

Through the Decades: The Development of Business Courts in the United States of America

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This article interprets the meaning of the term “business court” as it has developed through the variety of implementations and describes the successful development, and occasional failure, of those courts across the country.

INTRODUCTION

Once the concept of a specialized business court applied only to the Delaware Court of Chancery. Since the early 1990s, however, the concept has taken hold and expanded continuously across the United States with increasing momentum. This article completes a trilogy of *The Business Lawyer* articles charting the history of state “business courts” and explains what that term has come to mean in different jurisdictions, each with different challenges.¹ As detailed below, many

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1. See Mitchell L. Bach & Lee Applebaum, *A History of the Creation and Jurisdiction of Business Courts in the Last Decade*, 60 BUS. LAW. 147, 223–26 (2004) [hereinafter *Business Courts History*]; ABA Ad Hoc Comm. on Business Courts, *Business Courts: Towards A More Efficient Judiciary*, 52 BUS. LAW. 947 (1997). The 2004 article by Bach and Applebaum provides one of the best early

states have sought and found diverse solutions in implementing special procedures for the efficient resolution of complex business disputes.

I. WHAT IS A BUSINESS COURT?

The term “business court” does not have a single specifically defined meaning but “encompasses an array of specialized formats for administering business and commercial cases at the state civil trial court level.”² This includes specialized dockets, tracks, or programs within an existing civil trial court system, separate divisions of a civil trial court system, or in some cases a separate court in the sense that the Delaware Court of Chancery is a separate court within an overall court system.³ All business courts are “primarily designed to provide timely and well-reasoned case management and disposition to (1) commercial disputes between businesses, sometimes involving individuals with an interest in the business, and (2) internal disputes over the management and control of business entities.”⁴ One description of business court objectives is “to provide an efficient forum for the just, expeditious, and consistent resolution of complex commercial or business cases[.]”⁵ though not all business courts include a requirement that the case be complex.⁶ As explained in a recent business courts primer published by the ABA’s Section of Business Law:

There are common elements underlying all of these business courts, binding them together under that rubric. They each have: (1) a specialized jurisdiction focusing on business and/or commercial disputes; (2) one judge, or a set of judges, specially assigned to the business court; and (3) the same judge handling a single case from beginning to end. In practice, there are variations in jurisdiction and in the nature of judicial assignments to business courts. For example, in some courts a specially assigned business court judge may hear only business court cases, while in other court systems the business court judge may also handle non-business civil, or even criminal, cases. The one constant is a single specialist judge for a single case from beginning to end.⁷

There are significant variations in business court jurisdiction, i.e., in the means of determining which cases will go into the business courts and how they will get there. Thus, some business courts may have hundreds, or thousands, of

histories of the development of business courts in the United States as seen through the eyes of two lawyers who were among those who were instrumental in those efforts.

2. VANESSA R. TIRADENTES ET AL., *THE BUSINESS COURTS BENCH BOOK: PROCEDURES AND BEST PRACTICES IN BUSINESS AND COMMERCIAL CASES* xv (2019) [hereinafter *BUSINESS COURTS BENCH BOOK*].

3. *Id.*; Lee Applebaum & Mitchell L. Bach, *Business Courts in the United States: 20 Years of Innovation*, in *THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE* 869 (Peter M. Koelling ed., 8th ed. 2016) [hereinafter *Business Courts in the U.S.*].

4. Lee Applebaum, *The Steady Growth of Business Courts*, in *FUTURE TRENDS IN STATE COURTS* 70 (Nat’l Ctr. State Courts 2011) [hereinafter *Steady Growth*].

5. Ann Tucker Nees, *Making a Case for Business Courts: A Survey of and Proposed Framework to Evaluate Business Courts*, 24 GA. ST. U. L. REV. 477, 478–79 (2007) [hereinafter *Making a Case for Business Courts*].

6. *Business Courts History*, *supra* note 1, at 223–25.

7. *BUSINESS COURTS BENCH BOOK*, *supra* note 2, at xv.

cases filed annually, and others many fewer.⁸ We describe three basic models, which in practice have a wide range of permutations unique to each business court.

The first model is aimed at being objective in nature. Jurisdiction is determined by setting forth a clear list of case types that fall within the business court's jurisdiction, along with a jurisdictional minimum amount-in-controversy. Under this model, the business court may also set forth a clear list of case types that do not fall within the business court's jurisdiction. The case need not be complex or complicated. It simply needs to come within a listed case type.⁹ The minimum amount-in-controversy can function to limit the number of cases allowed,¹⁰ and might be considered as a gloss on the notion that cases with a more serious impact are better suited to the business court.

The second model is more subjective. The case must be a business or commercial case, but only is permitted in the business court if it is a "complex" business or commercial case.¹¹ Thus, one or more judicial gatekeepers play a critical role in determining whether a case goes into the business court; something unnecessary, for the most part, in the first model. "These courts rely on judicial gatekeepers to make discretionary decisions as to whether a business or commercial case is sufficiently complex to warrant inclusion on a business court docket. For example, a genuinely complex case may have a relatively low dollar value, while a procedurally and legally simple case could involve large sums."¹²

The third model is a hybrid, with both mandatory and discretionary jurisdiction. In these hybrid business courts, the enabling statutes, rules, or orders include a list of mandatory case types, along with discretionary judicial authority

8. For example, on one end, from 2006 to 2016, the Metro Atlanta Business Court accepted 239 cases, see FULTON CNTY. SUPERIOR COURT, METRO ATLANTA BUSINESS COURT 2016 ANNUAL REPORT 5 (2016), and from its inception in late 2012 through 2018, West Virginia's Business Court Division accepted ninety-three cases. See W. VA. JUDICIARY, BUSINESS COURT DIVISION 2018 ANNUAL REPORT 6–7 (2018). See also HON. ELLE HOBBS LYLE & JUSTIN SEAMON, REPORT FROM THE DAVIDSON COUNTY PILOT BUSINESS COURT: COMPLETION OF MARCH 16, 2015 SUPREME COURT ORDER 2 (Mar. 31, 2016).

On the other end, in its tenth year of operations (2009), Philadelphia's Commerce Case Management Program took on nearly 700 new cases in that year alone, see OFF. OF THE COURT ADM'R, FIRST JUDICIAL DISTRICT OF PENNSYLVANIA 2010 ANNUAL REPORT 71–72 (2010), and in the Massachusetts Business Litigation Session's first four years, when it had a narrower jurisdiction than at present, 1,029 cases came onto that business court's docket. See BUS. LITIG. SESSION RESOURCE COMM., THE MASSACHUSETTS BUSINESS LITIGATION SESSION: DOCKET AND CASELOAD ANALYSIS (Dec. 2004). Just five years into Chicago's Commercial Calendar, in 1998, nearly 3,700 cases were assigned in that year alone, see *Business Courts History*, *supra* note 1, at 163, and the proliferation of cases in Manhattan's Commercial Division caused the jurisdictional minimum amount-in-controversy to be raised from \$150,000 to \$500,000. See THE CHIEF JUDGE'S TASK FORCE ON COMMERCIAL LITIGATION IN THE 21ST CENTURY, REPORT AND RECOMMENDATIONS TO THE CHIEF JUSTICE OF THE STATE OF NEW YORK 8 (June 2012); N.Y. State Unified Court Sys. Off. of Court Admin., Administrative Order of the Chief Administrative Judge of the Courts No. 32/14 (Jan. 28, 2014), <https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/AO-32-14.pdf>.

9. *Business Courts History*, *supra* note 1, at 223–24; see also BUSINESS COURTS BENCH BOOK, *supra* note 2, at xvi; *Business Courts in the U.S.*, *supra* note 3, at 870–71.

