

DICTA



**A TENNESSEE
COURT IS
“IN BUSINESS”
FOR US ALL**

**SUPER
CIRCULATION
ISSUE**

A TENNESSEE COURT IS “IN BUSINESS” FOR US ALL



With a flourish of the pen, the Tennessee Supreme Court created a business court docket in the Davidson County Chancery Court, Part III, in March 2015. The business court (also known as the Business Litigation Pilot Project) began to take cases as of May 1, 2015. Chancellor Ellen Hobbs Lyle (<https://www.tncourts.gov/chancellorlyle>), a judge with significant experience adjudicating business law matters, presides over the court. General information about the court is available at <http://www.tsc.state.tn.us/bizcourt>.

This represents important progress for businesses and business lawyers in Tennessee. Many are familiar with the Delaware Chancery Court, the leading business trial court system in the United States. But numerous other states also have business courts of one kind or another. The Business and Corporate Litigation Committee of the American Bar Association Business Law Section has a standing subcommittee, the Business Courts Subcommittee, dedicated to these courts. These courts are recognized forums for dispute resolution across the country.

Why Are Business Cases Getting This Special Attention?

Given that I do not litigate cases (we transactional folks try to keep the matters we work on out of the courts!), you might wonder why I view the creation of a business court in Tennessee as a positive development. Having worked with the bar in Massachusetts on the establishment of a business court back in the 1990s (before I moved my family to Knoxville to start my law teaching career) and having taught business law courses at The University of

Tennessee College of Law for almost sixteen years now, however, I have come to understand business courts as important to the efficient, effective administration of justice in many business disputes. Specifically, business cases can have an idiosyncratic complexity to them that is best handled by a court that has the ability to specialize and develop an expertise on procedural and substantive business law.

For example, those who have taught or endeavored to explain shareholder derivative claims against corporate directors or officers asserting a breach of fiduciary duty or appraisal rights actions in which dissenting shareholders request a judicial valuation of their shares may appreciate the value of a court with significant experience in those kinds of cases. Cases of this kind often include unsettled or otherwise contentious legal issues in the context of specialized procedural requirements. In the hands of a court of general jurisdiction, trials frequently involve matters of first impression for the court or the judge and, as a result, can be lengthy. Based on experience in other states with specialized business courts of various kinds, the business court should result in a more efficient use of judicial resources, reducing the overall cost of this litigation to the state and the parties. In addition, the business court holds promise to develop an increasingly consistent, coherent body of judicial decisions relating to Tennessee business law. In fact, the online *Guide to the Business Court* (<http://chanceryclerkandmaster.nashville.gov/wp-content/uploads/GuidetotheBusinessCourt.pdf>) describes the court as “a specialized trial court established to (1) provide cost effective disposition of business cases and procedures adapted to the needs of each case; and (2) to develop a body of rulings

from which lawyers and litigants can better predict and assess outcomes in business cases.”

What Cases Does The Business Court Hear?

The business court is authorized to adjudicate a variety of business law actions alleging \$50,000 or more in compensatory damages or primarily requesting injunctive or declaratory relief. The types of claims that may be heard generally include (and this is a partial summary) civil disputes relating to the internal affairs of business entities, contractual and other business transactional matters, commercial real property issues, technology licensing, non-compete and non-solicitation agreements, antitrust, trade secrets, securities, and commercial construction contracts. Claims may be brought as shareholder derivative or commercial class actions. Specific types of claims and causes of action also are expressly excluded, including (without limitation) personal injury and wrongful death actions, standalone employer/employee and professional fee disputes, residential landlord/tenant actions, healthcare liability cases, and (quoting from the *Guide*) “cases in which the State of Tennessee is a party.” In addition, to be eligible for adjudication in the business court, the complaint in the action must have been filed on or after May 1, 2015.

Legal counsel may request that a case be transferred to the business court by filing a request to designate the case to the court with the Davidson County Clerk and Master’s Office within 60 days after service of the complaint on the defendant. The Chief Justice then either orders or denies transfer of the case. Objections to transfer (other than those relating

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to eligibility) must be filed with the Chief Justice within 30 days of the entry of the order transferring the case to the business court.

What Has Been Happening In The Business Court Since May?

It has only been six months since the business court opened its doors. Yet, business litigants in Tennessee already have begun to make the business court a court of choice. As might be expected, the range of matters before the court includes a diverse assortment of cases. Although a formal published report from the business court is not yet available on the nature of its docket, the recently released *Annual Report of the Tennessee Judiciary for 2015* (<http://www.tsc.state.tn.us/sites/default/files/do>

[cs/2015_outline_02092016.pdf](#)) notes (on page 13) that 34 cases were transferred to the business court in 2015, 11 of which were resolved by the end of the year. Other publicly available information indicates that the court has handled issues in (among other types of case) a number of contract disputes and at least one appraisal rights case, LLC statutory derivative action, and LLC fiduciary duty claim. Sample court orders illustrating issues addressed by the court to date, divided between substantive law and case management matters, are available on the court's website.

The Future Of The Business Court

The business court was expressly established as a pilot program to facilitate the

study of and feedback concerning the court's operations under the new rules. To assist in that assessment process, the Tennessee Supreme Court established a Business Court Rules Advisory Commission. The commission is chaired by a sitting judge from the Tennessee Court of Appeals and also includes eight members of the bar practicing in private firms and businesses in each of the three grand divisions.

Tennessee's cautious, thoughtful approach to the creation of a business court offers much to commend. A successful pilot program in Davidson County may not only portend the permanent establishment of a business court there but also may catalyze the establishment of other business courts across the state. This is a potential development to watch for.