



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
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September 9, 2024

Clerk of the Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688
Clerk@wicourts.gov

FILED

SEP 11 2024

CLERK OF SUPREME COURT
OF WISCONSIN

Re: Support for the Business Court Pilot Project.

Dear Chief Justice & Justices of the Wisconsin Supreme Court:

On behalf of the Wisconsin Institute for Law & Liberty, Inc., I write in support of Rule Petition 16-05, which established a Business Court Pilot Project. WILL is a non-partisan think tank, which, among other things, provides policy makers with well-researched analysis. The project should be extended for several reasons, some of which are discussed below.

I. Business courts are common throughout the nation, and Wisconsin needs one to stay competitive.

As a preliminary matter, the Business Court Pilot Project is far from original, despite attempts to paint it as a dangerous experiment. As of 2024, 25 states have established business courts, including several in the Midwest. Benjamin Raymond Norman & Benjamin Mark Burningham, *Recent Developments in Business Courts 2024* § 2.1 (2024), <https://www.americanbar.org/groups/business-law/resources/business-law-today/2024-march/recent-developments-business-courts-2024/>. Two other states are expected to begin business courts this year. *Id.* At least four more states have “dedicated complex litigation programs encompassing business and commercial cases.” *Id.*

Business courts are part of a broader trend toward specialization. See generally Markus B. Zimmer, *Overview of Specialized Courts*, Int’l J. for Ct. Admin., Aug. 2009, at 1. The table below summarizes just some of the data available on Wisconsin’s Criminal Justice Coordinating Council’s website about specialized dockets. *Local Program Map*, Criminal Just. Coordinating

Council (last accessed Aug. 30, 2024), <https://cjcc.doj.wi.gov/local-program-map>.

Court Type	Number of Counties & Tribes with the Type
Adult Drug Court	34
Co-Occurring Disorders Court	1
Family Dependency Treatment Court	5
Hybrid OWI/Drug Court	20
Mental Health Court	4
Other Treatment Court	3
OWI Treatment Court	18
Tribal Healing to Wellness Court	6
Veterans Treatment Court	15

In addition, dockets are commonly divided among family court, probate court, small claims court, traffic court, and criminal court. The Wisconsin Court System understands the value of specialized courts, and business courts are no different in kind.

II. Business courts address unique needs.

Business courts have become particularly popular because they work. As noted in one student comment, “states are implementing business programs to secure advantages, such as judicial efficiency, judicial expertise, and a streamlined docket.” Tyler Moorhead, Comment, *Business Courts: Their Advantages, Implementation Strategies, and Indiana’s Pursuit of Its Own*, 50 Ind. L. Rev. 397, 400 (2016).

A. *Business courts are efficient, which reduces costs, and benefits not only businesses but consumers and other litigants.*

