

BUSINESS COURTS COMMITTEE
REPORT PREPARED FOR THE OCTOBER 7, 2023 COUNCIL MEETING

1. 2022-2023 Budget Request and Anticipated Use of Funds.

The Committee requests \$2,000 with no anticipated revenue. These expenses would likely occur in connection with training for Business Court Judges or related travel expenses.

2. Use of Budgeted Funds during 2022-2023.

The Committee did not spend any BLS funds in 2022-2023.

3. Next Scheduled Meeting of the Committee.

No meeting of the Committee is currently scheduled.

4. Council Approval.

The Committee asks the Council to endorse two clarifying amendments to the business court statute (and to retain a lobbyist if needed to promote those amendments) and to approve a listserv for Business Court Judges. Regarding the proposed amendments, see added language in **yellow, bold, and underlined** in the business court statute below. Specifically,

1. Section 2(h) would be added. It is intended to clarify that shareholder litigation should be in the business courts, regardless of whether the company is a party.
2. Section 3(i) would be added. It is intended to clarify that proceedings to enforce business court judgments should go to the business court.
3. The third (unrelated to business court jurisdiction) is to approve a listserv for Business Court Judges that would be operated through the Business Law Section and the State Bar of Michigan. Only Business Court Judges would be allowed to participate.

PROPOSED AMENDMENTS

TO BUSINESS COURT JURISDICTION (#1 and #2)

600.8031 Definitions; business or commercial disputes.

Sec. 8031.

(1) As used in this section to section 8047:

(a) "Business court" means a special docket as described and organized under section 8033 and administered as provided in this section to section 8047.

(b) "Business enterprise" means a sole proprietorship, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, for-profit or not-for-profit corporation or professional corporation, business trust, real estate investment trust, or any other entity in which a business may lawfully be conducted in the jurisdiction in which the business is being conducted. Business enterprise does not include an ecclesiastical or religious organization.

(c) "Business or commercial dispute" means any of the following:

(i) An action in which all of the parties are business enterprises, unless the only claims asserted are expressly excluded under subsection (3).

(ii) An action in which 1 or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members of a limited liability company or a similar business organization, directors, officers, agents, employees, suppliers, guarantors of a commercial loan, or competitors, and the claims arise out of those relationships.

(iii) An action in which 1 of the parties is a nonprofit organization, and the claims arise out of that party's organizational structure, governance, or finances.

(2) Business or commercial disputes include, but are not limited to, the following types of actions:

(a) Those involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise.

(b) Those involving information technology, software, or website development, maintenance, or hosting.

(c) Those involving the internal organization of business entities and the rights or obligations of shareholders, partners, members, owners, officers, directors, or managers.

(d) Those arising out of contractual agreements or other business dealings, including licensing, trade secret, intellectual property, antitrust, securities, noncompete, nonsolicitation, and confidentiality agreements if all available administrative remedies are completely exhausted, including, but not limited to, alternative dispute resolution processes prescribed in the agreements.

(e) Those arising out of commercial transactions, including commercial bank transactions.

(f) Those arising out of business or commercial insurance policies.

(g) Those involving commercial real property.

(h) Actions under MCL 450.1489 and MCL 450.4515. Such actions qualify as a business or commercial dispute regardless of whether the business is named as a party.

(3) Notwithstanding subsections (1) and (2), business or commercial disputes expressly exclude the following types of actions:

(a) Personal injury actions including, but not limited to, wrongful death and malpractice actions.

(b) Product liability actions in which any claimant is an individual.

(c) Matters within the jurisdiction of the family division of circuit court.

(d) Proceedings under the probate code of 1939, 1939 PA 288, MCL 710.21 to 712B.41.

(e) Proceedings under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206.

(f) Criminal matters.

(g) Condemnation matters.

(h) Appeals from lower courts or any administrative agency.

(i) **Other than business court judgments,** proceedings to enforce judgments of any kind, including supplementary hearings.

(j) Landlord-tenant matters involving only residential property.

(k) Land contract, mortgage, construction, and condominium lien foreclosure matters and actions involving the enforcement of condominium and homeowners associations governing documents.

(l) Motor vehicle insurance coverage under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(m) Insurance coverage disputes in which an insured or an alleged insured is an individual consumer.

(n) Employment discrimination.

(o) Civil rights including, but not limited to, an action brought under any of the following:

(i) The Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to 37.2804.

(ii) The persons with disabilities civil rights act, 1976 PA 220, MCL 37.1101 to 37.1607.

(iii) Chapter XXI of the Michigan penal code, 1931 PA 328, MCL 750.146 to 750.148.

(p) Wrongful discharge, except for actions involving corporate officers or directors.

(q) Worker's compensation claims under the worker's disability compensation act, 1969 PA 317, MCL 418.101 to 418.941.

5. Membership.

The membership of the Committee is intentionally small. The members are Judge James Alexander (retired Oakland), Judge David Allen (Wayne), Judge Martha Anderson (Oakland), Judge Kathryn Viviano (Macomb), Judge Christopher Yates, Bruce Courtade, Jennifer Grieco, Brian Wassom, and yours truly.

6. Accomplishments Toward Committee Objectives.

The Committee's objectives are to serve as a liaison between the Business Court Judges and the Business Law Section, to serve as a resource for the Business Court Judges, and to assist the Business Court Judges in whatever ways they and the Business Law Section deem appropriate.

7. Meetings and Programs.

The Committee has communicated by e-mail frequently since the last Council meeting.

8. Publications.

The Committee has published no articles. The Michigan Business Law Journal includes a regular column on the Michigan Business Courts.

9. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action.

The Committee monitors proposed changes in the business court statute and Michigan Court Rules that deal with the Michigan Business Courts.

10. Miscellaneous.

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