

April 8, 2022

Chief Justice Ziegler and Justices of the Wisconsin Supreme Court
c/o Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688
(Sent electronically to clerk@wicourts.gov, and hand delivered, 4/8/22)

Re: Rule Petition 16-05D – Business Court Pilot Project

Dear Honorable Chief Justice Ziegler and Honorable Justices of the Wisconsin Supreme Court:

Thank you for the opportunity to comment on the above noted Rule Petition to extend the Pilot Project for Dedicated Trial Court Judicial Dockets for Large Claim Business and Commercial Cases (“Business Court Pilot Project”). By way of background, the undersigned are attorneys who have utilized or will likely use the Business Court Pilot Project, representing litigants on the commercial docket, both Plaintiffs and Defendants, and who join in this letter requesting that the program be extended. We all support this worthwhile program which has expedited complex commercial civil litigation in a way that delivers justice evenhandedly, promptly, conserves judicial resources and generally serves litigants in our State Court system very well.

For these reasons, we strongly encourage the Court to extend the Business Court Pilot Project, improve it with input from the Bar, particularly those who have utilized the program, and eventually make it a permanent part of the Court System in Wisconsin.

Not unlike similar previous innovations within our Courts that improved the delivery of justice in Wisconsin by creating focused and specialized dockets, such as the Small Claims Court, Drug Courts, Family Law Courts and Veterans Courts, the Business Court docket has streamlined the resolution of generally complex commercial litigation. The judges assigned to the Business Court Pilot Project have volunteered for this duty and have been selected based on experience and a willingness to tackle this area of law directly. They have performed well. Our clients have been generally well served.

However, there have been criticisms of the program, most of them received after an article in a publication that contained many misstatements about the program. It appears most of the comments come from folks who did not have hands-on experience with the program and yet their criticisms encourage this Court to just terminate the program. This would be ill-advised and a tremendous waste of time and effort. Better to continue the program, take heed of legitimate criticisms, and look to improve what is already a fine program.

We believe that many of the criticisms leveled against the program do not stand up and are based on misperceptions. We have identified what we believe are some of the main misperceptions and addressed each point in the summary attached to this letter.

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It is noteworthy that the Judges who have served in the Business Court Pilot Project are not criticizing it, but rather it appears that they believe in this worthwhile endeavor. We believe Wisconsin needs to emulate the dozens of other states that have recognized that Commercial Law is a specialized area deserving of focused development by judges qualified by experience or training to deal with these types of disputes. And it should be noted that the Judges on the Business Court docket maintain a full caseload in addition to performing work on cases in the pilot program. We commend their dedication and hard work.

We thank you for considering the opinion of those who have participated representing litigants in the Business Court Pilot Project and ask that you extend the project, improve it with ongoing constructive input and ultimately make it permanent.

Very truly yours,



Paul G. Swanson, Steinhilber Swanson LLP, on his behalf and on behalf of the below listed attorneys, with their consent:

Laura A. Brenner, Reinhart Boerner Van Deuren s.c.
Nora E. Gierke, Gierke Law LLC
Michael J. Cohen, Messner Tierney Fisher & Nichols
David G. Peterson, Reinhart Boerner Van Deuren s.c.
Thomas M. Burnett, Reinhart Boerner Van Deuren s.c.
David G. Hanson, Reinhart Boerner Van Deuren s.c.
James N. Law, Reinhart Boerner Van Deuren s.c.
Scott W. Hansen, Reinhart Boerner Van Deuren s.c.
Jessica Hutson Polakowski, Reinhart Boerner Van Deuren s.c.
Robert S. Driscoll, Reinhart Boerner Van Deuren s.c.
Steven J. Krueger, Law Firm of Conway Olejniczak & Jerry, S.C.
Joseph S. Goode, Laffey, Leitner & Goode LLC
Mark M. Leitner, Laffey, Leitner & Goode LLC
Klay A. Baynar, Laffey, Leitner & Goode LLC
John W. Halpin, Laffey, Leitner & Goode LLC
Ronald F. Metzler, Ruder Ware
Chad R. Levanetz, Ruder Ware
Timothy F. Nixon, Godfrey Kahn S.C.
John Kirtley, Godfrey Kahn S.C.
Daniel Blinka, Godfrey Kahn S.C.
Chris Rexroat, Falk Legal Group
Jamie Robinson, Burke, Warran, MacKay & Serritella, P.C.