10. BUSINESS COURTS BENCH BOOK, *supra* note 2, at xvi, 19; *Business Courts in the U.S.*, *supra* note 3, at 871.

11. BUSINESS COURTS BENCH BOOK, *supra* note 2, at xvi, 19; *Business Courts in the U.S.*, *supra* note 3, at 873–75; *Business Courts History*, *supra* note 1, at 225.

12. BUSINESS COURTS BENCH BOOK, *supra* note 2, at xvi, 19.

to allow other complex, non-mandatory, business and commercial cases onto the docket. North Carolina's business court provides a clear example of a hybrid business court.¹³ It evolved from the discretionary gatekeeping model in the mid-1990s into a hybrid model through the later addition of mandatory case types in 2005.¹⁴ Moreover, it subsequently added high jurisdictional minimum amount-in-controversy requirements, further controlling the docket by objective means.¹⁵

As stated, these three models do not apply in cookie-cutter fashion to actual practice among business courts. Each business court has its own variations, although typically within the realm of business and commercial litigation. In one state, the business court also encompasses consumer-based actions within its jurisdiction,¹⁶ and some business courts have taken on other cases not commonly seen as business court cases.¹⁷

There is another specialized court program that is closely associated with business courts, known as complex litigation courts.¹⁸ Rather than focusing on subject matter to define their jurisdiction, as with business courts, complex litigation courts are process driven. Jurisdiction is defined by whether a case is sufficiently complex to merit specialized assignment.¹⁹ Thus, a case will be assigned to a complex litigation court, e.g., if it has a multitude of litigants and lawyers, requires extensive depositions and discovery, includes an intense motion practice and a multitude of legal issues, and will involve a lengthy and burdensome trial.²⁰ These dockets may include business and commercial cases if sufficiently complex, but may also include cases involving other subject matter unrelated to business or commercial matters. In the 1990s, complex litigation courts were originally perceived as alternatives to business courts, or even adverse to business courts, e.g., in California and Connecticut.²¹ In California, a Judicial Council of California appointed task force reported that business courts were "not supported by important constituencies whose support would be necessary to

13. BUSINESS COURTS BENCH BOOK, *supra* note 2, at 19–20.

14. ABA BUS. LAW SECTION, BUS. & CORP. LITIG. COMM., ANNUAL REVIEW OF DEVELOPMENT IN BUSINESS AND CORPORATE LITIGATION 160–161 (2006).

15. N.C. STAT. § 7A-45.4(a)(9), (b)(2), (d)(4) (2019).

16. See State of Me. Supreme Judicial Court, Administrative Order JB-07-1 (A. 11-08) (Nov. 2, 2008), http://www.courts.maine.gov/rules_adminorders/adminorders/JB-07-1.html ("The Business and Consumer Docket (BCD) shall be a statewide docket comprised of selected actions involving business and/or consumer disputes, and shall be managed by two judges from either trial court designated by the Chief Justice of the Supreme Judicial Court.")

17. For example, Philadelphia's Commerce Court was assigned tax sequestration cases on commercial property where the city held tax liens, see FIRST JUDICIAL DIST. OF PA., 2015 ANNUAL REPORT 26 (2015), and North Carolina's Business Court had certain tax cases added as part of its mandatory jurisdiction. N.C. STAT. § 7A-45.4(b)(1) (2019).

18. BUSINESS COURTS BENCH BOOK, *supra* note 2, at 18–19; *Business Courts History*, *supra* note 1, at 204–16.

19. *Business Courts in the U.S.*, *supra* note 3, at 886–87 (citing *Business Courts History*, *supra* note 1, at 204–13).

20. *id.* at 887.

21. *Business Courts History*, *supra* note 1, at 206–07, 211–12.

make the concept viable.²² Years earlier, the California State Bar's Board of Governors had prohibited the State Bar's Business Courts Subcommittee from pursuing or supporting the creation of business courts in California.²³ In 2000, the Complex Civil Litigation Pilot Program was created in six of California's superior courts.²⁴ In Connecticut, opposition to business court proposals came from various parts of the bar and editorial sources, alternatively proposing the now twenty-two-year-old Complex Litigation Docket²⁵ as more suitable for Connecticut than a specialized business court.²⁶ As time passed, however, the sense of adversity faded and common ground has become apparent, in both practice and how business court and complex litigation court judges perceive themselves.²⁷ For example, complex litigation judges have served as presidents of the American College of Business Courts Judges²⁸ and as Business Court Representatives in the ABA's Section of Business Law.²⁹

II. HISTORY OF BUSINESS COURTS

As of January 1, 2020, twenty-five states around the country have some type of specialized business court or commercial docket as a feature of their judicial systems. Some are limited to specific locales within a state, others operate state-wide. While Delaware's Court of Chancery has existed for over two centuries, it was not until the early 1990s that other states' efforts to establish specialized courts and dockets to handle complex business and commercial disputes began to bear fruit. As discussed below (grouped by decade), what began as relatively modest efforts in five jurisdictions in the 1990s swelled in the following decades, as successes in early-adopting jurisdictions were built upon and replicated by others. A complete primer on the particulars of each court in each jurisdiction is beyond the scope of this article, but additional information regarding specific courts or states is readily available.³⁰

22. *Id.* at 206 (quoting Press Release, Judicial Council of Cal., State Courts Resolve Complex Cases More Efficiently National Report Finds (Aug. 29, 2003)).

23. *Id.* at 207.

24. *Id.*

25. See, e.g., STATE OF CONN. JUDICIAL BRANCH, FACTS OF THE CONNECTICUT JUDICIAL BRANCH COMPLEX LITIGATION DOCKET (June 5, 2018), https://www.jud.ct.gov/external/super/FACTS_060418.pdf.

26. *Business Courts History*, *supra* note 1, at 211 & n.531 ("The debate in Connecticut clearly reflected (i) a belief that there had to be a choice between these two types of courts; and (ii) strong passions on which choice should be made.")

27. *Business Courts in the U.S.*, *supra* note 3, at 886–88.

28. BUSINESS COURTS BENCH BOOK, *supra* note 2, at 19.

29. ABA Section of Bus. Law, *Business Court Representatives*, AM. B. ASS'N, https://www.americanbar.org/groups/business_law/migrated/committees/CL109000pub/ (last visited Apr. 17, 2020).

30. See, e.g., *Business Courts in the U.S.*, *supra* note 3; John Coyle, *Business Courts and Inter-State Competition*, 53 WM. & MARY L. REV. 1915 (2012); Ann Tucker Nees, *Making a Case for Business Courts: A Survey of and Proposed Framework to Evaluate Business Courts*, 24 GA. ST. U. L. REV. 477 (2007); Joseph R. Slight III & Elizabeth A. Powers, *Delaware Courts Continue to Excel in Business Litigation with the Success of the Complex Commercial Litigation Division of the Superior Court*, 70 BUS. LAW. 1059 (2015) [hereinafter *Delaware Courts Continue to Excel*]; Hon. Ben F. Tennille, Lee Applebaum & Anne Tucker Nees, *Getting to Yes in Specialized Courts: The Unique Role of ADR in Business Court Cases*, 11 PEPP. DISP. RESOL. L.J. 35 (2010); BUSINESS COURTS BENCH BOOK, *supra* note 2.

A. THE BUSINESS COURTS IN DELAWARE: THE COURT OF CHANCERY AND THE COMPLEX COMMERCIAL LITIGATION DIVISION OF THE SUPERIOR COURT

The Court of Chancery of the State of Delaware, established in 1792, is often considered one of the first, if not the first, court to develop skills, expertise, and procedures that garnered a reputation for being able to efficiently hear and decide sophisticated business and commercial disputes.³¹ As opposed to the courts and dockets for the states described below—which were specifically created to specialize in handling business and commercial disputes—the Court of Chancery grew organically into that role over the course of 225 years. This specialization was a logical outgrowth given that the court’s historical subject-matter jurisdiction over equitable claims frequently resulted in it hearing claims seeking injunctive relief (such as claims seeking to enjoin mergers) or claims challenging the conduct of fiduciaries.³² Delaware’s law court, the Superior Court, also saw its fair share of complex commercial legal disputes—that is, non-equity disputes—over the years.