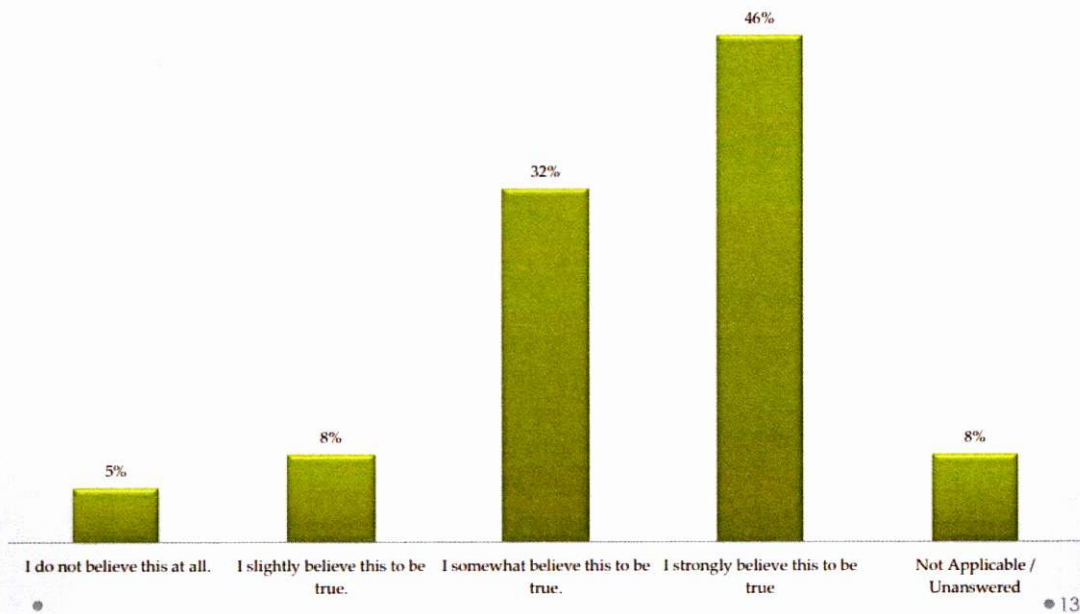
Judicial efficiency is especially important in the business world. To quote one New York judge, “[l]itigation is [a] major cost of doing business in our society.” A. Gail Prudenti, Opinion, *Commercial Division of State Court Vital to NY Business*, Long Island Bus. News. (Feb. 15, 2017), <https://libn.com/2017/02/15/prudenti-commercial-division-of-state-court-vital-to-ny-business/>. Streamlined litigation allows businesses to cut costs, which

benefits everyone. Indeed, Elon Musk appears poised to move a substantial portion of his business to Texas in part because he believes in its court system. Madlin Mekelburg & Ryan Autullo, *Musk's Legal Fights Boost Longshot Texas Bid to Become Court Hub*, Bloomberg (Aug. 28, 2024), <https://www.bloomberg.com/news/articles/2024-08-28/elon-musk-moving-tesla-hq-boosts-texas-plan-to-rival-delaware-business-courts?embedded-checkout=true>.

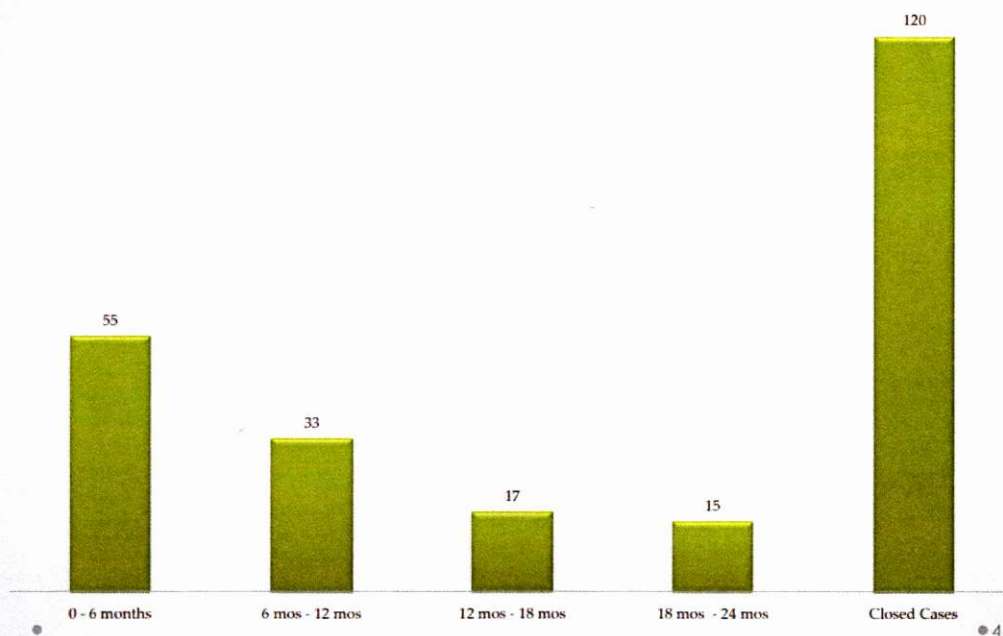
In terms of judicial efficiency, the data is clear. According to data collected by the Business Court Advisory Committee, business courts are resolving actions at breakneck speed. Below are three figures from the committee's 2022 report, showing both quantitative and qualitative data to support this claim.