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Jeffrey J. Liotta, DeWitt LLP
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Jerome R. Kerkman, Kerkman & Dunn
Dean P. Laing, O'Neil, Cannon, Hollman, DeJong & Laing, S.C.
Seth Dizard, O'Neil, Cannon, Hollman, DeJong & Laing, S.C.
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Sherry D. Coley, Davis & Kuelthau, SC
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Brent D. Nistler, Hanson Reynolds LLC
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Patrick Proctor-Brown, Quarles & Brady LLP
Matthew Splitek, Quarles & Brady LLP
Ryan M. Billings, Kohner, Mann & Kailas, S.C.
Richard M. Dahl, Madigan, Dahl & Harlan, P.A.
Bryan B. House, Foley & Lardner LLP
David M. Lucey, Foley & Lardner LLP
Michael D. Huitink, SBR Law Group LLC

Attachment: Summary of Misperceptions about the Business Court Pilot Project
Letter from Attorney Joseph F. Owens

cc: Attorney Laura A. Brenner, Chair, Business Court Advisory Committee
lbrenner@reinhartlaw.com

Summary of Misperceptions about the Business Court Pilot Project

- Misperception: The Business Court represents a “shadow” docket created in private without any opportunity for input from anyone and is not “transparent.”
 - Reality: The Business Court was created as a result of public petition and after hearing; anyone can provide comments at any time; the Committee will solicit comments about program, results, ways to improve it, and whether to make it permanent. Information about the Business Court is available for the public to view at www.wicourts.gov, including an explanation of the program, the documents creating and extending it, helpful forms for those participating in it. The program established more helpful case codes to try to help keep track of the types of cases being filed. Business Court judges are encouraged to issue written decisions which are maintained on this website with the hope that it will inform others. Many decisions from these Business Courts have already been posted for review. The website lists a contact person to handle questions, too. As part of the program, all litigants are offered the opportunity at the conclusion of their cases to provide feedback about the program and whether they thought it was helpful.
 - Reality: There have been some helpful articles written about the Business Court as well. See Lon Roberts, *The commercial court docket pilot program: Wisconsin’s ‘business court’*, Wis. L.J. (Mar. 2, 2021), <https://wislawjournal.com/2021/03/02/the-commercial-docket-pilot-program-wisconsins-business-court/>; Joe Forward, *Business Dispute? It Should Go to the Business Court Docket*, InsideTrack (Sept. 15, 2021), <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=13&Issue=18&ArticleID=28617>; Joseph S. Goode, Mark M. Leitner, Klay A. Baynar, *Using Business Courts to Enhance Commercial Law in Wisconsin*, (Mar. 2020), <http://lgmke.com/using-business-courts-to-enhance-commercial-law-in-wisconsin/>; Joe Forward, *Commercial Litigation: Business Court Pilot Project Still Open for Business*, InsideTrack (Dec. 4, 2019), <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=11&Issue=21&ArticleID=27333>; Michael J. Aprahamian, *The Need for Speed: Commercial Court now Open for Business*, Wis. Law. (Jan. 1, 2018), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=91&Issue=1&ArticleID=26094>.

- Misperception: Big business created the program.
 - Reality: The program was not created by 'big business' in Wisconsin. Twenty-seven states already have some form of business courts, including all the states surrounding Wisconsin. See *2022 Recent Developments in Business and Corporate Litigation*, available online at the following link: [Recent Developments in Business and Corporate Litigation | Business Law Today from ABA, https://businesslawtoday.org/practice-area/recent-developments-in-business-and-corporate-litigation/](https://businesslawtoday.org/practice-area/recent-developments-in-business-and-corporate-litigation/)
 - Reality: The pilot program proposes a specialty docket that is not unlike many other successful specialty court dockets, like dockets for drug courts, family courts, children's courts, probate, tax, bankruptcy, etc.

- Misperception: Business courts are only good for big businesses.
 - Reality: Business Courts are intended to make access to justice *more* accessible for *all* parties involved in a commercial case, and to make things more efficient. The parties more often hurt by inefficiency are those with fewer resources, not more.

- Misperception: Business Courts hurt consumers and employees or will favor businesses over individuals.
 - Reality: Commercial cases typically involve businesses v. businesses or commercial entities. The pilot program does not involve having Business Courts hear employee or consumer cases. The program is intended to help all participants in the process, not favor any particular group and to address inefficiencies, which again helps all litigants, especially those with fewer resources.

- Misperception: This creates an impression that other judges cannot handle complex commercial cases.
 - Reality: The program involves judges who do handle other types of cases to commit to learning about and handling certain commercial cases. It was created because many judges do not have any experience handling the types of issues that typically come up in commercial cases. It is not unlike other specialty dockets, like small claims courts, family law courts, drug courts, children's courts, bankruptcy courts, etc. – those have all worked very well by creating a specialized docket to increase efficiency and expertise among the judges. It also recognizes the reality that law is becoming more complex and specialized.

