



The Michigan Business Law

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In this issue, we begin a regular column on the business courts in Michigan. What is happening in the Michigan business courts is of interest to all business attorneys, whether transactional lawyers or litigators. In this issue, we focus on the 2017 amendments to the business court statute. Future issues will review significant business court cases and discuss specific issues in individual business courts.

Michigan Business Courts: Background

A mere five years ago, Public Act 333 of 2012 was enacted, mandating that circuit courts with three or more judges establish specialized business courts.¹ The business courts were created with three purposes:

- a) Establish judicial structures that will help all court users by improving the efficiency of the courts.
- b) Allow business or commercial disputes to be resolved with the expertise, technology, and efficiency required by the information age economy.
- c) Enhance the accuracy, consistency, and predictability of decisions in business and commercial cases.²

In the sixteen Michigan circuits with a business court,³ every "business or commercial dispute" must be assigned to the business court.⁴ The statute defines what constitutes a "business or commercial dispute" and what does not. The business courts are generally regarded as a success by the legal community.⁵

Nevertheless, a number of unexpected claims have made their way into the business courts.⁶ These include suits against members of credit unions and disputes over residential property.⁷ Although those claims often "technically fit" under the language of the original statute, they were not meant to be litigated in the business courts.⁸

In April 2017, Michigan Senators Rick Jones and Marty Knollenberg

introduced a bill to address these jurisdictional issues and reduce delays.⁹ SB 333 proposed amending MCL 600.8031 and MCL 600.8035 to refine and clarify the business court's jurisdiction.¹⁰ Supporters of the bill stressed the importance of maintaining proper jurisdiction and the purpose for which the business courts were created.¹¹ The amendments passed and took effect October 11, 2017.¹² In general, the amendments are designed to ensure that cases that are truly business disputes will be assigned to the business courts, whereas cases that are not truly business disputes will be assigned to the general civil docket.

Amendments to MCL 600.8031: Business Court Jurisdiction

The 2017 amendments affect the definition of a "business or commercial dispute." With the amendments, a "business or commercial dispute" now:

- Excludes disputes in which all parties are business enterprises where the claims are all expressly excluded under subsection (3);¹³
- Clarifies that "members" mean "members of a limited liability company or similar business organization;"¹⁴
- Adds "guarantors of a commercial loan" to the list of acceptable parties in an action involving a business enterprise;¹⁵ and
- Moves subsection (1)(c)(iv) to subsection (2)(a). Thus, business or commercial disputes now include actions involving "the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise."¹⁶

The other amendments to MCL 600.8031 expressly *exclude* the following:

- Supplementary hearings regarding proceedings to

enforce judgments of any kind;¹⁷

- Construction and condominium lien foreclosure matters;¹⁸
- Actions involving enforcement of condominium and homeowners' governing documents;¹⁹
- All motor vehicle insurance coverage disputes;²⁰ and
- Additional Revised Probate Code sections referenced.²¹

Amendments to MCL 600.8035: Clarification of Jurisdictional Requirements

Section 8035 was also amended. It now:

- Provides business court jurisdiction for "business and commercial disputes in which equitable or declaratory relief is sought," or for actions that otherwise meet the jurisdictional requirements of the circuit court;²²
- Replaces "shall" with "must" in the provision requiring that business or commercial disputes filed in a court with a business docket be maintained in the business court;²³ and
- Replaces "shall" with "must" in the provision requiring a blind draw for assignment of judges.²⁴

Developments in Various Business Courts

Ingham County

Judge Joyce A. Draganchuk recently attended a comprehensive course on electronically stored information including preservation, searching, retrieval, and admission. She reports that "ESI is everywhere and it is not going away." She adds, "[A]ttorneys who appear before me should now expect that I will have a firm grasp on all aspects of ESI and if they are not likewise educated in this area they had better become educated."

*The author would like to thank Emily S. Fields for her help in researching and drafting this column. Ms. Fields is an associate at the Troy, Michigan office of Mantese Honigman, PC.

Kent County

As of January 1, 2017, Judge J. Joseph Rossi has assumed one-third of the business docket. Judge Christopher P. Yates has the other two-thirds of the business docket.

Oakland County

The Business Court Advisory Committee is currently making recommendations regarding revisions to the Protocols and Standing Orders.

Wayne County

The first annual Wayne County Business Court – Bench Bar Meeting occurred October 20, 2017 in the jury room of the Coleman A. Young Municipal Center. It was well-attended and very informative.

Conclusion

Michigan business courts were designed to efficiently and consistently resolve business disputes with trained business court judges. The recent amendments to MCL 600.8031 and MCL 600.8035 should help further these goals. By clarifying business court jurisdiction, the amendments will help assure that only those cases that are truly “business or commercial disputes” are filed in the business courts.

NOTES

1. MCL 600.8031 *et seq.* (amending the Revised Judicature Act of 1961).

2. MCL 600.8033(3).

3. Business courts are found in the following Michigan counties: Berrien County; Calhoun County; Genesee County; Ingham County; Jackson County; Kalamazoo County; Kent County; Macomb County; Monroe County; Muskegon County; Oakland County; Ottawa County; Saginaw County; St. Clair County; Washtenaw County; and Wayne County.

4. MCL 600.8035(3). A fuller summary of Michigan's business court statute appeared in Mantese & Toering, *It's My First Business Court Case: What Should I Expect?*, 95 Mich Bar J 46 (Nov. 2016), <http://www.michbar.org/file/barjournal/article/documents/pdf4article2881.pdf>; and Toering, *The New Michigan Business Court Legislation: Twelve Years in the Making*, Bus L Today (Jan. 2013), http://www.americanbar.org/publications/blt/2013/01/03_toering.html. The ABA also publishes an annual Review of Developments in Business and Corporate Litigation, which contains a section on the Michigan business courts.

5. Senate Legislative Analysis, SB 0333, May 22, 2017.

6. House Legislative Analysis, SB 0333, August 3, 2017.

7. *Id.*

8. *Id.*

9. 2017 Senate Journal 487 (No. 39, April 26, 2017).

10. Senate Legislative Analysis, SB 0333, May 1, 2017.

11. House Legislative Analysis, SB 0333, August 3, 2017. No arguments were submitted in opposition to the bill.

12. MCL 600.8031 and MCL 600.8035.

13. MCL 600.8031(1)(c)(i). Subsection (3) provides a list of seventeen types of actions that are expressly excluded from business court jurisdiction, including, for example, personal injury matters, criminal actions, and probate matters.

14. MCL 600.8031(1)(c)(ii).

15. *Id.*

16. MCL 600.8031(2)(a). Relocating this provision would not appear to have a significant effect on the actual jurisdiction of the business courts in such actions. The move is for clarification only.

17. MCL 600.8031(3)(j).

18. MCL 600.8031(3)(k).

19. *Id.*

20. House Legislative Analysis, SB 0333, August 3, 2017. Under the previous language of MCL 600.8031(3)(l), motor vehicle insurance coverage disputes under the Insurance Code were excluded unless two or more parties were insurers. Under the amendment, “business or commercial disputes” expressly excludes all motor vehicle insurance coverage actions.

21. *Id.*

22. MCL 600.8035(1). The previous version required an amount in controversy exceeding \$25,000. By its terms, that meant that a declaratory judgment case that did not seek damages could be excluded from the business court.

23. MCL 600.8035(3).

24. MCL 600.8035(4).



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