No longer in its infancy, the proliferation of business courts and specialized commercial dockets as a means of efficiently handling complex business and commercial litigation has not abated in recent years. This article will highlight some of the recent developments in this arena both in the United States and in international jurisdictions, and is a summary of and introduction to the excellent work of nearly 20 authors in Chapter 4, “Business Courts,” in the ABA Business and Corporate Litigation Committee’s 2014 Edition of Recent Developments in Business and Corporate Litigation. A full history and description of the development of business courts and commercial dockets is beyond the scope of this article, but readers interested in that detailed background information will find the 2004 article by Mitchell L. Bach, Esq., and Lee Applebaum, Esq., in the Business Lawyer, to be the most authoritative dissection of the topic currently available. See Bach & Applebaum, A History of the Creation and Jurisdiction of Business Courts in the Last Decade, 60 BUS. LAW. 147 (2004).

There currently are functioning business courts of some type either in cities, counties, regions, or statewide in several states, including the following: Alabama, Colorado, Delaware, Florida, Georgia, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, and West Virginia. The summary below focuses on recent developments in some of these jurisdictions, or jurisdictions considering the implementation of specialized business courts as well as developments in this arena internationally.

**Fulton County Superior Court, Atlanta, Georgia**

Georgia’s Supreme Court established the Fulton County Superior Court’s Business Case Division in June 2005. The business court’s 2012 Annual Report included a “Business Court Impact” Section, in which the court sought to measure the business court’s efficiency in terms of disposition times; a 2011 study having found generally that delays in civil and domestic case administration resulted in both the loss of significant economic productivity and the loss of jobs.

The 2012 study gathered representative sample case data for the 2005 to the mid-2012 time period. It “measured both the amount of time a case was pending, as well as a case’s complexity by highlighting the number of docket entries created in each case.” The study found that, on average, the business court administers a complex contract case in 608 days, compared to 1,746 on the general docket. In complex tort cases the average numbers were 566 days in the business court compared to 1,284 days on the general docket. This empirical data highlights how jurisdictions with business courts can experience the benefits of more efficient adjudication of disputes that fall within their subject matter jurisdiction.

**Michigan**

Michigan has now joined the ranks of jurisdictions that have formed business courts. On October 16, 2012, Michigan Governor Rick Snyder signed the act that established a business court in every Michigan county that already had at least three circuit judges. The legislation became effective on January 1, 2013, and was implemented in most of the applicable counties during the first half of 2013.

In the 17 circuits with a business court, every “business or commercial dispute” (as broadly defined) is assigned to a special docket. Cases pending on pilot business dockets – the Specialized Business Dockets in Kent, Macomb, and Oakland Counties – will remain there. Jurisdiction in the business courts is mandatory where:
All parties are “business enterprises,” which is broadly defined to include both for-profit and nonprofit entities (except religious organizations);

• One party is a business enterprise and the other parties are present or former owners, officers, directors, or employees and the claims arise out of those relationships; or the dispute involves the internal organization of the business and the rights or obligations of its owners, officers, directors, or managers;

• One party is a nonprofit and the claims arise out of the nonprofit’s organizational structure, governance, or finances; or

• The dispute involves classic kinds of business litigation.

Most claims involving individuals, however, are specifically excluded from the business court. If any aspect of the suit includes a “business or commercial dispute,” the entire case will be assigned to the business court.

The Michigan Supreme Court has approved the business judges for the 17 circuits. Wayne County (Detroit along with its eastern and western suburbs) has three judges, and Oakland County (north of Detroit) has two; the remaining circuits have one business court judge each. In many of the less-populous counties, there are not enough business cases to occupy a judge full time. Thus, the judges in those courts will also maintain a docket of non-business cases. Judges are appointed for six-year terms.

In addition, the Michigan Supreme Court has directed how business courts must be implemented. Under its Administrative Order 2013-6, circuit courts “shall establish specific case management practices for business court matters. These practices should reflect the specialized pretrial requirements for business court cases, and will typically include provisions relating to scheduling conferences, alternative dispute resolution (with an emphasis on mediation scheduled early in the proceeding), discovery cutoff dates, case evaluation, and final settlement conferences.” Also, opinions from the business judges must be transmitted to the Michigan State Court Administrative Office within seven days after the court enters the opinion. As required by the statute, opinions from the business court judges are available to the public on an indexed website.

New Jersey

New Jersey is now considering whether to join the list of states with specialized business courts. On October 8, 2013, New Jersey Chief Justice Stuart Rabner announced the creation of a Working Group on Business Litigation. The working group is charged with “conducting a review of case management techniques used to file, track and resolve commercial litigation.” Moreover, the New Jersey judiciary has “added a dedicated section for business-related opinions to its website, njcourts.com,” which contains opinions “of the Supreme, Appellate, and Superior Courts, divided by case type for easy reference by attorneys and litigants.” The working group is also tasked with reviewing two pilot programs created several years ago addressing business disputes – “the Bergen/Essex Complex Commercial Program and the Non-Jury Trial Program in general equity.”

Ohio

Ohio business courts, or Commercial Dockets as they are referred to, began with the creation of the Supreme Court Task Force on Commercial Dockets. In January 2009, the task force established specific Commercial Dockets through the enactment of Temporary Rules of Superintendence 1.01 through 1.11. Those rules created four pilot-project counties – Cuyahoga, Franklin, Hamilton, and Lucas (which, respectively, are the homes of Cleveland, Columbus, Cincinnati, and Toledo). The goal of the Commercial Dockets was to promote efficiency and predictability in the following types of cases: disputes involving the formation, governance, dissolution, or liquidation of any business entity; disputes among owners (or other principals) of a business entity concerning their rights and obligations; disputes concerning trade secrets, nondisclosure, noncompete, or employment agreements between a business entity and an owner of the business entity; cases involving the rights, obligations, liability, or indemnity of a business entity’s officers, directors, or owners; and contract disputes and business-tort disputes between business entities.

