote litigants and attorneys. Connecticut has yet to implement some of these key technologies but does make use of the existing statewide case management system.

Business courts or divisions have been a successful impetus for the development of many of these technologies. Hi-tech courtrooms are most useful to hi-tech attorneys or to complex cases that require expert or remote testimony.

Most business courts or divisions use an existing county or statewide case management system. North Carolina implemented a unique business court case management system including all required peripheral applications.

Technology best practices must include mention of Maryland's business and technology court and Michigan's cyber court for business cases. Both were scheduled to be implemented on October 1, 2002, although Michigan's cyber court's startup has been suspended due to lack of maintenance or ongoing funds. The Maryland Business and Technology Court Task Force states:

None of the states that have created or are considering business courts, however, have addressed specialization in technology. Just as Maryland was the first state to put the Uniform Computer Information Transactions Act into law, it is also the first state to consider a court with a special focus on technology matters that will use technological tools to administer these disputes more efficiently and effectively.¹⁶

E-filing and document management are generally available in two different commercial models:

1. Application Service Provider (ASP)

A private company owns the software and manages the E-filing and document management process, including maintenance of the electronic document files. The company charges the user (usually attorneys who pass the costs on to their clients) a fee for filing and for access to electronic documents. In this model, usually the legislated court filing fees remain the same and can be collected by the ASP (company) or directly by the court. Examples include California and Delaware.

BENEFIT: Up-front and management costs to the court are zero.

DOWNSIDE: The court does not own the data or the system and is left empty-handed if the company goes bankrupt or dissolves. In addition, hidden electronic filing and access costs favor wealthier attorneys and litigants.

2. Court-Owned Applications

The court purchases or develops in-house E-filing and document management applications and acquires the expertise or contracts with a company to manage the process. Capital and maintenance costs can be recouped by legislative increases in, or the addition of a technology supplement to, fees. Examples include New York and Delaware.

BENEFIT: In this model, courts usually maintain the same filing and access fees for all users and do not run the risk of private company bankruptcy or dissolution.

DOWNSIDE: Capital and maintenance costs and the potential need to change filing fees legislatively.

Related technologies useful to business courts include:

- Interactive software to integrate key filings with references to statutory and legal citations;
- Electronic bench books and jury instruction templates;
- E-commerce applications to permit electronic payment of filing fees using pre-authorized attorney accounts; and
- File, document, and evidence tracking (bar code)

L. FUNDING

Best Practice

A business court is supported by state funding.

EXAMPLES:

California Complex Civil Litigation Division,
and North Carolina Business Court

State funding of business courts supports longevity, aligns with statewide judicial and business goals and initiatives, and promotes the use of shared and supplemental resources. California and North Carolina provide funding streams for their business courts. The Delaware Court of Chancery is mandated by the state constitution, and the chancery divisions in Illinois and New Jersey have been institutionalized into the structure of the trial courts. Connecticut has provided additional funding for resources but no new judgeships.

Massachusetts, Nevada, New York, and Philadelphia received no additional funds for either resources or new judgeships. Each of their business courts carved out judgeships from within each county-based general jurisdiction trial court. Earmarked state funding for business courts is not a hallmark of unified court systems.

Tim Dibble and Geoff Gallas are principles of Aequitas, a court consulting company in Jenkintown, Pennsylvania. Business court best practices were originally researched for the Georgia Administrative Office of the Courts and have been subsequently updated and revised.

ATTACHMENT I

BUSINESS COURT CASETYPES

Business, Chancery, and Complex Civil Litigation Casetypes
September 9, 2002

STATE	CASE TYPES
<p>CALIFORNIA</p>	<p>COMPLEX LITIGATION DIVISION Not limited to:</p> <ul style="list-style-type: none"> • Business disputes • Complex tort claims and mass torts • Class actions • Antitrust and trade regulations • Securities claims • Disputes with complicated legal and factual issues
<p>CONNECTICUT</p>	<p>CONNECTICUT COMPLEX LITIGATION COURTS Any civil matter with complex matters and legal issues as determined by the chief court administrator. All applications made to chief court administrator, who may assign to any judge based on county of record or expertise.</p> <p>Also includes:</p> <ul style="list-style-type: none"> • Mass torts • Class actions • Complex housing cases
<p>DELAWARE</p>	<p>DELAWARE COURT OF CHANCERY Cases involving purely equity matters:</p> <ul style="list-style-type: none"> • Corporate issues • Fiduciary duties • Alternative entity litigation (LLCs, LLPs) • Partnerships and business trusts • Estates • Trustees • Zoning matters • Real estate land purchase and title • Guardianships • Will contests