- Misperception: Business Courts will have a particular political bent.
 - Reality: Political viewpoint or affiliation is not something that is a factor in selecting Business Court judges, and political issues have nothing to do with commercial cases. Political matters are not included in the commercial court docket.

- Misperception: This will “favor” business cases over other cases.
 - Reality: It is not a program created to favor or give preference to any type of cases. The program recognizes that many other states have created a new category of specialty courts or dockets to deal with these types of commercial cases. It recognizes the reality that law is becoming more complex and specialized. And specialty courts like small claims courts, drug courts, family law courts, children’s courts and others like them have worked well and do not create ‘favoritism’ for those courts.

- Misperception: Business Court judges are selected by the Chief Justice after she gets recommendations from “big business.”
 - Reality: Under the pilot program, Business Court judges are appointed by the Chief Justice as part of a process by which they provide information about their experience and willingness to dedicate the time and effort to learn about the issues that typically come up in commercial cases. After a recent change to the program, the appointment is made only after receipt of input from the chief judge of the district as well.

- Misperception: Business Court judges are forced to take training from a school associated with Justice Scalia, so it must involve a certain judicial philosophy.
 - Reality: Business Court judges are not forced to take any particular training. They can get training from many sources, including judicial conferences, in-state CLE programs, other presentations, etc. One program that is offered to those interested in business courts is an annual program offered by the American College of Business Court Judges. Attendees who chose to attend that national program share best practices with other business courts from all over the country.

- Misperception: Big business lawyers drafted all the rules, so they only benefit big business.
 - Reality: The program was drafted with the help of a committee made up of judges from different parts of the state and lawyers with both big and small firm experience who had handled commercial court cases. They in turn received input from others. The Business Courts are developing their own best practices for their own dockets. There are not particular ‘rules’ for handling particular cases. There are suggestions for streamlining discovery, reducing costs and engaging in meaningful alternative dispute resolution if possible. The goal is to handle commercial court cases more efficiently for all participants.

- Misperception: The Committee “controls” Business Courts.
 - Reality: The Committee helped set up the program and reviews how litigants are reacting to the program. But, the Committee has no ‘control’ over the Business Courts at all.

- Misperception: The Program was “forced” on Dane County.
 - Reality: Dane County was recently added to the pilot program, but Dane County is one of a number of counties who are part of the pilot program.

- Misperception: “No one asked us about how we feel about it.”
 - Reality: The Committee solicited comments before the pilot program was implemented, but this is just that - a pilot program – and the goal is monitor the program and to collect comments (in fact they are welcome) about it and how to improve it. We will continue to monitor the participants’ and judges’ reactions to the program and will solicit more comments before anyone presents it as something that should be made more permanent. But with the program being interrupted by COVID-19, it would help to have the time to monitor and improve it. During the program and after its conclusion, comments will be more than welcome.

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Via Email

April 7, 2022

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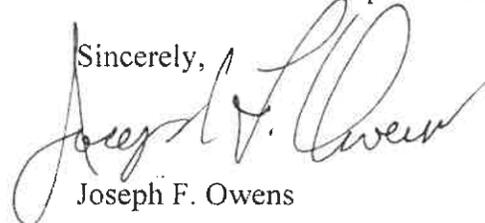
Re: Comments on Rule Petition 16-05-D – Business Court Pilot Project

Dear Attorney Swanson:

Thank you for the invitation to comment on the Business Court Pilot Project. My practice involves representation primarily of individuals and closely held corporations in litigation matters. The cases range from contract, casualty property loss, business interruption and business dissolution/divorce disputes. All of these areas of law typically involve commercial/business law issues.

I did have the opportunity to litigate a matter in the Circuit Court of Waukesha County presided over by Judge Aprahamian as a Business Court Pilot Project matter. The case involved a successful closely held roofing company – not a major corporation. The issues in the case included complex contractual issues between the two founders of the company, outside lenders and a divorce of one of the founders. Both I and Attorney Dean Laing appreciated the commercial experience and judicial scholarship brought to bear in resolving the case by Judge Aprahamian in the context of the Business Court Pilot Project. Based on my experience, I saw no evidence to support the concerns and misperceptions identified in the Summary of Misperceptions attached to your letter requesting comments.

Please add my name to the letter to Chief Justice Ziegler and the Justices of the Supreme Court.

Sincerely,

Joseph F. Owens

JFO:ljm
cc: Laura A. Brenner, Esq. (via email)