

BUSINESS COURTS COMMITTEE
REPORT PREPARED FOR THE JUNE 6, 2017 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee.

No meeting is currently scheduled.

2. Council Approval.

No matters require Council approval.

3. Membership.

The Committee is intentionally small (four members including Judge Christopher P. Yates.)

4. 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.

5. Meetings and Programs.

The Committee has not met since the last Council meeting. But on the afternoon of May 2, 2017, the Michigan Judicial Institute sponsored a program on business courts at the Hall of Justice in Lansing. Co-sponsored by the Commercial Litigation Committee, the seminar was informative and well attended. Business Court Judges, ADR experts, litigators, in-house counsel, and transactional attorneys (including Justin Klimko) discussed various issues involving the business courts.

6. Publications.

The Committee has published no articles.

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

SB 333 has been introduced to clarify the jurisdiction of the business courts. <http://www.legislature.mi.gov/documents/2017-2018/billintroduced/Senate/pdf/2017-SIB-0333.pdf>

The proposed amendments (attached) are not likely to be controversial. In fact, the bill quickly (and unanimously) passed the state Senate. The Committee does not recommend that the BLS take a position on the bill.

8. Miscellaneous.

Respectfully submitted,

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Date of Report: June 1, 2017

SENATE BILL No. 333

April 26, 2017, Introduced by Senators JONES and KNOLLENBERG and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 8031 and 8035 (MCL 600.8031 and 600.8035), as
added by 2012 PA 333.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8031. (1) As used in this section to section 8047:

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

5 (b) "Business enterprise" means a sole proprietorship,
6 partnership, limited partnership, joint venture, limited liability
7 company, limited liability partnership, for-profit or not-for-
8 profit corporation or professional corporation, business trust,

1 real estate investment trust, or any other entity in which a
 2 business may lawfully be conducted in the jurisdiction in which the
 3 business is being conducted. Business enterprise does not include
 4 an ecclesiastical or religious organization.

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

7 (i) An action in which all of the parties are business
 8 enterprises, **UNLESS THE ONLY CLAIMS ASSERTED ARE EXPRESSLY EXCLUDED**
 9 **UNDER SUBSECTION (3).**

10 (ii) An action in which 1 or more of the parties is a business
 11 enterprise and the other parties are its or their present or former
 12 owners, managers, shareholders, members **OF A LIMITED LIABILITY**
 13 **COMPANY OR A SIMILAR BUSINESS ORGANIZATION**, directors, officers,
 14 agents, employees, suppliers, **GUARANTORS OF A COMMERCIAL LOAN**, or
 15 competitors, and the claims arise out of those relationships.

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

19 ~~(iv) An action involving the sale, merger, purchase,~~
 20 ~~combination, dissolution, liquidation, organizational structure,~~
 21 ~~governance, or finances of a business enterprise.~~

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

24 (A) **THOSE INVOLVING THE SALE, MERGER, PURCHASE, COMBINATION,**
 25 **DISSOLUTION, LIQUIDATION, ORGANIZATIONAL STRUCTURE, GOVERNANCE, OR**
 26 **FINANCES OF A BUSINESS ENTERPRISE.**

27 (B) ~~(a)~~ Those involving information technology, software, or

1 website development, maintenance, or hosting.

2 (C) ~~(b)~~—Those involving the internal organization of business
3 entities and the rights or obligations of shareholders, partners,
4 members, owners, officers, directors, or managers.

5 (D) ~~(e)~~—Those arising out of contractual agreements or other
6 business dealings, including licensing, trade secret, intellectual
7 property, antitrust, securities, noncompete, nonsolicitation, and
8 confidentiality agreements if all available administrative remedies
9 are completely exhausted, including, but not limited to,
10 alternative dispute resolution processes prescribed in the
11 agreements.

12 (E) ~~(d)~~—Those arising out of commercial transactions,
13 including commercial bank transactions.

14 (F) ~~(e)~~—Those arising out of business or commercial insurance
15 policies.

16 (G) ~~(f)~~—Those involving commercial real property.

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

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

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

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

26 (d) Proceedings under the probate code of 1939, 1939 PA 288,
27 MCL 710.21 to ~~712A.32~~**712B.41**.

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

3 (f) Criminal matters.

4 (g) Condemnation matters.

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

6 (i) Proceedings to enforce judgments of any kind, **INCLUDING**
7 **SUPPLEMENTARY HEARINGS.**

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

10 (k) Land contract, ~~or~~ mortgage, **CONSTRUCTION, AND CONDOMINIUM**
11 **LIEN** foreclosure matters involving residential property.

12 (l) Motor vehicle insurance coverage under the insurance code
13 of 1956, 1956 PA 218, MCL 500.100 to 500.8302. ~~, except where 2 or~~
14 ~~more parties to the action are insurers as that term is defined~~
15 ~~under section 106 of the insurance code of 1956, 1956 PA 218, MCL~~
16 ~~500.106.~~

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

19 (n) Employment discrimination.

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

22 (i) The Elliott-Larsen civil rights act, 1976 PA 453, MCL
23 37.2101 to 37.2804.

24 (ii) The persons with disabilities civil rights act, 1976 PA
25 220, MCL 37.1101 to 37.1607.

26 (iii) Chapter XXI of the Michigan penal code, 1931 PA 328, MCL
27 750.146 to 750.148.

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

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

5 Sec. 8035. (1) A business court has jurisdiction over business
6 and commercial disputes in which ~~the amount in controversy exceeds~~
7 ~~\$25,000.00.~~ **EQUITABLE OR DECLARATORY RELIEF IS SOUGHT OR IN WHICH**
8 **THE MATTER OTHERWISE MEETS CIRCUIT COURT JURISDICTIONAL**
9 **REQUIREMENTS.**

10 (2) Venue of a suit in the business court is as provided in
11 chapter 16.

12 (3) An action ~~shall~~ **MUST** be assigned to a business court if
13 all or part of the action includes a business or commercial
14 dispute. An action that involves a business or commercial dispute
15 that is filed in a court with a business docket ~~shall~~ **MUST** be
16 maintained in a business court although it also involves claims
17 that are not business or commercial disputes, including excluded
18 claims under section 8031(3).

19 (4) An action ~~shall~~ **MUST** be assigned to a business court judge
20 by blind draw, unless the jurisdiction and venue of the case lies
21 in a county described in section 8033(2).

22 (5) An action assigned to a business court judge may be
23 reassigned by blind draw to another judge as prescribed by the plan
24 submitted under section 8033(1) or (2), as applicable, if the
25 action ceases to include a business or commercial dispute.

26 (6) An action that does not initially include a business or
27 commercial dispute but that subsequently includes a business or

1 commercial dispute as a result of a cross-claim, counterclaim,
2 third-party complaint, amendment, or any other modification of the
3 action ~~shall~~**MUST** be reassigned by blind draw to a business court
4 after the action is modified to include a business or commercial
5 dispute as prescribed by the plan submitted under section 8033(1)
6 or (2), as applicable.

7 (7) Upon motion of a party, the chief judge of the judicial
8 circuit may review assignments under subsections (3), (5), and (6).
9 The ruling of the chief judge under this subsection is not an order
10 that may be appealed under section 308.

11 Enacting section 1. The amendatory act that added section
12 8031(2)(a) of the revised judiciary act of 1961, 1961 PA 236, MCL
13 600.8031, applies to actions commenced on or after the effective
14 date of this amendatory act.