STATE	CASE TYPES
ILLINOIS	<p>COOK COUNTY CHANCERY DIVISION</p> <ul style="list-style-type: none"> • Injunctions • Class actions • Mortgage foreclosures • Name changes • Declaratory judgments • Partnership and corporation dissolutions • Mechanics liens • Construction of wills and trusts • Statutory and administrative review • Trusts and trusteeships • Breaches of fiduciary duty <p>COOK COUNTY LAW DIVISION</p> <ul style="list-style-type: none"> • Commercial Litigation Section
MARYLAND	<p>BUSINESS AND TECHNOLOGY COURT Implementation Date: October 1, 2002</p> <p>Actions in which the principal claims involve the following should presumptively be assigned to the program. Disputes and actions arising out of and/or relating to:</p> <ul style="list-style-type: none"> • Technology development, maintenance, and consulting agreements, including software, network, and Internet Web site development and maintenance agreements; • Hosting of Internet Web sites for business entities • Technology licensing agreements, including software and biotechnology licensing agreements or any agreement involving the licensing of any intellectual property rights, including patent rights; • Internal affairs of businesses (incl. corporations, general partnerships, LLPs, sole proprietorships, professional associations, real estate investment trusts, and joint ventures), including the rights or obligations between or among shareholders, partners, and members or the liability or indemnity of officers, directors, managers, trustees, or partners • Breach of contract, fraud, misrepresentation, or statutory violations arising out of business dealings • Shareholder derivative and commercial class actions • Commercial bank transactions • Declaratory judgment and indemnification claims brought by or against insurers where the subject insurance policy is a business or commercial policy and where the underlying dispute would otherwise be assigned to the Business and Technology Case Management Program • Trade secret, non-compete, non-solicitation, and confidentiality agreements • Business tort actions, including unfair competition or violations of Maryland's Trade Secret or Unfair and Deceptive Trade Practices Acts • Commercial real property disputes other than landlord/tenant • Maryland's Uniform Computer Information Transactions Act • Professional malpractice claims in connection with services to a business entity • Violations of Maryland's Anti-Trust and Securities Acts

STATE	CASE TYPES
MASSACHUSETTS	<p>SUFFOLK COUNTY BUSINESS LITIGATION SESSION</p> <p>Claims relating to:</p> <ul style="list-style-type: none"> • Governance and conduct of entities' internal affairs • Employment agreements • Liability of shareholders, directors, officers, partners, etc. • Shareholder derivative claims • Securities transactions • Mergers, consolidations, sales of assets, issuance of debt, equity, and like interests • Intellectual property • Confidential, proprietary, or trade secret information • Restrictive covenants • Breaches of contract or fiduciary, misrepresentation, business torts, or other violations involving business relationships • UCC complex issues • Transactions with banks, investment bankers and financial advisers, brokerage firms, mutual and money funds • Violation of antitrust or other trade regulation laws • Unfair trade practices involving complex issues • Malpractice claims by business enterprises against professionals • A business enterprise to which a government entity is a party • Other commercial claims, including insurance, construction, real estate, and consumer matters involving complex issues
NEVADA	<p>NEVADA BUSINESS COURT</p> <ul style="list-style-type: none"> • NRS Chapters 78-88 • Commodities • Securities • Investments • Deceptive trade practices • Trademarks • Enhanced case management / business • Other business court matters
NEW JERSEY	<p>CHANCERY DIVISION OF THE SUPERIOR COURT</p> <ul style="list-style-type: none"> • Mortgage foreclosure • Cancellation of a mortgage • Quiet title (to determine real property true ownership) • Partition of property • Enforcement of contractual obligations • Receiverships for business entities • Partnership and corporate litigation (trade secrets, fiduciary obligations, etc.) • Specific enforcement of contracts • Labor strike injunctions <p>COMPLEX COMMERCIAL PROGRAM (Essex and Bergen Counties)</p> <ul style="list-style-type: none"> • Complex commercial cases