In January 2012, the task force issued a final report recommending permanent Commercial Dockets (as the pilot programs were set to expire in July 2012) for any court of common pleas having six or more general division judges or located in a county having a population of 300,000 or more according to the latest federal decennial census. The report found that the benefits of the program included accelerating decisions, creating expertise among judges, and achieving consistency in court decisions around the state. On May 29, 2012, the Supreme Court of Ohio extended the effective end date of temporary rules governing the operation of the commercial dockets pilot program through June 30, 2013.

Of the pilot programs created, Cuyahoga, Lucas, and Hamilton counties have extended operation of their respective Commercial Dockets. Franklin County, however, by a 9–8 vote of its judges, decided to disband its Commercial Docket.

South Carolina

The South Carolina Business Court Pilot Program has existed since 2007 in Charleston, Greenville, and Richland Counties and has seen excellent participation, according to a study of the program completed in 2009. On January 3, 2014, South Carolina Chief Justice Jean H. Toal ordered that the pilot program be expanded to include all counties in the state. The state now is divided into three business court regions, and cases within those regions apply for business court assignment through the region’s business court judge. The process for having a case assigned to the business court is the same as under the prior orders: the business court judge must recommendation the assignment, and the chief justice decides whether to grant or deny the motion. If the motion is granted, the case can be assigned to any one of the three business court judges. Clients and lawyers around the state immediately began to take advantage of the expansion, as shown by a sharp increase in the number of motions.

West Virginia
In October 2012, the West Virginia Supreme Court of Appeals officially opened a Business Court Division. Of the original judges appointed to the Business Court Division, Judges Wilkes, Rowe, and Young are still active in the division. Additionally, Judge Thomas C. Evans, III, Judge Russell M. Clawges, Jr., and Judge Paul T. Farrell have been appointed to the division. In its first year, there were over 20 motions to refer matters to the new Business Court Division. Of those matters, 13 motions to refer have been granted. Moreover, of the referred matters, it was determined that four motions to refer required additional review in the form of a hearing before a decision on the motion could be reached.

Business Court Resources
The jurists assigned to business courts in the United States have access to a wonderful resource in the American College of Business Court Judges. The Ninth Annual Meeting of the American College of Business Court Judges (ACBCJ) took place from September 15–17, 2013, at George Mason University in Virginia, as part of the Judicial Education Program at the George Mason University School of Law and Economics Center. The topics covered included, among others: “Disparate Impact Analysis Beyond Mortgages”; “Privacy, Data Breach, and State Enforcement”; “Federal Rules Committee and E-Discovery”; “Economics of Reverse Mortgages”; and “Multi-Jurisdiction Case Management.” Judges from 20 different states, and various jurisdictions within those states, attended. In addition to judicial education, the ACBCJ provides resources, in terms of information and its member judges, to those jurisdictions interested in the development of business courts.

Various ABA Sections, Committees, and Subcommittees are also excellent resources on the topic of business courts. For instance, the Section of Business Law has created a pamphlet titled Establishing Business Courts in Your State as a tool for jurisdictions considering whether a specialized business court makes sense. The Committee on Business and Corporate Litigation’s Subcommittee on Business Courts provides a business court resources web page, with links and documents on both national and international business courts, that is likely the most comprehensive effort of its kind. In addition to numerous links to public sources, the web page includes business court materials and resources presented at ABA meetings that are not published elsewhere.

The University of Maryland School of Law’s Journal of Business & Technology Law continues to provide a very detailed online business court resource page, including links and information with respect to business and complex litigation courts.

The National Center for State Courts has an online resource link to specialized business courts as well.

Please click on the linked pdf document (from the BLS 2014 Spring Meeting program, “The Nationwide Innovation of Specialized Business and Commercial Courts for Effective Resolution of Business Disputes.”) for a comprehensive list of business court resources, with links to the applicable websites.

The movement toward the creation and use of specialized business and commercial courts continues unabated. Moreover, the great work these courts do is highlighted in the many case summaries that can be found in Chapter 4 of Recent Developments in Business and Corporate Litigation from business and commercial courts in the following jurisdictions: Delaware, Florida, Maryland, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, South Carolina, and West Virginia.

International
Commercial courts are being developed in Iraq, and pioneering American business court Judges Ben F. Tenille and Steven I. Platt have contributed to this effort through the sponsorship of the Department of Commerce Commercial Law Development Program.

In the Arabian Gulf region, the commercial courts in the Gulf States, the Qatar International Court and Dispute Resolution Centre, the Dubai International Financial Center Courts (DIFC), and the Bahrain Chamber for Dispute met in late 2102 and have collaborated on the topic of effective resolution of business and commercial disputes. Moreover, the DIFC and the Commercial Court of England and Wales have entered into a “Memorandum of Guidance as to Enforcement between the DIFC Courts and the Commercial Court, Queen’s Bench Division, England and Wales.” The DIFC courts have also entered a cooperation agreement with the Supreme Court of New South Wales, Australia.

In Africa, the Ivory Coast has set up a Commerce Court, and a Commercial Court Division has started operations in Lesotho.

In Europe, new commercial courts have also evolved in Italy, and the Romanian government is planning to open a new commercial court for business litigation in Bucharest.

Finally, in Southeast Asia, Singapore is planning to set up an International Commercial Court that focuses on mediation of commercial disputes, intended to be international in nature, with availability for cross-border commercial disputes.

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