Delaware recognized sophisticated litigants with complex commercial disputes in that court would benefit from a “Chancery-like” experience for their cases too—primarily from the litigation being assigned to a single, specialized jurist from its filing to final disposition, but with the added feature that a dispute could be submitted to a jury.³³ Thus, in 2010, the President Judge of the Delaware Superior Court issued an administrative directive creating the Complex Commercial Litigation Division of the Superior Court.³⁴ Thus, for a decade, Delaware’s commitment to the use of business and commercial courts to efficiently adjudicate complex commercial and business disputes has found a home in both the legal and equitable courts of the state.

By the early 1990s, other jurisdictions outside the First State began to evaluate the use of specialized business and commercial courts (or dockets within existing courts) as features for their judicial systems. As discussed below, a movement that began with five states in the final decade of the twentieth century swelled to half of the United States by the dawn of 2020.

B. THE 1990S—BUSINESS COURTS MAKE THEIR DEBUT IN NEW YORK, ILLINOIS, NEW JERSEY, AND NORTH CAROLINA

As noted, by the early 1990s, jurisdictions outside of Delaware had begun to consider and study whether the creation of specialty business or commercial

31. See, e.g., Jack Jacobs, *The Delaware Court of Chancery: A 225-Year Retrospective*, Law360 (Sept. 27, 2017, 4:05 PM), <https://www.law360.com/articles/968498/the-delaware-court-of-chancery-a-225-year-retrospective>. This article was written to commemorate the 225th anniversary of that court and contains information addressing the history of the court’s preeminence as a business court.

32. It is important to note that the equitable jurisdiction of the Court of Chancery extends far beyond the corporate and business disputes for which it is famous and includes important disputes touching the daily lives of Delaware citizens like real property, estate, or guardianship matters.

33. *Delaware Courts Continue to Excel*, *supra* note 30, at 1039–40.

34. See Administrative Directive No. 2010-3 (Del. Super. Ct. Apr. 26, 2010), https://www.courts.delaware.gov/superior/pdf/Administrative_Directive_2010-3.pdf.

courts could improve those jurisdictions' ability to administer justice to corporate and commercial litigants involved in civil disputes. California, New York, and Illinois (Chicago) were three jurisdictions giving early and serious consideration of how business courts might improve justice in those locations.³⁵ While California passed on the idea, New York and Illinois moved forward with the concept of creating business courts.³⁶

New York

To that end, in 1993 the Supreme Court of New York in New York County (Manhattan) created a pilot commercial program in an effort to identify ways to shore up confidence in the ability of the state courts of New York to effectively and efficiently address complex commercial disputes.³⁷ Buoyed by immediate signs of success in the pilot program, in November 1995 the office of the chief judge created the Commercial Division of the Supreme Court of New York.³⁸ In the beginning, the Commercial Division was limited to New York and Monroe Counties.³⁹ By 1998 the Supreme Court of New York expanded the Commercial Division to Nassau, Erie, and Westchester Counties and, four years later, further expanded the program to Albany, Suffolk, and Kings Counties. By the close of 2019, the Commercial Division was located in the following New York locations: 7th Judicial District (Rochester), 8th Judicial District (Buffalo), Albany County, Kings County, Nassau County, New York County (Manhattan), Onondaga County, Queens County, Suffolk County, Westchester County, and the Bronx.⁴⁰

Illinois

The creation of a specific Commercial Calendar in Illinois began with an administrative order issued by the Presiding Judge of the Cook County Circuit Court's Law Division, issued on September 9, 1992, which created a pilot program by which individual judges would handle the entire proceedings for individual cases assigned to them.⁴¹ While the pilot program was to include "Individual Calendars" in both a General Calendar Section and a Commercial Calendar Section, the Commercial Calendar Section was not operational until 1993.⁴² The Commercial Calendar Section was originally staffed with the assignment of

35. See NAT'L CTR. FOR STATE COURTS, *FUTURE TRENDS IN STATE COURTS 2011: SPECIAL FOCUS ON ACCESS TO JUSTICE* 70 (2011), http://www.utcourts.gov/committees/social_media/COURT%20TRENDS_book2011.pdf.

36. See *id.*

37. See *Business Courts History*, *supra* note 1, at 152.

38. *Id.* at 153.

39. *Id.* at 153–54.

40. See, e.g., *Commercial Division—N.Y. Supreme Court*, NYCOURTS.GOV, <http://ww2.nycourts.gov/courts/comdiv/index.shtml> (last visited Apr. 28, 2020); *12JD—Civil Supreme, Bronx—Filing Rules*, NYCOURTS.GOV, <http://ww2.nycourts.gov/COURTS/12jd/BRONX/Civil/filingrules.shtml#Commercial> Division (last visited Apr. 28, 2020).

41. *Business Courts History*, *supra* note 1, at 160.

42. *Id.* at 160–61.

three judges over the course of 1993–1994.⁴³ The Commercial Calendar Section was successful—and busy—and by 2001 the number of judges assigned to the Section had risen to eight.⁴⁴ At the end of 2019, the Commercial Calendar Section was still comprised of eight assigned judges.⁴⁵

North Carolina

While New York and Illinois had paved the way by establishing commercial divisions or calendars within existing courts (in specific locales), in 1995 North Carolina chose a different path by creating a business court,⁴⁶ whose jurisdictional reach would be statewide. The North Carolina Business Court was created by order of the Supreme Court of North Carolina, and was initially staffed by one judge, The Honorable Ben F. Tennille (Ret.).⁴⁷ The task assigned to Judge Tennille included the mandate that the business court generate a body of case law addressing corporate governance matters in North Carolina, upon which the citizens (corporate and otherwise) of North Carolina could rely.⁴⁸ The North Carolina Business Court has been viewed as a success, receiving accolades from the bar and serving as a catalyst for the creation of similar courts in other states.⁴⁹ By the early 2000s, North Carolina had created a Commission on the Future of the North Carolina Business Court to consider, among other things, the court's expansion.⁵⁰ The Commission's report, issued in October 2004, did, indeed, recommend the expansion of the business court to three judges, sitting in three counties.⁵¹ As of June 30, 2019, the business court had been expanded to include five active business court judges, sitting in Charlotte, Greensboro, Raleigh, and Winston-Salem, who may hear cases originating in locations throughout North Carolina.⁵²

43. *Id.* at 161.

44. *Id.* at 161–62.

45. *Commercial Calendar Section*, STATE ILL. CIRCUIT COURT COOK CNTY., <http://www.cookcounty.org/ABOUTTHECOURT/CountyDepartment/LawDivision/CommercialCalendarSection.aspx> (last visited Apr. 28, 2020).

46. “The North Carolina Business Court is a specialized forum of the [North Carolina] superior court” *Superior Court*, N.C. JUDICIAL BRANCH, <https://www.nccourts.gov/courts/superior-court> (last visited Apr. 28, 2020).

47. *Business Court's History*, *supra* note 1, at 166–67.

48. *Id.* at 167–68.

49. *Id.* at 170. One study indicates that a significant number of out-of-state plaintiffs chose to litigate in the business court, suggesting “that in some cases, out-of-state plaintiffs are selecting North Carolina as their home for litigation.” Gregory Day, *Revisiting the North Carolina Business Court After Twenty Years*, 37 CAMPBELL L. REV. 277, 317 (2015).

50. *Business Court's History*, *supra* note 1, at 170.

