



13 AND COUNTING: A Look at the Oakland County Business Court Through the Eyes of the Judges

By Roger P. Meyers and Mahde Y. Abdallah

Michigan's business court statute took effect in January 2013, and the specialized docket created thereunder is now in its 13th year. In human terms, the business court has become a teenager: coming into maturity but still learning and refining. In light of that milestone, we sat down with each of the judges who have served on the Oakland County Business Court to reflect on what has worked well so far, what might be improved, and what practitioners might expect over the next several years as the business court continues to evolve.

I. INTRODUCTION TO THE BUSINESS COURT

The Michigan business court statute was the culmination of nearly a dozen years of starts and stops, ranging from an enacted but unfunded “cyber court” to widely differing pilot programs in Kent, Macomb, and Oakland counties.¹ The analysis and experimentation of those years ultimately led to the passage in October 2012 of a comprehensive new statute, codified at MCL 600.8031 to 8047, that took effect January 1, 2013.² Colloquially, the statute created “business courts,” but this term formally refers to specialized dockets within the circuit courts for circuits having at least three circuit judges.³

The goals of the business courts are to “[a]llow business or commercial disputes to be resolved with the expertise, technology, and efficiency required by the information age economy” and “[e]nhance the accuracy, consistency, and predictability of decisions in business and commercial cases.”⁴ Consistent with these goals, the business court is envisioned as a place to explore and develop new “judicial structures that will help all court users by improving the efficiency of the courts.”⁵

Business courts have jurisdiction over “business or commercial disputes” that seek equitable or declaratory relief, or otherwise meet circuit court jurisdictional requirements.⁶ The business court statute defines business and commercial disputes.⁷ Qualifying disputes can be summarized as having two characteristics: First, they are brought either between business enterprises or between a business enterprise and persons who have ownership, management, competitive, or similar relationships with the enterprise (and the dispute arises out of such relationships).⁸ Second, they involve claims arising out of business-focused subject matters, such as mergers, organizational governance, commercial transactions or other business dealings, and so on.⁹ The statute expressly carves out certain disputes, such as employment discrimination, consumer insurance, and landlord-tenant disputes, even if they otherwise meet the general definition.¹⁰ A case in which part of the action does include a business or commercial dispute must be assigned to the business court even if it also involves claims — including otherwise excluded claims — that are not business or commercial disputes.¹¹

The Michigan Supreme Court appoints judges to six-year terms on the business court.¹² In Oakland County, the Supreme Court assigned the Hon. Wendy Potts (ret.) and the Hon. James Alexander (ret.) to serve as the court’s first two business court judges.¹³ The Hon. Martha Anderson served on the docket from 2019 to 2022, following Judge Potts’s retirement. The current business court judges, serving since 2020 and

2022 respectively, are the Hon. Michael Warren and the Hon. Victoria Valentine. Each of these five jurists graciously gave their time and wisdom, without which this article would not have been possible.

II. THE UNIQUE PRACTICE OF LAW IN THE BUSINESS COURT

Practice in the business court differs in notable ways from general civil practice. Some of these can be seen from the outset. Unlike the general civil docket, where a standardized scheduling order is typically generated automatically, the business court judges unanimously take a more active and collaborative role in managing newly filed actions. “In tort cases, the lawyers often don’t talk until the end,” Judge Alexander explained. To change that, he and Judge Potts began scheduling interactive case management conferences to “get them talking” and “give them some say” in their schedule. That practice continues today: “An early case management conference helps attorneys streamline the case,” commented Judge Valentine. Judge Warren agreed, saying he trusts lawyers to exercise good faith in proposing scheduling orders because they “know how much time they need.” Judge Anderson found the practice so valuable that she took it back to the general civil docket when her term on the business court ended.

The case management conference also enables the judge to explore whether early alternative dispute resolution is appropriate. “The business court bar is much more amenable to facilitation and resolving cases, because for the most part, the cases involve a business decision and cost-benefit analysis of facilitation versus going to trial,” stated Judge Warren. “The concept was, the quicker the parties come together, the quicker the case resolves,” Judge Alexander elaborated. Nevertheless, even business court disputes can be emotional, and “sometimes the parties need to get in front of a judge,” pointed out Judge Valentine, who supports mediation if the parties want it but does not order mediation automatically.

