

Iowa Business Court Pilot Program

Second Annual Evaluation (July 13, 2015)

A. Background

In March 2012, the Iowa Civil Justice Reform Task Force released its final report proposing reforms to Iowa's civil justice system. One of the key reforms the task force recommended was implementation of a business specialty court as a pilot program. In response, the supreme court initiated a three-year pilot program for a business specialty court in Iowa, which began accepting cases in May 2013. The supreme court also directed state court administration (SCA) staff to provide an annual evaluation report to monitor the progress and assess the effectiveness of this pilot program. This is the second annual report.

1. *Goals of the business court pilot program:* The primary goals of the business court are to move complex business litigation through the court system more expeditiously and with lower costs for the litigants and the court system. Other potential benefits include:

- Development of a published body of business court case law to provide guidance for the fair and cost-effective resolution of business litigation
- Removal of complex and time consuming business litigation from the regular district court dockets
- Development of innovative court practices and uses of court technology that could be applicable across the justice system

2. *Eligibility criteria for assignment to the business court pilot program:* A case is eligible for assignment to the business court pilot program if it involves a claim for least \$200,000 in compensatory damages or a party seeks primarily injunctive or declaratory relief, and the case involves one or more of the following claims:

- a. Technology licensing agreement
- b. Internal affairs of a business
- c. Breach of contract, fraud, or misrepresentation arising out of business transactions
- d. Shareholder derivative or commercial class action
- e. Commercial bank transactions
- f. Trade secrets, non-compete clause in a contract, or confidentiality
- g. Commercial real property
- h. Anti-trust or securities
- i. Business tort claims between or among two or more business entities

3. *Presiding judges and venue:* The supreme court appointed three district court judges to preside over cases assigned to the business court: Judge Michael Huppert (District 5), Judge Annette Scieszinski (District 8), and Judge John Telleen (District 7). During the pilot period, cases assigned to the business court are heard by one of these three judges in the county where the cases were originally filed. Current Iowa venue rules apply.

4. *Procedure for designating a matter for the Iowa Business Court Pilot Program:* A case may be assigned to the business court pilot project if all parties agree to the assignment. They must file a Joint Consent for Assignment to the Business Court Pilot Program with the state

court administrator asserting that their case meets the criteria for assignment to the business court (see A.2, above).

If the case meets the eligibility criteria, it will be assigned by the state court administrator to one of the three district court judges appointed to preside over business court cases. Assignments to the three business court judges are generally random, though the state court administrator attempts to maintain a fair distribution of the business court cases among the three judges to prevent unduly burdening any one of the three districts where the three business court judges reside. For each business court case, the state court administrator assigns a primary judge to handle all litigation issues. A second business court judge is assigned to handle settlement negotiations in each case.

B. Eligibility Criteria to Qualify for Assignment to the Business Court

From May 28, 2013 (when the first case was assigned to the business court) through July 2, 2015 (when the most recent two cases were assigned to the business court), a total of 21 cases were assigned to the business court pilot program. Table 1 shows the number of cases that met the various criteria for assignment to the business court.

Table 1
Eligibility Criteria Met by the Ten Cases Assigned to the Business Court Pilot Program

	Number of cases meeting criteria		
	<u>1st year</u>	<u>2nd year</u>	Total
<i>Must meet at least one threshold criterion:</i>			
Damages > \$200,000	8	9	17
Injunctive/declaratory relief	5	5	10
<i>AND must meet one or more of these criteria:</i>			
Business tort claims	7	8	15
Internal affairs of a business	6	6	12
Business transactions—e.g., breach of contract	7	4	11
Commercial bank transactions	1	2	3
Trade secrets, non-compete, confidentiality	2	0	2
Commercial real property	0	3	3
Technology licensing agreement	1	1	2
Shareholder derivative or commercial class action	1	0	1
Anti-trust or securities	0	0	0

Of the 21 cases assigned to the business court in the first two years,¹ 17 met the threshold criteria with claims for damages of more than \$200,000, while 10 cases met the threshold criteria by seeking injunctive or declaratory relief. Cases must also meet at least one of several additional criteria to qualify for assignment to the business court. Fifteen cases met an additional criterion because they involved business tort claims, 12 involved a dispute

¹ The pilot program began in May 2013. This report includes cases assigned to the business court through July 2, 2015, so the evaluation period includes 26 months. However, we will refer to this period as the “first two years.”

regarding the internal affairs of a business, and 11 involved a disputed business transaction (e.g. breach of contract or fraud).