51. See CHIEF JUSTICE'S COMM'N ON THE FUTURE OF THE N.C. BUS. COURT, FINAL REPORT AND RECOMMENDATION (Oct. 28, 2004), <https://businesscourtsblog.com/wp-content/uploads/2019/01/North-Carolina-2004-01545787xB05D9.pdf>.

52. See N.C. ADMIN. OFF. OF THE COURTS, REPORT ON NORTH CAROLINA BUSINESS COURT 2 (Aug. 1, 2019), https://www.nccourts.gov/assets/inline-files/20190801-Business-Court-Report.pdf?jlXJNA.44eUzY4zc5Sw_r6_Fb_Y3pSCZ; see also Andrew Jones, *Toward a Stronger Economic Future for North Carolina: Precedent and Opinions of the North Carolina Business Court*, 6 ELON L. REV. 189, 192, 199 (2014) (“All trial court judges in North Carolina are elected by the voters, with the notable exception of special superior court [business court] judges appointed by the Governor.”).

New Jersey

In the early 1990s, Essex County, New Jersey, began assigning complex commercial litigation matters to designated judges who would handle the matters from “case management through trial.”⁵³ By 1996, the informal process being used in Essex County had enjoyed favorable reactions from the bar and business groups, which led the Chief Justice of the New Jersey Supreme Court to create a formal pilot program in Essex and Bergen Counties for the handling of complex commercial disputes.⁵⁴ Between 1996 and 2013 there were a number of efforts in New Jersey to build on the early successes in Essex and Bergen Counties;⁵⁵ and, in the latter year, the Chief Justice of the Supreme Court created a Working Group on Business Litigation to study further how New Jersey might address complex commercial litigation going forward.⁵⁶ In April 2014, the Working Group on Business Litigation released its report.⁵⁷ While the Working Group did not recommend any changes to the existing court structure in New Jersey, it did recommend that the existing pilot programs in Essex and Bergen Counties be expanded statewide.⁵⁸ On January 1, 2015, the New Jersey Supreme Court expanded the programs statewide with the creation of the Complex Business Litigation Program, pursuant to which in each location (or vicinage as the courts are divided in New Jersey) at least one judge would be designated to handle all cases filed in that jurisdiction under the Complex Business Litigation Program.⁵⁹ New rules governing practice and procedure in the Program became effective on September 1, 2018; and, as of July 1, 2019, all fifteen vicinages in New Jersey had at least one judge assigned to the Program.⁶⁰

C. 2000–2010—THE EXPANSION CONTINUES

During the opening decade of the twenty-first century, the following jurisdictions joined those discussed above by creating their own versions of business courts: Pennsylvania, Massachusetts, Nevada, Rhode Island, Maryland, Georgia, Maine, Florida, South Carolina, New Hampshire, Ohio, and Delaware.

Pennsylvania

In the late 1990s, after the failure of multiple efforts at statewide legislative efforts to establish business courts in Pennsylvania, members of the bar in Philadelphia worked with the Administrative Judge of the Philadelphia Court of

53. *Business Courts History*, *supra* note 1, at 171.

54. *Id.* at 171–72.

55. *See, e.g., id.* at 171–76.

56. *See, e.g.,* REPORT OF THE WORKING GRP. ON BUS. LITIG. (Mar. 2014), <https://businesscourtsblog.com/wp-content/uploads/2019/01/New-Jersey-2014-01545807xB05D9.pdf>.

57. *See id.*

58. *See id.* at 7.

59. *See Complex Business Litigation Program*, NJCOURTS.GOV, <https://www.njcourts.gov/courts/civil/cblp.html> (last visited Apr. 28, 2020).

60. *See id.*

Common Pleas to create a Commerce Case Management Program in that court.⁶¹ Created by administrative order, and patterned after the Commercial Division in New York, the Commerce Case Management Program opened for business effective January 1, 2000, in the Philadelphia Court of Common Pleas.⁶² The goal of Philadelphia's Commerce Case Management Program, according to one of its judges, is "provide a quality product" via the expertise and focus of assigned jurists.⁶³ The Commerce Case Management Program began with two assigned judges.⁶⁴ While currently up to four judges may be assigned to the Commerce Program, since 2002, there have been three sitting judges in the program.⁶⁵ In 2007, the western end of Pennsylvania received its own form of business court with the creation of the Commerce and Complex Litigation Center in the Fifth Judicial District in Pittsburgh.⁶⁶

Massachusetts

In October 2000, the Chief Justice of the Massachusetts Superior Court established a two-year pilot program creating a Business Litigation Session in the Suffolk County Superior Court in Boston.⁶⁷ In February 2003, the Chief Justice of the Superior Court issued an administrative directive making the Session permanent in Suffolk County and expanding its jurisdiction to hear disputes from the neighboring counties of Essex, Norfolk, and Middlesex—so long as all parties to such disputes from the three counties consented to venue in the Business Litigation Session in Boston.⁶⁸ A superseding administrative directive in 2009 opened up the Business Litigation Session to cases from all counties in Massachusetts, but with the same caveat that all parties must consent to venue.⁶⁹ It is worth noting that the Business Litigation Session is also somewhat unique in that its judges are assigned to one of two sessions of six months each, and with two judges working as a team in each session.⁷⁰

Nevada

In 2000, the Supreme Court of Nevada issued rules establishing business courts in Nevada's Second Judicial District (Reno) and Eighth Judicial District

61. *Business Courts History*, *supra* note 1, at 176–77.

62. *Id.* at 176–77.

63. *Id.* at 177.

64. *Id.*

65. See Administrative Docket No. 01 of 2016, <https://www.courts.phila.gov/pdf/regs/2016/cp-aj-ad-01-2016.pdf> (Pa. Ct. Comm. Pl. Aug. 2, 2016).

66. See *Civil—Commerce and Complex Litigation Center*, FIFTH JUDICIAL DIST. OF PA., https://www.allegheycourts.us/civil/commerce_complex_litigation.aspx (last visited Apr. 28, 2020).

67. *Business Courts History*, *supra* note 1, at 180.

68. See Administrative Directive No. 03-01, <https://www.mass.gov/files/documents/2016/08/xi/03-01.pdf> (Mass. Super. Ct. Feb. 12, 2003).

69. See Administrative Directive No. 09-1, https://bostonbar.org/pub/bw/0809/011209/buslit_directive.pdf (Mass. Super. Ct. Jan. 19, 2009).

70. See *About the Superior Court Business Litigation Session: Overview*, MASS.GOV, <https://www.mass.gov/info-details/about-the-superior-court-business-litigation-session> (last visited Apr. 28, 2020).

(Las Vegas).⁷¹ The Nevada Supreme Court's actions on this front were the product of a wider examination by the state (via a legislative subcommittee) of ways it could foster business formation and development in Nevada.⁷² Key to this examination was the Sub-subcommittee for the Examination of Business Court and Business Laws.⁷³ Ultimately, Nevada determined to model its business courts after those of New York and would limit it to the two jurisdictions—Reno and Las Vegas. While in 2009 Nevada explored the possibility of establishing a Court of Chancery as a statewide form of business court, the state decided not to establish such a court in favor of continuing with the business courts established in 2000.⁷⁴

Rhode Island

In April 2001, the Presiding Justice of the Rhode Island Superior Court issued an administrative order establishing a Business Calendar for the Superior Court in Providence and Bristol Counties.⁷⁵ In July 2011, the Superior Court expanded the Business Calendar statewide.⁷⁶

Maryland

In the early 2000s, the General Assembly of Maryland established the Maryland Business and Technology Task Force to examine “the feasibility of establishing a specialized court function within Maryland’s circuit courts to adjudicate business and technology disputes.”⁷⁷ The Task Force completed its studies and recommended the creation of the Maryland Business and Technology Case Management Program, which became operational in 2003.⁷⁸ The Program was promulgated via the rulemaking process of the Maryland Court of Appeals, and created a statewide Program within the existing circuit courts within the state.⁷⁹ The Program required that judges appointed to the Program attend specialized training to assist in the management of complex business and commercial litigation matters;⁸⁰

71. *Business Courts History*, *supra* note 1, at 184.