STATE	CASE TYPES
NEW YORK	<p>THE COMMERCIAL DIVISION OF THE STATE OF NEW YORK</p> <ul style="list-style-type: none"> • Breach of contract • Breach of fiduciary duty • Business fraud • Unfair competition • Uniform Commercial Code • Shareholder derivative actions • Commercial class actions • Commercial banking • Accountant fee disputes and malpractice
NORTH CAROLINA	<p>NORTH CAROLINA BUSINESS COURT</p> <p>Selected cases within the North Carolina General Statutes:</p> <ul style="list-style-type: none"> • Chapter 55 Business Corporation Act • Chapter 55B Professional Corporations • Chapter 57C Limited Liability Companies • Chapter 59 Partnerships • Chapter 78A Securities Act • Chapter 78B Tender Offer Disclosure Act • Chapter 78C Investment Advisors Act
ORANGE COUNTY FLORIDA	<ul style="list-style-type: none"> • Actions relating to the internal affairs or governance, dissolution or liquidation, rights or obligations between or among owners, or liability or indemnity of managers of corporations, partnerships, limited partnerships, limited liability companies or partnerships, professional associations, business trusts, joint ventures or other business enterprises • Disputes between or among two or more business enterprises relating to transactions, business relationships or contracts between or among the business enterprises. Examples of such transactions, relationships, and contracts include: <ol style="list-style-type: none"> 1. Uniform Commercial Code transactions; 2. Purchases or sales of businesses or the assets of businesses; 3. Sales of goods or services by or to business enterprises; 4. Non-consumer bank or brokerage accounts, including loan, deposit cash management and investment accounts; 5. Surety bonds; 6. Purchases or sales or leases of, or security interests in, commercial, real or personal property; 7. Franchisor/franchisee relationships. • Actions relating to trade secret or non-compete agreements • "Business torts" • Actions relating to intellectual property disputes • Actions relating to securities, or state securities laws or antitrust • Shareholder derivative actions and class actions based on claims otherwise falling within these types, and consumer class actions other than personal injury and products liability claims

STATE	CASE TYPES
	<ul style="list-style-type: none"> • Actions relating to corporate trust affairs • Malpractice claims involving business enterprises and attorneys, accountants, actuaries, architects, or other professionals in connection with the rendering of professional services to the business enterprise • Declaratory judgment actions brought by insurers, and coverage disputes and bad faith claims brought by insureds, where the dispute arises from a business or commercial insurance policy, such as a commercial general liability policy • Third-party indemnification claims against insurance companies where the subject insurance policy is a business or commercial policy, not including claims where the underlying dispute is principally a personal injury claim
<p>PHILADELPHIA</p>	<p>PHILADELPHIA COMMERCE PROGRAM — CIVIL TRIAL DIVISION Actions or disputes relating to or between or among:</p> <ul style="list-style-type: none"> • Internal affairs or governance, dissolution or liquidation, rights or obligations between or among owners (shareholders, partners, members), or liability or indemnity of managers (officers, directors, managers, trustees or members or partners functioning as managers) of business corporations, partnerships, limited partnerships, limited liability companies or partnerships, professional associations, business trusts, joint ventures or other business enterprises, including but not limited to any actions involving interpretation of the rights or obligations under the organic law (e.g., PA Business Corporation Law), articles of incorporation, by-laws or agreements governing such enterprises; • Two or more business enterprises relating to transactions, business relationships or contracts between or among the business enterprises. Examples of such transactions, relationships and contracts include: a) Uniform Commercial Code transactions; b) Purchases or sales of businesses or the assets of businesses; c) Sales of goods or services by or to business enterprises; d) Non-consumer bank or brokerage accounts, including loan, deposit cash management, and investment accounts; e) Surety bonds; f) Purchases or sales or leases of, or security interests in, commercial, real, or personal property; and g) Franchisor/franchisee relationships; • Trade secret or non-compete agreements; • “Business torts,” such as claims of unfair competition, or interference with contractual relations or prospective contractual relations; • Intellectual property disputes; • Securities, or relating to or arising under the Pennsylvania Securities Act; • Derivative and class actions based on claims otherwise falling within these 10 types, and consumer class actions other than personal injury and products liability claims; • Corporate trust affairs; • Declaratory judgment actions brought by insurers, and coverage disputes and bad faith claims brought by insureds, where the dispute arises from a business or commercial insurance policy, such as a Commercial General Liability policy; and • Third-party indemnification claims against insurance companies where the subject insurance policy is a business or commercial policy and where the underlying dispute would otherwise be assigned to the Commerce Program, not including claims where the underlying dispute is principally a personal injury claim.

STATE	CASE TYPES
<p>RHODE ISLAND</p>	<p>STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS PROVIDENCE, SOUTH CAROLINA SUPERIOR COURT Administrative Order No. 2001-9 Re: Business Calendar</p> <p>Civil actions in which the principal claim or claims involve the following are appropriate matters to be assigned to the Business Calendar for all purposes, including motion practice, discovery disputes, injunctive relief, and hearing on the merits (with or without a jury);</p> <ul style="list-style-type: none"> (a) Breach of contract or fiduciary duties, fraud, misrepresentation, business tort or statutory violations arising out of business dealings and/or transactions; (b) Transactions governed by the provisions of the Uniform Commercial Code; (c) Complicated transactions involving commercial real property; (d) Shareholder derivative actions; (e) Commercial class actions; (f) Commercial bank transactions; (g) Matters affecting the internal affairs or governance of business organizations or entities; (h) Business insolvencies and receiverships.