C. Characteristics and Current Status of Business Court Cases

1. Case Characteristics: Tables 2 and 3 (below) show the 21 cases assigned to the business court pilot program and the following information about each case:

- a. County and judicial district where the case was originally filed
- b. Primary business court judge assigned to the case
- c. Settlement judge for the business court case
- d. Number of plaintiffs
- e. Number of defendants
- f. Bench trial or jury demand
- g. Date filed in district court
- h. Date Joint Consent for Assignment to Business Court filed
- i. Date currently set for trial

2. Observations about the 21 cases assigned to the business court:

Table 2 shows the characteristics of the ten cases that have already been resolved (settled or a judgment after trial entered), and Table 3 shows the characteristics of the 11 cases that are still pending in the business court:

- **Among the 21 cases assigned to the business court:**
 - Eight were initially filed in District 5; six in District 8; two each in Districts 1, 3, and 7; and one from District 6.
 - No cases have been assigned to the business court from Districts 2 or 4.
 - Ten cases were assigned to the pilot program during the first year, and 11 cases were assigned during the second year.
 - Plaintiffs in 15 cases filed a jury trial demand, while a bench trial was sought in 6 cases.
 - Each of the three business court judges has been assigned as the primary judge (handling all matters except settlement negotiations) in approximately the same number of cases: seven cases have been assigned to Judge Huppert, seven have been assigned to Judge Telleen, and six have been assigned to Judge Scieszinski.
 - Judges Huppert and Scieszinski shared the primary judge assignment in one case (see endnote to Table 2).

Table 2: Ten Cases Concluded by the Business Court (From June 1, 2013 to June 30, 2015)

#	Case title / District Ct Case # (County)	Dist	Pri-mary Judge*	Settle-ment Judge*	# of Pltfs	# of Defs	Jury / bench trial	Date filed in Dist Ct	Date assigned to Biz Ct	Date set for Trial	Date settled or closed	Months: Biz Ct assignment to dispo.
1	World Food Intern v World Food Proc / EQEQ087352 (Mahaska)	8A	Scies-zinski	Huppert	1	3	Bench	11-Jan-13	28-May-13	18-May-15	Settled 12-Jul-14	13.5
2	Bartling v LWBJ Financial /LACL124872 (Polk)	5C	Huppert	Telleen	2	7	Jury	21-Mar-12	3-Sep-13	28-Jul-14	Settled 14-July-1	10.5
3	Gen Motors v Leep Cheverolet /LACE123778 (Scott)	7	Scies/Hupp**	Huppert	1	1	Jury	17-Sep-13	27-Sep-13	20-Oct-14	Settled 10-Oct-14	13
4	Rothgeb & Meyers v Axis Group Hldgs /LALA006081 (Lee)	8B	Telleen	Scies-zinski	2	10	Jury	10-Oct-12	9-Oct-13	8-Dec-14	Settled 21-Aug-14	10.5
5	WDM School Dist v Weitz Co et al /LACL123417 (Polk)	5C	Huppert	Scies-zinski	1	14	Jury	3-Oct-11	24-Oct-13	29-Sep-14	Settled 23-Sep-14	11
6	Flemmer v US Bank /EQCE074673 (Polk)	5C	Telleen	Huppert	2	2	Jury	10-Jul-13	7-Nov-13	15-Sep-14	Settled 7-Jul-14	8
7	Mettille et al v Caluzzi /EQCV038275 (Dallas)	5A	Huppert	Telleen	1	1	Bench	25-Apr-13	11-Dec-13	6-Aug-14	Settled 17-Jul-14	6.5
8	Desert Flour v Timberline Mgt /LACV078149 (Linn)	6	Telleen	Scies-zinski	2	3	Jury	1-Apr-13	3-Jan-14	17-Jun-14	Settled 11-Apr-14	3
9	Copy Systems Inc v Laser Resources et al- /LACL129210 (Polk)	5C	Scies-zinski	Huppert	1	3	Jury	25-Nov-13	11-Mar-14	16-Feb-15	Settled 14-Oct-14	7
10	Goetsch v Circle G Farms /EQCV015164 (Ida)	3B	Telleen	NA	3	4	Bench	5-Sep-14	12-Sep-14	Trial: 11-17-14	Ruling 29-Jan-15	4.5

*Primary judge handles all aspects of a case except settlement negotiations, which are handled by the settlement judge.