72. *Id.*

73. *Id.* at 184–85.

74. See Legislative Commission Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in Nevada, Bulletin No. 09-03 (Jan. 2009), <https://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2009/Bulletin09-03.pdf>.

75. *Business Courts History*, *supra* note 1, at 188.

76. See State of Rhode Island and Providence Plantations, Superior Court, RE: Business Calendar, Administrative Order No. 2011-10 (July 29, 2011), <https://www.courts.ri.gov/Courts/DecisionsOrders/AdministrativeOrders/2011-10.pdf>.

77. *Business Courts History*, *supra* note 1, at 190.

78. AMELIA PARSONS & BRETT BURKA, REPORT ON BUSINESS COURTS, RECENT DEVELOPMENTS, AND RELATED ISSUES 10 (May 2015), https://cdn.laruta.io/app/uploads/sites/7/legacyFiles/uploadedFiles/MSBA/Member_Groups/Sections/Business_Law/Report%20on%20Business%20Courts,%20Recent%20Developments,%20and%20Related%20Issues.pdf.

79. *Business Courts History*, *supra* note 1, at 191.

80. See PARSONS & BURKA, *supra* note 78, at 10.

and, by 2006, each judge that had been assigned to the Program had completed such training.⁸¹ More recently, the Maryland State Bar Association created an Ad Hoc Task Force to engage in a two-year study of certain key factors that it had identified as having “limited the effectiveness of the Program,” which included concerns such as a perceived non-uniformity in the Program across the various circuit courts and a resulting inconsistency in forms and procedures.⁸²

Florida

Effective on January 2, 2004, the Presiding Judge of the Ninth Judicial Circuit (Orlando) established a Complex Business Litigation Division within the Civil Division of that court.⁸³ That same year, the Seventeenth Judicial Circuit (Ft. Lauderdale) also created a Complex Business Litigation Division.⁸⁴ The Eleventh Judicial Circuit (Miami metro) created its own Complex Business Litigation Division in 2006 “to address the overwhelming number of complex business cases” being filed in that circuit.⁸⁵ In 2007, the Thirteenth Judicial Circuit (Tampa) followed the lead of earlier adopting circuits and established its own complex business litigation subdivision.⁸⁶ While the Ninth Judicial Circuit (Orlando) was an early adopter of a complex business litigation division, by 2018 the circuit faced a critical shortage of resources and, therefore, ordered the cessation of all activities in that division in order to allocate additional resources to the family court division in that circuit.⁸⁷ This was so, even though, in 2017, the Eleventh Judicial Circuit (Miami metro) reaffirmed the creation of its Complex Business Litigation Division in its civil division, and adopted certain changes to the division’s administration that had been part of a pilot project beginning in the prior year.⁸⁸ Following a short hiatus, however, Orlando’s complex business litigation division was reinstated in October 2019.⁸⁹

81. See *id.* at 11.

82. See MSBA BUS. LAW SECTION AD HOC TASK FORCE, FINAL REPORT AND PROPOSED RECOMMENDATION: BUSINESS & TECHNOLOGY CASE MANAGEMENT PROGRAM 1 (Jan. 31, 2017), <https://businesscourtsblog.com/wp-content/uploads/2019/01/Maryland-2017-01545805xB05D9.pdf>.

83. *Business Courts History*, *supra* note 1, at 194.

84. See *Circuit Civil*, SEVENTEENTH JUDICIAL CIRCUIT COURT FLA., <http://www.17th.flcourts.org/01-civil-division/> (last visited Apr. 28, 2020).

85. See *Complex Business Litigation*, ELEVENTH JUDICIAL CIRCUIT COURT FLA., <https://www.jud11.flcourts.org/About-the-Court/Our-Courts/Civil-Court/Complex-Business-Litigation> (last visited Apr. 28, 2020).

86. See Thirteenth Judicial Circuit of Fla., Administrative Order S-2013-021 (Apr. 18, 2013), <https://www.fljud13.org/Portals/0/AO/DOCS/2013-021-S.pdf>.

87. ABA BUS. LAW SECTION, BUS. & CORP. LITIG. COMM., RECENT DEVELOPMENTS IN BUSINESS AND CORPORATE LITIGATION 140–42 (2015).

88. See *In re Reaffirmation of the Creation of Complex Business Litigation in the Circuit Civil Division of the Eleventh Judicial Circuit of Florida; Re-Designation of CBL Sections; and Modification of Procedures for the Assignment and Reassignment of Cases to CBL Sections*, Administrative Order No. 17-11 (Dec. 12, 2017), <https://www.jud11.flcourts.org/Render?fileid=%7BF8D3A74F-EFC8-4506-9416-85A8A5580ACC%7D>.

89. See *Business Court to Reopen on October 21, 2019*, NINTH JUDICIAL CIRCUIT COURT FLA., <https://www.ninthcircuit.org/news/business-court-reopen-october-21-2019> (last visited Apr. 28, 2020).

Georgia

In 2005, Georgia entered the market for business courts. On June 3 of that year, the Supreme Court of Georgia adopted rules for the Atlanta Judicial Circuit, which created a complex business litigation division in Fulton County in metro-Atlanta.⁹⁰ These rules were subsequently amended to allow other metro-Atlanta counties to adopt the rules for establishing a business court, and two years later the adjacent county, Gwinnett, adopted a business court pilot program.⁹¹ By amendment to the rules in 2016, the Fulton and Gwinnett Counties' Business Case Division became known as the Metro Atlanta Business Case Division.⁹² As of 2017, the Metro Atlanta Business Case Division was staffed with six judicial officers over the two counties, and who received assignments on a rotating basis.⁹³ In 2019, after a constitutional amendment in 2018,⁹⁴ Georgia created its first Statewide Business Court by act of the Legislature dated April 2, 2019, and which was signed by the Governor on May 7, 2019.⁹⁵ The Statewide Business Court began operations on January 1, 2020, and will begin taking cases on August 1, 2020. The court has a single judge, appointed by the Governor and confirmed by the State House and Senate Judiciary Committees, and has chambers in Macon, Georgia.⁹⁶ The new Statewide Business Court will not serve as the exclusive venue for business disputes in Georgia, as the Metro Atlanta Business Court will continue to operate, and other counties may establish their own business court dockets or programs.

Maine

By administrative order (effective November 17, 2008), the State of Maine Supreme Judicial Court created a statewide Business and Consumer Docket to be staffed with two judges.⁹⁷ The docket description includes consumer disputes with business entities requiring specialized and differentiated case management that are not necessarily class actions, making it unique among existing business courts in this aspect.⁹⁸

90. See PARSONS & BURKA, *supra* note 78, at 8.

91. See FULTON CNTY. SUPERIOR COURT, METRO ATLANTA BUSINESS COURT 2017 ANNUAL REPORT 2 (2017), <https://www.businesscourtsblog.com/wp-content/uploads/2019/09/2017-Report-01635329xB05D9.pdf>.

92. *Id.* at 2.

93. *Id.* at 3.

94. GA. CONST. art. VI, sec. I, para. I.

95. H.B. 239, 2019–2020 Gen. Assemb., Reg. Sess. (Ga. 2019).

96. See *id.*

97. See State of Me. Supreme Judicial Court, Administrative Order JB-07-1 (Nov. 4, 2008), https://courts.maine.gov/rules_adminorders/adminorders/JB-07-1.html.

