



THE SUPERIOR COURT'S COMPLEX BUSINESS LITIGATION PROGRAM THREE YEARS AFTER IMPLEMENTATION

by Edward T. Kole

After many years of discussion, by order of the chief justice, effective Jan. 1, 2015, the New Jersey Supreme Court implemented a statewide Complex Business Litigation Program, the purpose of which was to address the specific needs of parties and practitioners in business-related litigation. The program, which may be unfamiliar to some practitioners, applies to all vicinages in the state, with a judge designated in each vicinage to handle cases. Those cases eligible for the program run the gamut of complex commercial and construction-related litigation with a threshold of at least \$200,000 in damages.

Purpose of the Program

Businesses, as well as their attorneys, have long been frustrated by a litigation process that can be disruptive (multiple judges handling a matter), time consuming (discovery motions, backlog of civil cases) and costly (the start and stop of litigation with multiple trial dates). The process becomes more onerous when the cases involve complex business dis-

putes where there are substantial amounts of document discovery (including electronically stored information); multiple parties; significant damage claims and/or pre-trial motions raising novel, complex legal and evidentiary issues. As a result, the program was implemented with the mindset of meeting the goals of the business community to address business disputes with finality, in a timely, cost-effective manner before a court trained to handle such matters.

Benefits of the Program

The program has a number of benefits built into it to address the aforesaid concerns of the business community and its counsel. First, unlike cases filed in the Chancery Division, the program provides for complex commercial and construction cases to be brought in the Law Division, with availability for both bench and jury trials. Next, unlike other cases filed in the Law Division, where attorneys have had multiple judges on any given matter, cases that participate in the program have the benefit of being assigned to a specific judge appointed to the program, who will handle the matter from inception to



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conclusion. These cases also are not subject to the onerous track deadlines set for other Law Division matters. Moreover, to support the Court's effort to establish a clear body of complex business case law upon which the courts can draw, each judge in the program is expected to issue a minimum of two written opinions every year. And while alternative dispute resolution still exists in the program, it is optional, not mandatory like other matters filed in the Law Division.

Getting into the Program

To opt into the program, upon filing the case information statement (CIS) for the initial pleading, an attorney must designate his or her case as either a complex commercial case or a complex construction case, numbers 508 and 513,

respectively, on the CIS. The amount in controversy must be at least \$200,000. That said, for those cases that do not meet the monetary threshold, but for which there are otherwise compelling reasons for inclusion in the program (*i.e.*, complex issues, significant interpretation of a statute, a large number of witnesses, unique discovery issues), a party may file a motion for inclusion into the program.

Conclusion

While the program is still evolving and new rules may soon be implemented, counsel should maximize the benefits of the program. By way of example, fashion case management orders that give parties the same benefits they may enjoy in federal court. One suggestion would be for inclusion of letter applica-

tions on discovery disputes as opposed to discovery motions.

In the author's opinion, one of the keys to success of the program will be the stability of the judge in the position; in other words, that the judges remain in the position and not be subject to rotation. Rotation could defeat the purpose of training judges to handle these matters and allowing parties to have one judge handle a matter from inception to conclusion. ☞

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