Q8. Achieving a resolution of the case at a lower overall cost (work time and expenses).

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.

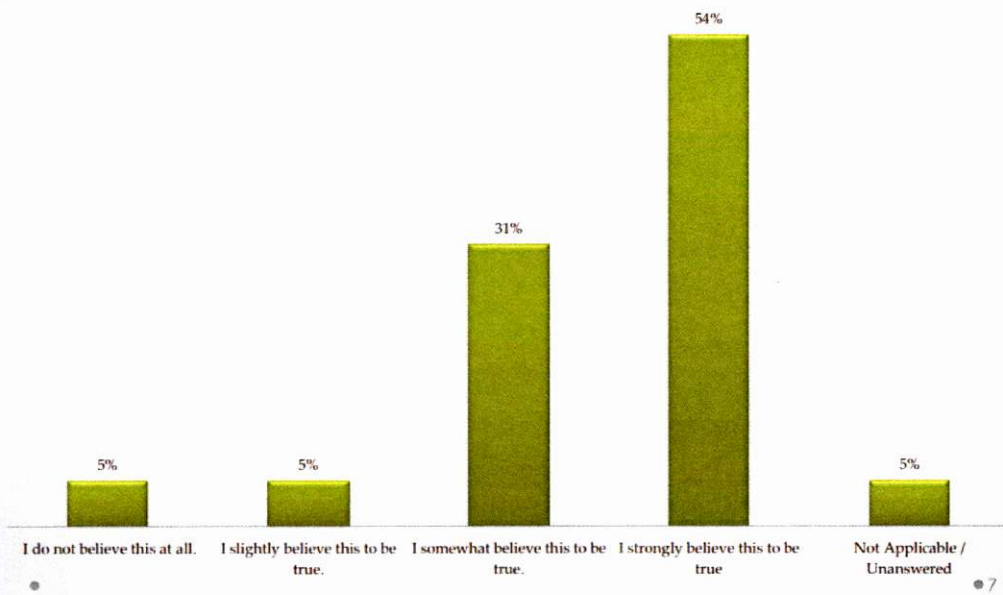


CDPP: Time to Disposition



Q2. Developing a detailed case management timeline with the court.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



These findings are consistent with other studies. For example, a 2012 study looked at the Business Case Division of the Fulton County Superior Court in Atlanta, Georgia from 2005 to 2012. Richard L. Renck & Carmen H. Thomas, *Recent Developments in Business Commercial Courts in the United States and Abroad*, Bus. L. Today, May 2014, at 1, 1. The study found that “complex contract cases” were resolved 1138 days faster and “complex tort cases” 718 days faster. *Id.* As summarized in one ABA publication, “[t]his empirical data highlights how jurisdictions with business courts can experience the benefits of more efficient adjudication” *Id.*

Moving business cases through the court system faster has another benefit: it gives judges more time to spend on non-business cases. A rape victim should not have to wait for a judge to clear his or her docket. By ensuring judges with expertise (discussed below) can work on complex business cases, this Court can ensure that those cases are not clogging up the Wisconsin Court System.