98. BUSINESS COURTS BENCH BOOK, *supra* note 2, at 8; *Business and Consumer Court*, STATE ME. JUDICIAL BRANCH, https://www.courts.maine.gov/maine_courts/business/index.shtml (last visited Apr. 28, 2020).

South Carolina

Upon petition of the South Carolina Bar, on September 7, 2007, the Supreme Court of South Carolina created a Business Court Pilot Program.⁹⁹ The pilot program was to run for two years, and was established in the three primary, commercial counties in the state: Greenville, Charleston, and Richland (Columbia metro).¹⁰⁰ The Supreme Court of South Carolina has extended the pilot program on multiple occasions, and by 2014 it had extended the pilot program to all counties in the state, which were grouped into three regions, with each region having one judge assigned to the pilot program.¹⁰¹ In August 2014, the Supreme Court added five additional judges (for a total of eight jurists) to the Business Court Pilot Program.¹⁰² By the close of 2017, the Business Court Pilot Program had expanded to ten judges in the three regions.¹⁰³ This long-running “pilot program successfully demonstrated the merits of having a business court in the Palmetto State, and in January 2019, the Supreme Court of South Carolina declared the Business Court Program was now permanent and would continue “unless rescinded or modified by Order of the Chief Justice.”¹⁰⁴

New Hampshire

In 2008, the New Hampshire Legislature passed legislation creating a Business and Commercial Dispute Docket in the Superior Court.¹⁰⁵ The Business and Commercial Dispute Docket of the Superior Court is a statewide program, but which sits in the Superior Court in Merrimack County (Concord) because the United States District Court “has offered the use of one of its courtrooms for extremely lengthy trials if needed.”¹⁰⁶ Among other things, all parties must consent to its jurisdiction, and unlike its northern neighbor, no party can be a consumer.¹⁰⁷

Ohio

In 2007, the then-current Chief Justice of the Ohio Supreme Court created the Supreme Court Task Force on Commercial Dockets, “charging it with assessing

99. See Supreme Court of S.C., Administrative Order 2007-09-07-01 (Sept. 7, 2007), <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2007-09-07-01>.

100. See *id.*

101. See Supreme Court of S.C., Administrative Order 2014-01-03-02 (Jan. 3, 2014), <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-01-03-02>.

102. See Supreme Court of S.C., Administrative Order 2014-08-13-02 (Aug. 8, 2014), <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-08-13-02>.

103. See Supreme Court of S.C., Administrative Order 2017-12-20-02 (Dec. 20, 2017), <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-12-20-02>.

104. See Supreme Court of S.C., Administrative Order 2019-01-30-01 (Jan. 30, 2019), <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2019-01-30-01>.

105. See *Business Court Mediation*, N.H. JUDICIAL BRANCH, <https://www.courts.state.nh.us/adrp/business/index.htm> (last visited Apr. 28, 2020).

106. See *id.*

107. N.H. SUPER. CT. R. 207(III)(a)(c) (2019), <https://www.courts.state.nh.us/rules/supercr-new/supercr-new-207.htm>.

the best method of establishing commercial civil litigation dockets in Ohio's Courts of Common Pleas."¹⁰⁸ Upon the recommendation of the Task Force, the Supreme Court adopted temporary rules to set the framework for commercial dockets in Ohio, and by March of 2009, commercial dockets had been established in the Courts of Common Pleas in Cuyahoga (Cleveland), Franklin (Columbus), Hamilton (Cincinnati), and Lucas (Toledo) Counties.¹⁰⁹ In 2013, "the Supreme Court adopted permanent rules that provided for voluntary participation by a Court of Common Pleas and the commercial docket judges in eligible counties, which included counties with either 6 or more general division judges or populations exceeding 300,000."¹¹⁰

Given that individual Courts of Common Pleas in the various Ohio jurisdictions control their adoption or rejection of the Commercial Docket program, the commitment to such a program has seen varying levels of fealty over the four jurisdictions that have them. In Cuyahoga County (Cleveland), the Commercial Docket functioned with two assigned judges until 2015, when the judges of the court voted to disband the program.¹¹¹ Two years later, however, in 2017, the members of that court voted to restart the Commercial Docket in Cuyahoga County, with four judges hearing cases starting in 2018.¹¹² In 2012, Franklin County (Columbus) disbanded its Commercial Docket program.¹¹³ In 2017, the Commercial Docket program in Hamilton County (Cincinnati) ceased operating.¹¹⁴ The Lucas County (Toledo) Commercial Docket program, however, has been stable and fully operational with two judges since formed in 2009.¹¹⁵ In its 2019 Report of the Corporation Law Committee of the Ohio State Bar Association to that Association's Council of Delegates, the Committee recommended that the Bar Association "support the creation of a statewide commercial docket or similar procedure" to bring stability to the adoption and use of commercial dockets in Ohio to address complex commercial litigation matters.¹¹⁶

D. 2010–2020—EXPANSION CONTINUES TO THE INTERIOR UNITED STATES

While the first decade of the twenty-first century saw business courts expand predominantly in jurisdictions on the east coast of the country, the second decade witnessed an expansion to the interior states, with the following jurisdictions

108. See Ohio State Bar Ass'n, Meeting Materials from Council of Delegates Meeting, Report of the Corporation Law Committee 37–38 (May 10, 2019), <https://www.ohioabar.org/globalassets/home/about-the-osba/osba-leadership/council-of-delegates/cod-past-reports/2019/council-of-delegates-book-for-05-10-19-meeting-2.pdf>.

109. See *id.* at 38.

110. *Id.*

111. See *id.* at 39.

112. See *id.*

113. See *id.*

114. See *id.*

115. See *id.*

116. See *id.* at 41.

adopting some form of specialized business court: West Virginia, Michigan, Iowa, Arizona, Tennessee, Indiana, Wisconsin, Wyoming, and Kentucky.

West Virginia

In 2010, the West Virginia Legislature passed a bill “authorizing the Supreme Court of Appeals to conduct a study and make a recommendation regarding the creation of a Business Court Division” in West Virginia.¹¹⁷ The Supreme Court of Appeals appointed a committee to study the issue, and the committee ultimately recommended the creation of a Business Court Division within the circuit courts of the state.¹¹⁸ On September 11, 2012, the Supreme Court of Appeals acted on that recommendation (after deliberation and public comment) by adopting rules establishing the Business Court Division.¹¹⁹ On October 10, 2012, the Business Court Division opened for business.¹²⁰ The Business Court Division is fully operational, and is served by seven judges appointed by the Chief Justice, each to serve a term of seven years.¹²¹

Michigan

After many years of efforts, in late 2011 (and into 2012) three counties in Michigan adopted Specialized Business Dockets—Macomb County, Kent County, and Oakland County.¹²² Later in 2012, however, the Michigan Legislature passed legislation authorizing the creation of business courts statewide.¹²³ The legislation was effective on January 1, 2013, and required that any circuit court with three or more judges create a Specialized Business Court Docket and authorized, but did not mandate, other circuits to similarly create a Specialized Business Court Docket.¹²⁴ As of June 3, 2019, seventeen counties in Michigan had created Specialized Business Court Dockets, each with the authority to set their own rules and procedures.¹²⁵

Iowa

In 2012, the Iowa Supreme Court created the Iowa Business Specialty Court pilot program.¹²⁶ In 2016, the Iowa Supreme Court made the Iowa Business

117. See W. VA. JUDICIARY, 2018 BUSINESS COURT ANNUAL REPORT 1 (2018), <http://www.courtsww.gov/lower-courts/business-court-division/pdf/2018AnnualReport.pdf>.

118. See *id.*

119. See *id.*

120. *Id.*

121. See *id.*

122. See Douglas L. Toering, *The New Michigan Business Court Legislation: Twelve Years in the Making*, BUS. L. TODAY, Jan. 31, 2013, at 2.

