This book is about case management, best practices, and decision making in United States business courts. For our purposes, the term “business court” encompasses an array of specialized formats for administering business and commercial cases at the state civil trial court level. Business courts are typically divisions, dockets, tracks, or programs within an existing state civil court system, though not always.

Bracketing out the Delaware Court of Chancery, modern business court development began in Chicago, Manhattan, and Newark, New Jersey in 1993, with the most recent states to add a business court being Wyoming’s Chancery Court and Kentucky’s Jefferson County Business Court Docket Pilot Project in 2019. As of this writing, there are 25 states with business courts, with the foregoing 2019 additions yet to become operational. These business courts have been created by legislation, a state’s highest court, or an administrative order of a trial court’s chief judge, with one involving a constitutional amendment. They may exist statewide, regionally, or in selected cities or counties within a state.

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.

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We have used the phrases “broad jurisdiction business courts” and “complex jurisdiction business courts” to describe two basic business court models. Broad jurisdiction business courts determine jurisdiction by a defined list of case types, which are additionally subject to a minimum amount in controversy. If a case falls within the list and is above that minimum jurisdictional sum, it comes within the business court’s docket without additional subjective or discretionary evaluation by a judicial gatekeeper. These jurisdictional lists are not always identical among broad jurisdiction business courts, but there is more overlap than difference. New York’s Commercial Division and Philadelphia’s Commerce Court provide clear examples of listing case types to define mandatory jurisdiction.

In the broad jurisdiction model, the minimum amount in controversy can provide some level of docket control over the number of cases that would otherwise automatically come into the business court. In New York State’s Commercial Divisions, jurisdictional minimums range from $50,000 in some counties to $500,000 in New York County (Manhattan). This $500,000 sum has increased over time from an initial jurisdictional minimum of $125,000 as a tool to manage that court’s docket.

Other business courts may limit jurisdiction to complex business and commercial cases. The cases are still business or commercial in nature, but must have additional characteristics making them sufficiently complex to require specialized case management. These complex jurisdiction business courts rely heavily on judicial gatekeepers to determine which cases are permitted to proceed in the business court, some of which are detailed in Chapter 1.

Maryland’s Business and Technology Case Management Program (BTCMP), a statewide business court, provides the example of a pure complex jurisdiction business court. BTCMP jurisdiction requires that every case either must be complex or must present a novel legal issue of broad importance that compels inclusion on the BTCMP docket. Under Maryland Rule 16-308, a gatekeeper judge must determine if a case

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10. 20 Years of Innovation, supra note 1, at 874–75.
“presents commercial or technological issues of such a complex or novel nature that specialized treatment is likely to improve the administration of justice.”

Instead of a list of case types, the Maryland Rule lists factors providing guidance to the gatekeeper: “(1) the nature of the relief sought, (2) the number and diverse interests of the parties, (3) the anticipated nature and extent of pre-trial discovery and motions, (4) whether the parties agree to waive venue if assignment of the action to the program makes that necessary, (5) the degree of novelty and complexity of the factual, legal, or evidentiary issues presented, (6) whether business or technology issues predominate over other issues presented in the action, and (7) the willingness of the parties to participate in ADR procedures.”

In practice, one is less likely to see a pure complex jurisdiction business court model than a hybrid model, including both a list of mandatory jurisdiction case types and a provision allowing discretionary inclusion of unlisted complex business or commercial cases. North Carolina’s Business Court provides a prime example here. It has both mandatory jurisdiction over cases falling within certain listed categories (that must further meet minimum amounts in controversy of $1 million to $5 million), and a separate and distinct rule for discretionary inclusion by the state’s Chief Justice.

With discretionary cases, North Carolina’s gatekeeping factors are similar to those described in Maryland’s BTCMP test (which itself followed North Carolina’s original complex jurisdiction rule): “the number and diverse interests of the parties; the amount and nature of anticipated pretrial discovery and motions; whether the parties voluntarily agree to waive venue for hearing pretrial motions; the complexity of the evidentiary matters and legal issues involved; whether it will promote the efficient administration of justice; and such other matters as the Chief Justice shall deem appropriate.”

