



INSIDE THE NEW COMPLEX BUSINESS LITIGATION PROGRAM FOR THE NEW JERSEY SUPERIOR COURT

By: Edward Kole & Karin Sage

After years and years of discussion and debate, the New Jersey Supreme Court, by Order of Chief Justice Rabner, has implemented a state-wide Complex Business Litigation Program (the "Program") designed to address the particularized needs of the parties in business related litigation. Effective January 1, 2015, all Vicinages in the State participate in the Program, which is designed to handle complex commercial and construction cases that have the potential for \$200,000 or more in damages. Viewed as a welcome change by commercial litigators, the Program will place New Jersey into a group of 27 other states which already operate with some form of specialized business litigation Program or Court.

A. Purpose of The Program

Businesses have long been frustrated by a litigation process that can often be disruptive, time consuming and costly. The process becomes more onerous when the claims involve complex business or commercial transactions where substantial amounts of documentary evidence (including electronically stored information) are exchanged, parties risk exposure to potentially significant damage awards, and/or the case will involve pre-trial motions raising novel legal and evidentiary issues. Therefore, over the past decade, there has been a renewed emphasis by members of the business community, and from those advocating on their behalf, to establish a protocol whereby business disputes could be handled in a more efficient, timely and cost-effective manner. The result: the Complex Business Litigation Program. In line with the business community's goals of certainty, finality, timeliness and a cost-effective means of addressing business disputes, the Program was designed to serve a number of important purposes including:

- Fostering a more favorable environment for maintaining business activities in New Jersey
- Addressing a perceived need to accommodate the unique attributes of complex commercial and construction cases
- Addressing a degree of dissatisfaction within the business community with the handling (or mishandling) of certain complex business disputes
- The critical need for development of a clear body of law to guide both attorneys and businesses

B. What Are The Benefits Of The Program

The Program has built into it a number of benefits – all of which are tailored to best serve the concerns of the business community when it becomes necessary to turn to the courts for assistance in resolving their disputes.

Of particular significance, unlike cases brought in the Chancery Division - - the Program provides for qualifying complex commercial and construction cases to be brought in the Superior Court, Law Division, with availability for both bench and jury trials.

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Moreover, unlike other cases filed in the Law Division, where parties may be subject to having multiple judges deciding motions before being assigned to a judge for trial, cases that participate in the Program have the benefit of being assigned to a specific judge when the case is first filed and that judge who will remain with the case until its conclusion.

To ensure the Program's purpose of developing a clear body of complex business case law is met, each judge assigned to the program will be expected to issue a minimum of two written opinions every year.

Opportunity for ADR still exists, however, although encouraged, referral to mediation is presently optional under the Program, not mandatory like other cases filed in the Law Division.

C. How Do You Get Into The Program

For cases filed after January 1, 2015, to opt into the program the attorneys or parties will designate their case as either a complex commercial case type (508 on the Case Information Statement ("CIS")) or a complex construction case type (513 on the CIS).

To qualify for inclusion in the Program, the amount in controversy must be at least \$200,000. However, for those cases that do not meet the requisite \$200,000 threshold but otherwise involve compelling issues to be resolved pertaining to discovery, a large number of witnesses, or a significant interpretation of a business or commercial statute, application may be made for acceptance in and assignment to the program.

Finally, if your case would otherwise qualify for inclusion into the Program, but was filed prior to January 1, 2015, you can seek a transfer into that program via motion.



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