123. See H.B. 5128, 96th Leg., Reg. Sess. (Mich., 2012).

124. See *id.*

125. See *Business Courts*, MICH. COURTS, <https://courts.michigan.gov/administration/admin/op/business-courts/pages/business-courts.aspx> (last visited Apr. 28, 2020).

126. See *Iowa Business Specialty Court*, IOWA JUDICIAL BRANCH, <https://www.iowacourts.gov/iowacourts/district-court/iowa-business-specialty-court/> (last visited Apr. 28, 2020).

Specialty Court permanent, with three judges in three different judicial districts around the state.¹²⁷ In late 2019, two additional judges were assigned to the Iowa Business Specialty Court.¹²⁸

Arizona

The Arizona Supreme Court created a Business Court Advisory Committee in 2014, which ultimately recommended “the establishment of a pilot commercial court in the Superior Court in Maricopa County.”¹²⁹ The Supreme Court authorized such a pilot commercial court via administrative order in 2015, with the pilot commercial court in operation as of July 1, 2015.¹³⁰ Effective January 1, 2019, the pilot commercial court in Maricopa County was made permanent; and, while it has not expanded to other locales in Arizona, the new rules permit that individual judges may utilize the case management features of the commercial court in their own courtrooms where they “find[] those procedures beneficial, wholly or partially, in managing a commercial case that is not assigned to the commercial court, or that is pending in a county that has not established a commercial court.”¹³¹

Tennessee

By order dated March 16, 2015, the Supreme Court of Tennessee created the Davidson County Business Court Pilot Project “to provide expedited resolution of business cases by a judge who is experienced and has the expertise in handling complex business and commercial disputes.”¹³² Nashville is located in Davidson County. The pilot project was expanded with slight modifications in 2017, one of which was to open up the Business Court Pilot Project to disputes from other jurisdictions around the state of Tennessee.¹³³

Indiana

In January 2016, the Supreme Court of Indiana established a three-year Commercial Courts Pilot Project, which was to commence on June 1, 2016, and had

127. *See id.*

128. Scott Stewart, *Two Judges Join Iowa Business Specialty Court*, DAILY REC. (Dec. 4, 2019), <https://www.omahadailyrecord.com/content/two-judges-join-iowa-business-specialty-court>.

129. COMMERCIAL COURT REV. COMM., SUPREME COURT OF ARIZ., REPORT TO THE ARIZONA JUDICIAL COUNCIL 5 (June 18, 2018), <https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/AZCCRCreport.ashx>.

130. *See* NAT’L CTR. FOR STATE COURTS, SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY: COMMERCIAL COURT EVALUATION (FINAL REPORT) 1 (Dec. 2018), https://iaals.du.edu/sites/default/files/documents/publications/az_commercial_court_ncsc_evaluation_12-12-18.pdf.

131. Supreme Court of Ariz., *In Re* Rule 8.1, Rules of Civil Procedure: Order Permanently Adopting and Amending Experimental Rule 8.1, Arizona Rules of Civil Procedure (Dec. 13, 2018), <http://www.azcourts.gov/Portals/20/2018%20Rules/R-18-0033-FINAL%20RULES%20ORDER.pdf?ver=2018-12-14-085404-143>.

132. Supreme Court of Tenn., Judicial Order No. ADM2015-00467, at 1 (Mar. 16, 2015), http://www.tncourts.gov/sites/default/files/docs/order_est._davidson_countybusiness_court_pilot_project_3-16-2015.pdf.

133. *See* Press Release, Tenn. State Courts, Tennessee Supreme Court Appoints Chancellor Anne C. Martin to Lead Business Court Pilot Project (Sept. 30, 2019), <http://tncourts.gov/news/2019/09/30/tennessee-supreme-court-appoints-chancellor-anne-c-martin-lead-business-court-pilot>.

been scheduled to end on June 1, 2019.¹³⁴ However, after finding that the Commercial Court Pilot Project was “successful in advancing” the benchmarks and goals for the pilot project, the Supreme Court ordered that commercial courts be permanently established in six jurisdictions around the state, with one commercial court judge in each location.¹³⁵ These commercial courts became permanent as of June 1, 2019.¹³⁶

Wisconsin

In April 2017, the Wisconsin Supreme Court created a Commercial Docket Pilot Project.¹³⁷ The commercial dockets were established in two locations (Waukesha County and the Eighth Judicial District) and were to start on July 1, 2017.¹³⁸ The pilot program is to run for three years, at which time the Supreme Court would review the project.¹³⁹ At the time of writing this article, the timeline for or results of any such review had not been reported, and the website for the Commercial Docket Pilot Project reflected thirteen written decisions.¹⁴⁰ As of April 2019, parties to litigation in any county in Wisconsin were permitted to jointly petition to have their dispute heard in the Commercial Docket Pilot Project.¹⁴¹

Wyoming

On March 15, 2019, the Governor of Wyoming signed into law legislation creating a statewide chancery court to “provide a forum for streamlined resolution of commercial, business and trust cases.”¹⁴² The Supreme Court of Wyoming is directed to establish court of chancery rules and procedures by January 1, 2020, and has established a committee to accomplish those tasks.¹⁴³ Draft rules were adopted for further comment and study on December 30, 2019.¹⁴⁴ The implementing legislation does not specify where the court will sit, but does state that

134. See Ind. Supreme Court, Judicial Order 19S-MS-295, at 1 (May 16, 2019), <https://www.businesscourtsblog.com/wp-content/uploads/2019/05/Order-Making-Commercial-Courts-Permanent-01593987xB05D9.pdf>.

135. *Id.*

136. *See id.*

137. See Supreme Court of Wis., Judicial Order No. 16-05, *In re* Creation of a Pilot Project for Dedicated Trial Court Judicial Dockets for Large Claim Business and Commercial Cases 4 (Apr. 11, 2017), <https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=188391>.

138. *See id.* at 4.

139. *Id.*

140. See *Commercial Docket Pilot Project*, WISC. COURT SYS., <https://www.wicourts.gov/services/attorney/comcourtpilot.htm> (last visited Apr. 28, 2020).

141. See *Guidelines for Transferring a Case to the Commercial Docket*, WISC. COURT SYS., <https://www.wicourts.gov/services/attorney/docs/guidelinestransfercomdocket.pdf> (last visited Apr. 28, 2020).

142. See *Chancery Court*, WYO. JUDICIAL BRANCH, <https://www.courts.state.wy.us/chancery-court/> (last visited Apr. 28, 2020).

143. *See id.*

144. Wyo. Supreme Court, *In re* Adoption of Draft Rules of Civil Procedure for the Chancery Court (Dec. 30, 2019), <http://www.courts.state.wy.us/wp-content/uploads/2020/01/Order-on-Chancery-Court-with-proposed-draft-rules.pdf>.

the chancery court may have up to three judges, who will serve terms of six years.¹⁴⁵

Kentucky

In his 2018 State of the Judiciary Address, the Chief Justice of the Supreme Court of Kentucky reported on the recommendation, from a Civil Justice Reform Commission, that the state “develop a business courts pilot project in one or more jurisdictions” in Kentucky.¹⁴⁶ The Supreme Court of Kentucky acted on that recommendation in 2019 and issued an order creating the Jefferson County Business Court Docket Pilot Project.¹⁴⁷ The order created a “pilot project for the implementation of a Business Court Docket in Jefferson County Circuit Court,” which includes the city of Louisville.¹⁴⁸ The order also created a Business Court Docket Advisory Committee, which was charged with making recommendations to the Supreme Court on matters necessary to carry out the creation of the Business Court Docket Pilot Project.¹⁴⁹ On November 20, 2019, Kentucky’s supreme court issued an order promulgating Rules of Practice for the Jefferson County Business Court Docket Pilot Project.¹⁵⁰

CONCLUSION

Nearly every court has faced challenges in finding the resources to allocate to the creation of a specialized business court. However, the desire for judicial efficiency in resolving complex commercial matters has led many enterprising judges and lawyers to develop systems and processes that overcome their own challenges. By cataloguing those efforts, we hope that this article will serve as a resource for the continued development of specialized business courts throughout the United States.