One would expect the broad jurisdiction model to result in more cases on the docket, absent a high jurisdictional minimum amount in controversy. Total volume will, of course, depend on a court’s overall caseload, but North Carolina’s experience bears out the notion that mandatory jurisdiction lists will result in more cases on a docket. In 2018, 93 percent of the cases pending in the North Carolina Business Court

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11. Id. at 873.
12. See N.C. GEN. STAT. § 7A-45.4, Designation of complex business cases.
14. Id.
15. For example, as of this writing there is pending legislation in Texas setting a $10 million jurisdictional minimum for a proposed business court. As stated above, North Carolina has $1 million and $5 million minimums for certain types of claims, and the Metro Atlanta Business Court and Delaware Superior Court Complex Commercial Litigation Division have $1 million minimums. By contrast, Philadelphia’s Commerce Court has a $50,000 jurisdictional minimum and the Cook County Commercial Calendars in Chicago hear commercial cases above $30,000.
were mandatory cases, and only 19 out of 324 were discretionary. \(^\text{16}\) We also note here that some business courts require full consent by all parties to establish business court jurisdiction, as well as judicial approval. \(^\text{17}\) This likewise will limit the number of cases on a business court’s docket, whether broad or complex jurisdiction.

Delaware’s Court of Chancery is the most well-known business court. It is also the most unique of the lot, because it is a traditional court of chancery with a jurisdictional model going back hundreds of years. That being said, even the Court of Chancery has made innovations during the new business court era, extending jurisdiction beyond its traditional equity parameters. \(^\text{18}\) Further demonstrating Delaware’s intent to not be left behind in developing modern business courts, Delaware’s law court, the Superior Court, now has a specialized Complex Commercial Litigation Division. \(^\text{19}\)

In close company with business courts are specialized complex litigation programs. These are not dedicated solely to business and commercial disputes, but focus on complexity as the primary basis for jurisdiction. Some of these complex litigation programs include complex business and commercial cases within their jurisdiction, thus giving these dockets greater specialization in business and commercial cases, while still hearing other complex case types. \(^\text{20}\) Complex litigation programs encompassing business and commercial cases exist in at least four states: California, Connecticut, Minnesota, and Oregon. \(^\text{21}\) Some states, such as Arizona, have both a specialized business court and a complex litigation program. \(^\text{22}\)

Dedicated commercial courts and dispute resolution venues are not unique to the United States. London is home to a renowned body of commercial courts and dispute resolution forums, \(^\text{23}\) which are subject to competition from Europe, Asia, and the United States. For example, in addition to their existing commercial courts, Paris

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\(^{17}\) For example, the Iowa Business Specialty Court requires joint consent of the parties. Iowa Bus. Specialty Court, https://www.iowacourts.gov/iowa-courts/district-court/iowa-business-specialty-court/.


\(^{19}\) 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. 1039 (2015).

\(^{20}\) *Business Courts History*, supra note 3, at 204–16.

\(^{21}\) ABA SECTION OF BUSINESS LAW, BUSINESS AND CORPORATE LITIGATION COMMITTEE, *RECENT DEVELOPMENTS IN BUSINESS AND CORPORATE LITIGATION* (2018) at § 3.1 [hereinafter *RECENT DEVELOPMENTS 2018*].