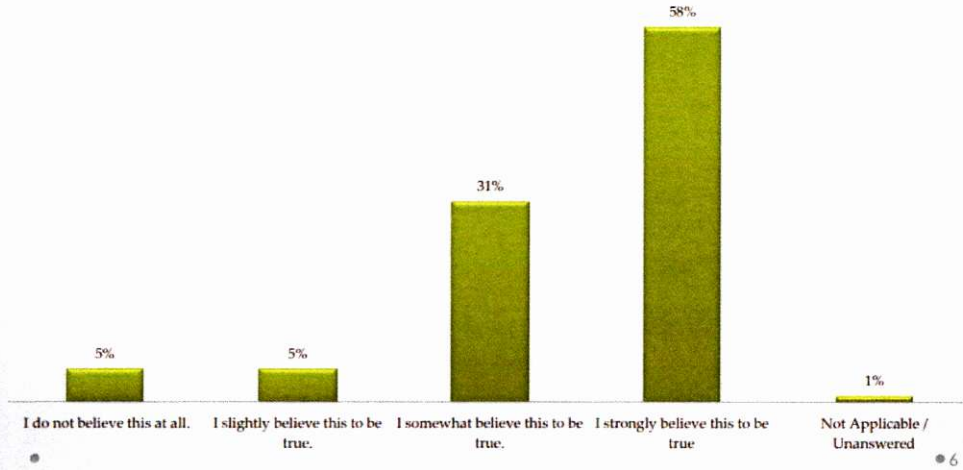
B. Business courts foster and recognize expertise, which increases predictability.

Business courts are also about ensuring judges with the right experience are assigned to the right actions. Judges with business expertise are better equipped to handle business cases, just like former prosecutors are probably better equipped to handle criminal cases. (Judicial job satisfaction is probably also increased by letting judges work on cases that they are most interested in.)

The Business Court Advisory Committee has also collected data on this point, as shown below.

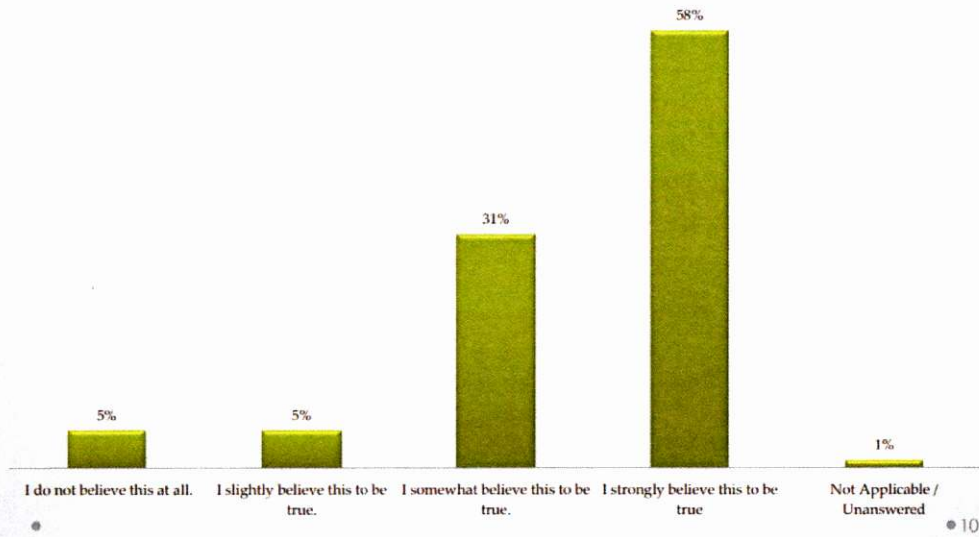
Q1. Providing a judge with experience in managing complex business litigation cases.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



Q5. Judge employing an effective strategy for settling the case.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



Additionally, the Business Court Pilot Project also publishes circuit court decisions, which help create a body of precedent that increases predictability. The Wisconsin Court System website has 22 published business court decisions. *Commercial Docket Pilot Project*, Wis. Ct. Sys. (Sept. 5, 2024), <https://www.wicourts.gov/services/attorney/comcourtpilot.htm>.

Overall, the Business Court Pilot Project is well liked by virtually all businesses and attorneys who regularly use it. To throw out the project at this point would be a step backward. In an age of data-driven decision-making, there are many reasons to continue the project, and no legitimate reasons to get rid of it.

Sincerely,

A handwritten signature in cursive script that reads "Skylar Croy".

Skylar Croy
Associate Counsel