**Judge Scieszinski handled this case as the primary judge for a couple months, then recused herself when a conflict arose. Judge Huppert was thereafter assigned as the primary judge.

Table 3: Eleven Cases Active / Pending in the Business Court (July 2, 2015)

#	Case title / District Ct Case #	Dist.	Primary Judge*	Settlement Judge*	# of Pltfs	# of Defs	Jury / Bench	Date filed in Dist Ct	Date assigned to Biz Ct	Date set for Trial
1	Estate of Willenborg v American Trust /ESPR044243 (Dubuque)	1A	Scieszinski	Huppert	5	3	Bench	14-Mar-12	5-Dec-13	19-Oct-15 (2 nd)
2	Tai Village v Baccam, et al /EQCE076614 (Polk)	5C	Huppert	Assigned to a Master	3	12	Bench	2-Jun-14	10-Dec-14	
3	Matrixx Mgmt v Highland Meadows /EQCV139151 (Dallas)	5A	Huppert	Telleen	1	1	Bench	9-Dec-14	16-Jan-15	
4	Promat v. FLSmidth et al. /LACV152295 (Woodbury)	3B	Telleen	NA	1	3	Jury	18-Dec-12	16-Jan-15	J Trial: Jun 8-12**
5	Shredlage v Scheerer /LALA074975 (Mahaska)	8A	Scieszinski	Telleen	3	1	Jury	16-Jan-15	30-Mar-15	
6	Meyer v Peoples Savings Bank, et al. /LACV059252 (Grundy)	1B	Huppert	Telleen	1	3	Jury	5-Mar-15	10-Apr-15	
7	Seaway Bank & Trust v. Layton State Bank / LACV041701 (Clinton)	7	Huppert	Telleen	1	1	Jury	15-Jan-15	29-Apr-15	11-Jul-16
8	Carpenter v. Northwestern Mutual Insur, et al., /LALA018726 (Louisa)	8B	Telleen	Huppert	1	5	Jury	16-Sep-13	29-Apr-15	
9	Copple et al, v Copple et al., /CVCV047906 (4 cases consolidated) (Polk)	5C	Telleen	Huppert	4	4	Jury	24-Jun-14	3-May-15	
10	Dovico et al. v Valley View Swine et al. / LALA105144 (Wapello)	8A	Scieszinski	Huppert	41	8	Jury	2-Apr-14	2-July-15	1-Feb-16
11	Winburn et al., v Hoksbergen et al., / LALA002187 (Powsheik)	8A	Scieszinski	Huppert	12	3	Jury	16-May-14	2-July-15	1-Feb-16

*Primary judges handles all aspects of the case except settlement negotiations, which are handled by the assigned settlement judge.

**Still pending on July 2, 2015, due to post-trial motions.

- **Among the Ten cases resolved by the business court** (see Table 2):
 - Nine cases settled without a trial, while one was resolved by a bench trial and ruling.²
 - The time from assignment to the business court to entry of a settlement or judgment ranged from three months (*Desert Flour*) to 13.5 months (*World Food International*).

² Judge Telleen conducted the bench trial and issued the written ruling. Selected written rulings on summary judgment motions and final orders after trial are posted on the Iowa Judicial Branch website (www.iowacourts.gov): click "About the Courts," then "Specialty Courts," then "Business Court," then "Rulings and Orders."