145. See WYO. STAT. § 5-13-101 *et seq.* (2019).

146. Supreme Court of Ky., 2018 State of the Judiciary Address: Shaping Judicial Branch to Meet Needs of Today’s Society (Nov. 2, 2018), <https://kycourts.gov/Documents/Newsroom/SOJ2018.pdf>.

147. See Supreme Court of Ky., Judicial Order No. 2019-06 (Apr. 9, 2019), <https://www.business-courtsblog.com/wp-content/uploads/2019/06/Kentucky-Order-in-Full-01601275xB05D9.pdf>.

148. See *id.* at 1.

149. See *id.*

150. See Supreme Court of Ky., Judicial Order No. 2019-13 (Apr. 9, 2019), https://kycourts.gov/courts/supreme/Rules_Procedures/201913.pdf.

APPENDIX A: TABLE OF CURRENT BUSINESS COURTS

Year Business Court became operational¹⁵¹	Business Court operational and/or later developments	Means of creation	Statewide (S), Regional (R),¹⁵² Local (L)¹⁵³
1993	Cook County (Chicago), Illinois Commercial Calendars	Order of Local Court	L
1993	New York County (Manhattan), New York Commercial Pilot Program	Order of Local Court	L
1993	Essex County (Newark), New Jersey Complex Commercial Case Assignment	Order of Local Court	L
1994	Delaware Superior Court Rules Governing Summary Proceedings for Commercial Disputes (rarely used and effectively superseded as a law-side business court with the creation of the Superior Court's Complex Commercial Litigation Division in 2010)	Order of State's Highest Court	S
1995	Commercial Divisions Created in Manhattan and Monroe County, New York	Order of State's Highest Court	R
1996	Commercial Pilot Projects, Essex and Bergen Counties, New Jersey	Orders of Local Courts	L
1996	North Carolina Business Court	Order of State's Highest Court	S

151. We are referencing the year each business court became operational, rather than the year of any order or legislation creating the business court, if there is a difference between the two. So, e.g., the Cook County Circuit Court Commercial Calendars were created by court order on September 9, 1992, but the first Commercial Calendar only became operational in September 1993. *Business Courts History*, *supra* note 1, at 160–61.

152. Business court located in more than one city or county in a state, but not statewide.

153. Business court located in a single city or county.

1996	Milwaukee County, Wisconsin Circuit Court Summary Proceedings for Business Disputes (rarely used and rules rescinded in 2009; Wisconsin established a business court pilot program in 2017)	Order of Local Court	L
1998	Commercial Divisions in Nassau, Erie, and Westchester Counties, New York	Order of State's Highest Court	R
2000	Philadelphia Commerce Case Management Program	Order of Local Court	L
2000	Suffolk County (Boston), Business Litigation Session (made statewide in 2009)	Order of Statewide Trial Court	L, R, S
2000	Reno and Las Vegas, Nevada Business Courts	Order of State's Highest Court	R
2001	Rhode Island Business Calendar (originally in Providence and Bristol Counties, made statewide in 2011)	Order of Statewide Trial Court	R, S
2002	Commercial Divisions in Albany, Suffolk, and King Counties, New York	Order of State's Highest Court	R
2003	Maryland Business and Technology Case Management Program	Legislation	S
2003	Delaware Court of Chancery adds commercial technology jurisdiction	Legislation	S
2004	9th Judicial Circuit (Orlando), Florida Complex Business Litigation Court (discontinued due to lack of resources in 2018 but renewed in fall 2019)	Order of Local Court	L

2005	Fulton County (Atlanta), Georgia Business Case Division (became Metro Atlanta Business Court in 2016, now covering Fulton and Gwinnett Counties)	Rule promulgated by State's Highest Court	L, R
2005	Commercial Division added in Queens County, New York	Order of State's Highest Court	R
2006	Maine Business and Consumer Docket	Order of State's Highest Court	S
2006	11th Judicial Circuit (Miami), Florida Complex Business Litigation Section	Order of Local Court	L
2007	13th Judicial Circuit (Tampa), Complex Business Litigation Division	Order of Local Court	L
2007	Pittsburgh Commerce and Complex Litigation Center	Order of Local Court	L
2007	South Carolina Business Court Pilot Program (expanded from three to all forty-six South Carolina Counties in 2014; officially made permanent in 2019)	Order of State's Highest Court	R, S
2007	Gwinnett County, Georgia Business Case Division (now within Metro Atlanta Business Court ambit)	Order of Local Court	L
2007	Commercial Division in Onandaga County, New York	Order of State's Highest Court	R
2007	Colorado 4th Judicial District, Commercial Docket (evolved into Public Interest Docket in 2013) (no longer operational)	Order of Local Court	L

2008	17th Judicial Circuit (Ft. Lauderdale), Florida Complex Business Litigation Division	Order of Local Court	L
2008	New Hampshire Business and Commercial Dispute Docket	Legislation	S
2009	Ohio Court of Common Pleas Commercial Dockets (originally in four counties, now only in Cleveland and Toledo)	Order of State's Highest Court	R
2010	Jefferson County, Alabama Commercial Litigation Docket (no longer operational)	Order of Local Court	L
2010	Delaware Superior Court Complex Commercial Litigation Division	Order of Statewide Trial Court	S
2012	West Virginia Business Court Division	Rules adopted by State's Highest Court	S
2011–2012	Special Business Dockets established in Macomb, Kent, and Oakland Counties, Michigan Circuit Courts	Orders of Local Courts	L
2012	Michigan Business Courts established in seventeen out of eighty- three counties	Legislation (providing for business court in circuits with three or more circuit court judges)	R
2012	Judges in Franklin County, Ohio Court of Common Pleas vote to end Commercial Docket ¹⁵⁴		
2012–2013	Iowa Business Specialty Court Pilot Project (made permanent in 2016)	Order of State's Highest Court	S
2015	New Jersey Complex Business Litigation Program	Order of State's Highest Court	S

154. <https://www.ohiobar.org/globalassets/home/about-the-osba/osba-leadership/council-of-delegates/cod-past-reports/2019/council-of-delegates-book-for-05-10-19-meeting-2.pdf>

2015	Davidson County (Nashville), Tennessee Business Court Docket Pilot Project (expanded to other counties in 2017)	Order of State's Highest Court	L, S
2015	Maricopa County (Phoenix), Arizona Commercial Court Pilot Project (made permanent in 2019)	Order of State's Highest Court	L
2016	Indiana Commercial Courts Pilot Project (made permanent in 2019)	Order of State's Highest Court creating Commercial Court dockets in six Indiana county, superior courts	R
2017	Wisconsin Commercial Docket Pilot Project (made statewide in 2019)	Order of State's Highest Court	R, S
2017	Judges in Court of Common Pleas of Hamilton County, Ohio, chose to end Commercial Docket ¹⁵⁵		
2019	Statewide Georgia Business Court (centered in Macon, becomes operational in 2020, and allows Metro Atlanta Business Court to continue)	Created by constitutional amendment and ensuing legislation	S
2019	Wyoming Chancery Court (to become operational in 2020)	Legislation	S
2019	Jefferson County (Louisville), Kentucky Circuit Court Business Court Docket Pilot Project	Order of State's Highest Court	L
2019	Bronx Commercial Division	Order of State's Highest Court	R

¹⁵⁵. Ohio State Bar Ass'n, *supra* note 108.