Another significant difference in business court practice is the degree of specialization.

While judges typically are generalists who see a wide range of disputes, the narrower focus of the business docket allows business court judges to develop deeper familiarity with the issues that come before them. “Litigators appreciate that judges have become experts in the field,” says Judge Warren. “When you have that expertise, you can rest assured that judges are familiar with the subject area, are well versed, have seen the issues before, and have a sense of how the proceedings should go.” Judge Alexander agrees, noting that the statutory goal of creating consistency and expertise among business court judges “absolutely has occurred.”

This is not to say that business court judges only see business disputes. In Oakland County, each judge also oversees a full load of criminal cases.¹⁴ The judges broadly agreed that such a mixed docket presents unique challenges. For example, criminal cases take precedence over other cases, including older business cases set for trial. This can inject complications and disruption into scheduling. Yet the judges also generally enjoy having a mixed docket and felt that changing to a business-only docket would be very difficult to accomplish.

The nature of the business docket itself adds still more complexity. Judge Valentine observed that a disproportionate number of applications for temporary restraining orders and motions for preliminary injunction are filed in the business court. Judge Warren concurred, describing the volume as “exponentially higher,” and Judge Anderson estimated that one or two temporary restraining orders were virtually guaranteed to arrive every Friday afternoon. But the judges recognized such motions, though they can be disruptive, often play an important role in helping to resolve a case.

Meanwhile, the judges unanimously emphasized the vastly greater extent of dispositive motion practice in business court. Some of their feedback may be eye-opening for practitioners. Judge Anderson described a “steady diet” of motions brought under MCR 2.116(C)(8), and while recognizing the challenge posed by client expectations, Judge Valentine cautioned that many such motions are “tactical but not helpful” to the court. Judge Alexander shared that view, estimating that “in 90% of motions for summary disposition, there’s a fact question.” Compounding the problem of increased volume, the typical business court dispositive motion is also lengthy, is supported by extensive exhibits, and requires more research before decision than is seen in the civil docket. And, even where relief is granted, leave to amend is often required — thus starting the cycle anew. Judge Potts notes that it is an “intense” challenge to “handle the business docket properly” with these competing demands.

One concrete measure of the business court’s



OAKLAND COUNTY BUSINESS COURT JUDGES



Hon. James Alexander
2013-20



Hon. Wendy Potts
2013-19



Hon. Martha Anderson
2019-22



Hon. Michael Warren
2020-present



Hon. Victoria Valentine
2022-present

success is the increased willingness of parties to have a judge, rather than a jury, decide their case in the rare event that it proceeds to trial. Judge Anderson “definitely” saw fewer jury demands in her business court cases than her general civil cases. Judge Warren reported a “heavy disposition” toward bench trials. And Judge Alexander pointed out that “if you have a sophisticated business case and have to spend the first three days educating a jury, it’s a problem.” Court statistics support these subjective observations: An Interactive Court Data Dashboard provided by the State Court Administrative Office reveals consistent parity, year after year, between bench and jury trials in the business court.¹⁵ In comparison, general civil cases are tried to juries at roughly triple the rate of bench trials.¹⁶

That reduced rate of jury trials (atop the already low rate of trials in any form) may come at a cost, however. Judge Valentine said that while the overall “quality of the lawyers is amazing,” they may be “a little out of practice” and can come across as “a little too savvy and scholarly” in front of a jury. Judge Warren echoed that view, emphasizing that business court lawyers excel in motion practice but are less clear on how to effectively present a case to a jury.

In general, however, the judges were uniformly impressed with the advocacy in the business court. Judge Potts complimented both the professionalism and the “excellent” work product, while Judge Alexander appreciated that the “level of lawyering was high” and “made our job easier.” And Judge Valentine appreciated the complexity of the practice and the strategy and analysis that goes into it, noting that “the thick of litigation is in the business court.”