- The *average time* from assignment to the business court docket to case resolution is *8.75 months*.
- The *Goetsch* case (Ida County) was resolved in the shortest time of any business court case – from filing in the district court to resolution in the business court. It was filed in district court in early September 2014, assigned to the business court two weeks later, tried to the court in November 2014, and a ruling was entered in January 2015 – approximately *five months* after it was filed in the district court and *4.5 months* after it was assigned to the business court.
- The *Desert Flour* case (Linn County) settled within less than *four months* after its assignment to the business court and slightly over one year after filing in the district court.
- **Among the cases pending in the business court on July 2, 2015** (see Table3):
 - Two cases recently assigned to the business court (both involving hog confinement businesses as defendants) have the largest number of plaintiffs of any cases assigned to the business court: 41 plaintiffs in *Dovico et al.*, and 12 plaintiffs in *Winburn et al.*
 - The *Promat* case (Woodbury County) was assigned to the business court in January 2015 and commenced a jury trial in June 2015. The case remains open pending resolution of post-verdict motions.
 - The *Willenborg* case (Dubuque County) is the oldest case on the business court docket. This estate case was filed in district court in March 2012 -- 20 months before it was assigned to the business court in December 2013. It is scheduled to start a bench trial in October 2015 – *43 months* after it was initially filed in district court and *23 months* after it was assigned to the business court.

D. Judges' Time Spent on Business Court Cases

Prior to the start of the business court pilot program, some chief judges and district court administrators expressed concern that the business court pilot project could impose an undue burden on the three judicial districts where a business court judge resides. To assist in obtaining data to address this concern, the three business court judges agreed to provide weekly reports on the time they spend on each business court case to which they are assigned. Table 4 (below) shows the number of hours the three business court judges have spent on business court cases during the first two years of the pilot program.

Table 4 - Judges' Time on Business Court Cases During the First Two Years

<i>Business Court Cases</i>	Case filed in:	Primary judge/judge's district	Settlement judge/judge's district	Total Hours (First 2 Years)			Total Hours
				Huppert (D5)	Scieszinski (D8)	Telleen (D7)	
Estate of Willenborg (DBQ)	D1	Scieszinski	Huppert	0	107	0	107
Meyer (Grundy)	D1	Huppert	Telleen	2	0	0	2
Goetsch (Ida)*	D3	Telleen	NA	0	0	113	113
Promat (Woodbury)	D3	Telleen	NA	0	0	24	24
Bartling (Polk)*	D5	Huppert	Telleen	14	0	0	14
WDM School Dist (Polk)*	D5	Huppert	Scieszinski	33	0	0	33
Flemmer (Polk)*	D5	Telleen	Huppert	0	0	27	27
Mettille et al (Dallas)*	D5	Huppert	Telleen	15	0	46	61
Copy Systems Inc (Polk)*	D5	Scieszinski	Huppert	46	10	0	56
Tai Village (Polk)	D5	Huppert	NA	2	0	0	2
Matrixx Mgmt (Dallas)	D5	Huppert	Telleen	37	0	0	37
Copple et al (Polk)	D5	Telleen	Huppert	0	0	0	0
Desert Flour (Linn)*	D6	Telleen	Scieszinski	0	0	14	14
Gen Motors (Scott)*	D7	Scies/Hupp	Huppert	170	69	0	239
Seaway Bank (Clinton)	D7	Huppert	Telleen	1	0	4	5
World Food (Mahaska)*	D8	Scieszinski	Huppert	28	68	0	96
Rothgeb (Lee)*	D8	Telleen	Scieszinski	0	63	39	102
Shredlage (Mahaska)	D8	Scieszinski	Telleen	0	9	0	9
Carpenter (Louisa)	D8	Telleen	Huppert	1	0	4	5
Dovico et al. (Wapello)	D8	Scieszinski	Huppert	0	0	0	0
Winburn et al (Powersheik)	D8	Scieszinski	Huppert	0	0	0	0
(1) Total Hours				348	325	270	942
(2) Subtotal - Hours spent outside judge's own district				201	186	266	653
(3) Subtotal – Hours spent within judge's own district				147	139	4	289
(4) % of judge's time outside own district				58%	57%	99%	69%
(5) FTE judge time spent on cases outside own district*				0.05	0.05	0.07	0.17
(6) FTE judge time spent on cases within own district*				0.04	0.04	0.001	0.08
(7) Total FTE judge time spent on Bus Ct cases				0.09	0.08	0.07	0.25

**For this report, we assume a full-time judge worked 40 hours per week for 48 weeks per year or approximately 3,840 hours during the two years of the pilot program. The 942 hours spent by the three judges on business court cases over the first two years equals .25 (one-quarter) of a full-time equivalent (FTE) judge (942 divided by 3,840); see “Total hours” column, row 7.

