

**COMMERCIAL LITIGATION COMMITTEE  
REPORT PREPARED FOR THE JUNE 4, 2005 COUNCIL MEETING**

**1. Next Scheduled Meeting of the Committee**

Deferred until plans for business court efforts are more concrete.

**2. Council Approval**

N/A

**3. Membership**

In response to a broadcast message to the entire Section, 46 members have volunteered to work on a subcommittee that will study and seek feedback on the draft business court statute. This subcommittee will probably meet for planning purposes over the summer.

**4. Accomplishments Toward Committee Objectives**

See April 2005 Business Court Update, attached.

**5. Meetings and Programs**

The next meeting has not yet been scheduled. It will probably take place in Lansing. The purpose will be to review the draft business court statute and meet with representatives of the business-to-business mediation project.

**6. Publications**

There may be publications sent out in connection with the business court effort.

**7. Legislative/Judicial/Administrative Developments**

See response to no. 4.

**8. Miscellaneous**

N/A

**STATE BAR OF MICHIGAN  
BUSINESS LAW SECTION**

**BUSINESS COURT AD HOC COMMITTEE**

**APRIL 2005 UPDATE**

**BUSINESS COURT EXECUTIVE COMMITTEE**

Diane L. Akers, Chairman (Bodman LLP)  
T. J. Ackert (Smith, Haughey, Rice & Roegge, PC)  
Daniel J. Cherrin (Public I)  
Susan M. Diehl (Holcim (US), Inc.)  
Hon. Karl V. Fink (Pear, Sperling, Eggan & Muskovitz, PC)  
Michael P. Marsalese (The Marsalese Law Group, PLLC)  
Cyril Moscow (Honigman, Miller, Schwartz & Cohn, LLP)  
William H. Volz (Wayne State University)

**Background of the Business Court Ad Hoc Committee.** The Business Court Ad Hoc Committee (“Committee”) was established by the Business Law Section Council to study and make recommendations whether Michigan, like many other states, should establish some form of business court. Since January 2002 when the formation of the Committee was announced, approximately 200 members of the Section have volunteered to help with this project.

The Committee has held a number meetings with lawyers, businesses, chambers of commerce and other groups to solicit their feedback on how business litigation in Michigan can be improved and how a business court might achieve that goal. The Committee has also conducted significant research on the nature of business courts around the country and has sought the advice of various “experts” on business courts. The Committee also worked with other sections of the State Bar as well as judges.

**Purposes for Business Courts.** While the forms of business courts vary, all business courts have certain overriding purposes.

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

2. **Enhancing efficiency through pro-active case management, technology and early alternate dispute resolution options.** All business courts seek to enhance the efficiency with which all litigation, including commercial litigation, is resolved. Business court judges generally become familiar with the specific facts, claims, defenses, theories and issues in a case at a very early stage. This allows prompt and often effective exploration of alternate dispute resolution possibilities, and business courts around the country report an increased number of settlements in business court cases. It also allows

pro-active case management and significant narrowing of the issues before the parties engage in costly discovery and motion practice.

Business courts also encourage efficiency by utilizing technology and electronic filing and communication, where appropriate.

In many states, business court judges are encouraged or even required to issue written opinions, particularly on significant evidentiary and potentially dispositive issues. Over time, a body of case law develops that provides valuable guidance for litigants and their counsel. Parties may, for example, file fewer motions when they can review in advance how the business court judge has decided similar cases or issues.

Business courts also enhance the efficiency with which all cases can be resolved because they remove cumbersome business cases from the dockets of other judges, who then are able to devote more time and attention to other sorts of cases.

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

**Cost of Business Courts.** Business courts generally do not require new funding or additional resources. Rather, a business court represents a reallocation of case loads among existing judges.

**Current Plans for a Business Court Statute.** The Committee has been working with the majority whip of the Michigan House of Representatives, Brian Palmer, with the goal of introducing a bill creating a business court during 2005. A proposed bill is being drafted and the Committee will be involved in reviewing the draft and soliciting feedback from lawyers, businesses, commercial organizations, chambers of commerce, the bench and others who may be interested.

**For More Information.** For more information about the Committee, contact Committee Chairman Diane L. Akers at Bodman LLP, 313-259-7777, [dakers@bodmanllp.com](mailto:dakers@bodmanllp.com).