\(^{23}\) *RECENT DEVELOPMENTS 2018*, supra note 20, at § 3.2.4.
and the Netherlands now offer English language commercial courts to international disputants. 24 Singapore and Dubai are examples of two other competitors for international commercial litigation and dispute resolution. 25

In the United States, Manhattan’s Commercial Division has adopted a Large Complex Case List pilot program modeled on the United Kingdom’s Financial List litigation program. 26 In 2013, Manhattan’s Commercial Division designated one of its judges to handle international commercial arbitration matters within that New York business court. 27 In 2015, Atlanta’s Business Court Division, now the Metro Atlanta Business Court, was empowered to address international commercial arbitrations and to enforce international arbitration awards promptly. 28

In Chapter 1, South Carolina Business Court Judge Clifton Newman and business court historian Lee Applebaum set out a concise overview of the 25 states with business courts. This book’s central purpose, however, is to identify and detail business court administration, procedures, and best practices nationwide, and to address common legal issues decided by business courts and complex litigation courts handling business and commercial litigation. There are numerous articles discussing the history and function of business courts 29 and book chapters detailing their development, 30 and this book is not aimed at recapitulating those efforts.

The substance of this book is written by business and complex litigation court judges familiar with the procedures, practices, and decision making in their courts. In Chapter 2, Judge Newman addresses case management. In Chapter 3, Judges Timothy Driscoll (New York), Mary Miller Johnston (Delaware), and Jerome Abrams (Minnesota) provide a closer examination of discovery management; and in Chapter 4, these same judges drill down into electronic discovery issues. Mirroring the realities of business and commercial litigation, these two chapters constitute the largest part of this book.

24. Id.
25. Id.
26. Id. at § 3.2.2.
30. See, e.g., supra notes 1 and 20. The annual publication Recent Developments in Business and Corporate Litigation, produced by the ABA Section of Business Law’s Business and Corporate Litigation Committee, has included a chapter on business courts every year from 2004 to the present.
In Chapter 5, Michigan Business Court Judge Christopher Yates writes on court adjuncts and appointments, focusing on mediators, receivers, and special masters. In Chapter 6, Judge Yates also tackles the subject of recurring legal issues, writing on restrictive covenants (noncompetes, non-solicitation, and nondisclosure disputes), business divorce, class actions, trade secrets, and corporate and alternative entity statutes. Chapter 7, authored by California Judge Gail Ander (Ret.) and Delaware Vice Chancellors Donald F. Parsons (Ret.) and Joseph R. Slights III, covers settlement and ADR. Chapter 8 brings us to trials in business courts, and who better to write about trials than experienced trial judges, here Judges Johnston and Driscoll. In Chapter 9, Judge Yates covers the use of technology in courtrooms, and specifically at trial.

This Benchbook Primer also provides three very useful appendices to judges, lawyers, and court administrators: (1) resources for judges; (2) resources for practitioners; and (3) an appendix of forms actually used by business courts.

Finally, we emphasize that this book was developed by, and is being published through, the ABA Section of Business Law. It is the work of the Section’s Judges Initiative Committee and Business and Corporate Litigation Committee. The Business Law Section has a long and influential history advocating the creation and expansion of business courts, going back 25 years. No professional organization consisting of lawyers and/or judges has had a more lasting and important role in the growing and successful new world of business courts, and the publication of this Benchbook will substantially add to and reinforce that important legacy.

31. In 1994, the Section created an Ad Hoc Committee on Business Courts, which surveyed efforts to create and organize business courts throughout the United States, publishing its findings in a 1997 article in *The Business Lawyer*. See Ad Hoc Committee on Business Courts, *Business Courts: Towards a More Efficient Judiciary*, 52 Bus. L. 947 (1997). When the Section created its Business and Corporate Litigation Committee (BCLC), the Ad Hoc Committee became the BCLC’s Business Courts Subcommittee, which published the *Business Courts History*, supra note 3. The Subcommittee has become a leading repository of information and data regarding business courts, as well as a critical resource for lawyers and judges interested in working to create or improve business courts nationally and around the world. The Section not only promoted the remarkable business court movement, but also has fostered the involvement of business court judges in Section educational programs and activities through its Business Court Representatives Program and Judges Initiative Committee. These judges greatly benefit all Section members and have transformed this publication from a dream into a reality.