

COMPLEX LITIGATION

Complex Business Litigation Program Offers Significant Benefits

Commercial litigators and the business community should take note

By Sergio D. Simões

Over the past several years, the New Jersey Judiciary has actively endeavored to address the concerns of litigants and practitioners involved in complex business and construction cases, by developing methods to streamline and simplify the often complicated and costly litigation process. The result of the Judiciary's effort is the recent implementation of a statewide Complex Business Litigation Program for the handling of complex business, commercial and construction cases. Counsel, accountants, financial advisers and others who are often on the front lines of complex business disputes would do well to familiarize themselves with the details and workings of this program.

The program stems from the "Working Group on Business Litigation," which was created by Chief Justice Stuart Rabner in the fall of 2013. Chaired by Bergen County Assignment Judge Peter Doyne, and comprised of jurists, attorneys and business industry leaders from throughout the state, the working group was tasked with reviewing the Judiciary's current programs and existing practices and suggesting means to achieve certainty, finality and cost-effectiveness in complex business cases. Following months of effort, the Working Group ul-



timately recommended the statewide expansion of an existing pilot program that had been implemented in the Bergen and Essex vicinages.

The pilot program allowed the assignment judge in each vicinage to designate a judge with expertise in business or commercial litigation to oversee the resolution of all commercial matters from beginning to end, as well as rec-

ommending time goals for case conferences and resolution of those cases. The working group also concluded that the establishment of a separate, specialized business court was not required since the litigation needs of the business community could be satisfied within the existing court structure. On Nov. 13, 2014, the Supreme Court authorized the expansion of the pilot program statewide.

Under the new statewide program, a complex business litigation judge has been designated in each vicinage. Each designated program judge will receive extensive specialized training in all areas relating to business litigation, complex business case management, and instruction on business and financial topics, including financial statements, business valuation, economic damages and the Uniform Commercial Code, among other topics. The designated program judges are expected to issue at least two written opinions per year in order to develop a body of case law relating specifically to complex business litigation.

Participation in the program is open to jury and nonjury cases filed on or after Jan. 1, 2015, with a threshold damages amount of \$200,000 or more. Parties may file a motion with the Complex Business Litigation Program for inclusion in the program where the amount in controversy is less than \$200,000. Parties may also move for removal from the program on the grounds that the action does not meet the criteria for eligibility.

When a complex business, commercial or construction case is filed, the assignment judge, his or her designee, as well as the program judge, may initially conduct a review of the case to determine if it is appropriate for participation in the program. If after review a case is deemed ineligible for the program, it will be reassigned to the appropriate track for case management.

To be eligible, a case must be designated as a complex commercial dispute (case type 508) or complex construction case (case type 513) on the Civil Case Information Statement accompanying the complaint. According to a Notice to the Bar announcing the implementation of the program, eligible complex commercial disputes include those business or commercial transactions involving significant damage awards, complex factual or legal issues, a large number of separately represented parties, the potential for numerous pretrial motions raising difficult or novel

legal issues, case management of a large number of lay and expert witnesses or a substantial amount of document evidence, cases requiring the significant interpretation of a business or commercial statute, or cases requiring substantial time to complete a trial.

Eligible complex construction cases include those matters which raise the potential for significant damage awards because of claimed design and construction defects, facility delivery delay claims,

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claims involving complex factual or legal issues, a large number of separately represented parties, those matters raising novel or legal issues, a large number of lay and expert witnesses or documentary evidence, or claims requiring substantial time to complete the trial.

Expressly excluded from complex construction are construction and professional payment and billing claims, change order claims, wrongful termination, quantum meruit, and construction lien or mechanics lien claims, unless such claims are associated with a complex construction claim. The program also generally does not include matters that are handled by General Equity or matters involving consumers, labor organizations, personal injury or condemnation, or cases in which the government is a party. Actions to establish a constructive trust or impose an

equitable lien to satisfy damages are eligible for participation in the program, as are cases primarily seeking legal relief in which ancillary injunctive relief is sought.

Eligible cases are not subject to the court's mandatory civil mediation and arbitration programs. However, as part of case management, parties may be encouraged to participate in mediation or other forms of alternative dispute resolution.

The program offers several promising advantages to litigants and practitioners engaged in complex commercial and construction litigation. Complex business and construction cases will now be heard by specially trained jurists with commercial backgrounds or an interest in developing specialized commercial expertise, who will be familiar with the specific issues raised. Litigants will also receive the benefit of a trained jurist managing their case from inception to conclusion, resulting in a streamlined discovery process, greater oversight and reduced fees and costs. Of increased benefit is the development of a new body of published case law specific to complex commercial and construction cases.

Looking forward, the program may even reduce the need for appeals and ensure finality at the trial court level, as greater oversight by a program judge over a complex case will reduce the potential for error, and the development of published case law specific to complex commercial and construction matters at the program level will offer greater clarity to litigants and the bar. With the implementation of the program, the Judiciary has taken a positive step forward in achieving efficiency and cost-effectiveness in the business litigation practice. It would benefit litigants and practitioners to consider participation in this program before commencing a complex business, commercial or construction matter. ■