PROPOSED, BUT NOT YET IMPLEMENTED, BUSINESS COURTS' CASETYPES

September 6, 2002

STATE	CASE TYPES
COLORADO	<p>COLORADO BUSINESS COURT Implementation Date Undetermined Disputes involving:</p> <ul style="list-style-type: none"> • The rights, duties, or liabilities of equity owners, managers, or agents of any form of business entity; • The formation, sale or purchase, or merger or conversion of any business entity; • Conduct invoking antitrust laws or law governing unfair competition or interference with business or contractual relations, or agreements among or between businesses and their agents or employees restraining competition; • Commercial transactions not involving a consumer party; or • Intellectual property.
MICHIGAN	<p>CYBER COURT Implementation Date: Originally October 1, 2002, suspended due to lack of funding</p> <p>Concurrent jurisdiction over business and commercial actions more than \$25,000. Business and commercial actions would mean disputes arising between business owners, associates, or competitors or between a business entity and its customers. Cyber Court cases would include but not be limited to those involving or arising out of:</p> <ul style="list-style-type: none"> • Information technology, software, or Web site development, maintenance, or hosting; • The internal organization of business entities and the rights or obligations of shareholders, partners, members, owners, officers, directors, or managers; • Contractual agreements or other business dealings, including licensing, trade secret, noncompete, nonsolicitation, and confidentiality agreements; • Commercial transactions, including commercial banking transactions; • Business or commercial insurance policies; • Commercial real property other than landlord-tenant disputes. <p>Would expressly exclude:</p> <ul style="list-style-type: none"> • Tort actions, including personal injury, wrongful death, or medical malpractice matters; • Landlord-tenant matters; • Employee-employer disputes; • Administrative agency, tax, zoning, and other appeals; • Criminal matters; and • Proceedings to enforce judgments of any type.

ATTACHMENT I I
BUSINESS COURT BEST PRACTICES INTERVIEWEES

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NOTES

1. In September 2002, 15 business courts were studied. In February 2004, two business courts were added to the study: Orange County, Florida, Business Court Sub-Division and Rhode Island's Superior Court Business Calendar. Maricopa County, Arizona, has recently implemented a complex litigation track, which is not reviewed in this report. Orange County and Rhode Island business courts are not referenced in the Best Practices narrative, but data for all business courts is provided in the Business Court Matrix (pages 26-31) and in the Case Types tables (Attachment I).

2. See *The Commercial Division of the State of New York, A Brief History of the Commercial Division*, Web pages 1-2, http://www.courts.state.ny.us/comdiv/Brief_History_of_CD.htm

3. See *North Carolina Business Court, Definition of a Complex Business Case*, Web page 2, <http://www.ncbusinesscourt.net/New/aboutcourt/>

4. The Illinois' Cook County Chancery Division has a similar history, although without the national and international reputation.

5. Nott, Melissa L., and Nunnally, Allen C, *Section 1, The Business Litigation Session in the Massachusetts Superior Court, Suffolk County: Judicial Specialization for the 21st Century*, report prepared for the Business Litigation Conference, Boston, Massachusetts, February 28, 2002, Page 11.

6. See California AOC Deskbook on the Management of Complex Civil Litigation.

7. Robert L. Haig, *How Business and Courts Can Help Each Other*, Metropolitan Corp. Counsel, January, 2000, pgs. 13 and 33.

8. See *supra* note 7, page 5, reference to *ABA Highlights Business Courts at Annual Meeting in San Francisco*, Metropolitan Corp. Counsel, Sept. 1997, at 28.

9. *Focus on Business Courts*; Paul T. Dacier: *Hi-Tech Business Needs Higher Tech Courts*, Metropolitan Corp. Counsel, April 2000, at 40.

10. Interview with Judge van Gestel, September 9, 2002, and van Gestel, Allan, *The Business Litigation Session at Suffolk Superior Court*, Massachusetts Bar Institute Section Review Summer 2001, page 11.

11. See *Supra* note 8, page 5.

12. Honorable Ben F. Tennille

13. Interview with Hon. Ben F. Tennille, September 4, 2002.

14. *Commerce Program Case Management Procedures*, Administrative Docket No. 01-2000, The Philadelphia Courts, First Judicial District of Pennsylvania.

15. *2002 California Rules of Court*, Sec. 19. Complex civil litigation, Web page 1, <http://www.courtinfo.ca.gov/rules/2002/appendix/divistandard-51.htm>.

16. *Maryland Business and Technology Court Task Force Report*, Chapter 10 of the Maryland Acts of 2000, V. Experience of Other States, page 6. Judge Tennille has recommended that the North Carolina Business Court be expanded to include technology cases specifically.

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