III. WHAT WORKS WELL AND WHAT CAN BE IMPROVED

In the early years of the business court, there were concerns of both over- and under-inclusiveness

in the jurisdiction established under the business court statute. The statute was amended in 2017 to address these issues, resulting in expansion of jurisdiction for certain types of claims involving individuals — such as guarantors of commercial loans — but also exclusion of other types of claims even when brought solely between business enterprises.¹⁷

The judges universally viewed that amendment as having largely succeeded in striking the right balance between cases that belong in the business court and those that do not. Judge Warren views the jurisdictional scope as “close to stability.” Judge Anderson likewise believes that most cases are going to the docket, business or civil, where they ought to be. Judge Potts confirmed that the 2017 amendment “really helped” strike the right balance. And Judge Alexander summed up, “Overall, [the statute] is doing its job. . . . If it ain’t broke, don’t fix it. And I don’t think it’s broken.”

That said, the judges generally agree there still is some room for fine-tuning. In particular, they consistently mentioned three categories of cases they feel should, but currently do not, fall clearly within business court jurisdiction. The first category involves proceedings supplementary to judgment in an underlying business court case, where the court already is familiar with the parties and the dispute. The second category involves cases where one party is a municipal corporation or other governmental entity, which circumstance has led to inconsistent jurisdictional decisions from business court to business court. The third category includes cases dealing with internal business affairs, such as derivative suits, in which the underlying entity has not been named as a party. The State Bar of Michigan’s Business Courts Committee is working to develop legislation to address many of these issues.¹⁸

A bigger shared concern, and one that may be more difficult to solve, is capacity. Judge War-

ren noted that the “demands on judges” — both business court and otherwise — “are much higher now” than when he first took the bench two decades ago. But these demands fall particularly hard on the business court. Under the statute, the judges are expected to publish written opinions to a searchable statewide database.¹⁹ Judge Potts notes, however, that it is “staff intensive” to prepare opinions in the face of the business court’s outsized volume of motions. Judge Anderson agreed, calling the task “daunting.” Statewide utilization studies are underway to evaluate whether a sufficient number of judges have been allocated to each business court, but in Judge Warren’s view, there is no question that the Oakland County Business Court is “underjudged” with only two judges to carry the load.

IV. A LOOK TO THE FUTURE

Our legal system is in a time of rapid change, and the business court is no exception. In looking at what may be just over the horizon for the business court in the next five to 10 years, the judges offered a handful of predictions and ideas.

Judges Potts and Valentine both expressed concern about the challenge of relatively smaller business disputes, which are difficult to resolve in a cost-effective manner, and the need for a method to “fast-track” such disputes with streamlined procedures. Judge Valentine also emphasized the need for lawyers to work collaboratively to address increasing discovery and evidentiary issues relating to metadata. Judge Alexander reiterated the need to shift back to in-person hearings for substantive matters, reserving Zoom for routine matters. Judge Potts sees an increased role for prelitigation alternative dispute resolution, given the continued increase in cost of litigation. And several judges remarked that the searchability of the business court opinion database needs improvement to make it a more useful tool.

What emerges from these predictions and

suggestions, however, is a sense of refinement and continuous improvement, rather than any need for a major overhaul. The business court is in its teen years now, and as summarized by Judge Alexander, it is “aging well.” ¹⁴



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Footnotes:

1. See generally Douglas L. Toering, *The New Michigan Business Court Legislation: Twelve Years in the Making*, available at <https://www.businesscourtsblog.com/wp-content/uploads/2019/01/New-Michigan->

[Business-Courts-2013-01552036x805D9.pdf](#).
 2. 2012 PA 333.
 3. MCL 600.8031(1)(a); MCL 600.8033(1).
 4. MCL 600.8033(3).
 5. *Id.*
 6. MCL 600.8035(1).
 7. MCL 600.8031.
 8. MCL 600.8031(1)(c).
 9. MCL 600.8031(2).
 10. MCL 600.8031(3).
 11. MCL 600.8035(3).
 12. MCL 600.8037(2).
 13. Order, ADM File No. 2012-36, April 3, 2013.
 14. In Wayne County, conversely, business court judges oversee a mixed business and general civil docket.
 15. See <https://www.courts.michigan.gov/publications/statistics-and-reports/interactive-court-data-dashboard>.
 16. See *id.*
 17. 2017 PA 101.
 18. https://higherlogicdownload.s3.amazonaws.com/MICHBAR/ebd9d274-5344-4c99-8e26-d13f998c7236/UploadedImages/Bus_Courts.pdf.
 19. MCL 600.8039(3).

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