Business court judges' time spent on cases outside their own judicial district:

Table 4 (above) shows the three judges spent a total of 942 hours on all the business court cases in the first two years (see column D, row 1 in the summary section at the bottom). Of those hours, the judges spent 653 hours working on cases outside their own districts (see column D, row 2), which is 69 percent of the total hours they spent on business court cases (see column D, row 4). Judge Telleen spent 99 percent of his business court hours working on cases outside his own district. Judges Huppert (58 percent) and Scieszinski (57 percent) also spent a majority of their business court time working on cases outside their respective districts (see row 4).

While the judges spent a substantial portion of their business court time on cases that were outside their own districts, the overall amount of judicial time devoted to business court cases is relatively small -- as measured by full-time equivalent (FTE) judicial time. (See the second footnote below Table 4 for an explanation of FTE judicial time). Table 4 (row 7, column D) shows that the total time (942 hours) spent by the three judges on business court cases over a two year period equals just **.25 (or 25%) of one FTE judge**. A total of just **.17 (17%) of an FTE judge** was devoted to cases outside the judges' respective judicial districts.

Table 5 - Business Court Judge Time: Net Gain or Loss to Each District

		A	B	C	D	E	F	G
		D1	D3	D5	D6	D7	D8	Total judge hours contributed to other districts
<i>Bus Ct judge hours contributed by these judges to other districts:</i>								
1	Huppert (D5)	2	0		0	171	29	202
2	Telleen (D7)	0	137	73	14		43	267
3	Scieszinski (D8)	107	0	10	0	69		186
4	Bus Ct judge hours <i>received from</i> judges <u>outside the district</u> (Sum of rows 1 to 3)	109	137	83	14	240	72	655
5	Bus Ct judge hours <i>contributed to</i> districts outside their own district (Column G, rows 1 to 3)	0	0	202	0	267	186	655
6	NET judge hours gained or lost due to business court (Row 4 minus row 5)	109	137	-119	14	-27	-114	0

Which districts gained or lost judicial work time as a result of the first two years of the business court pilot program? Table 5 addresses this question. Row 4 shows the total number of judicial work hours each district *received* from business court judges from other districts. Row 5 shows the number of work hours each business court judge contributed to cases outside their district. Row 6 shows the **net** hours of judge work time gained or lost due to the work of the three judges on business court cases during the first two years:

- District 1 and 3 realized a gain of 109 and 137 judge hours respectively from the business court judges – since those districts do not have a resident business court judge.
- District 5 experienced a net loss of 119 hours of judge time to other districts, while District 8 experienced a net loss of 114 hours, and District 7 a net loss of 27 hours.

These net losses and gains in judicial work time over a two year period are not substantial. A gain of 137 judicial work hours by District 3 equals about 3.5 weeks of a judge’s time. Over two years, similar net gains or losses are likely to occur when districts require the assistance of a judge from another district to cover judicial conflicts in their own districts.

E. Attorney Evaluation of the Business Court Pilot Program

Feedback from attorneys who have handled cases that have been assigned to the business court is an essential component of this evaluation. Since the inception of the business court pilot project in May 2012, ten cases have been resolved through settlement or trial. Upon the conclusion of each business court case, state court administration emailed a three page questionnaire to each named attorney in the case and asked the attorneys to complete the survey and return it to SCA staff by regular mail or email. Thirty attorneys submitted completed surveys. The questionnaire includes four sections (also shown in Table 6, below):

- A. Factors that led the Attorney to Seek Assignment to the Business Court
 - 11 questions that ask about attorneys’ expectations for the business court
 - Response ratings: 3= High expectations, 2 = Moderate expectations, 1 = Low expectations, 0 = No expectations
- B. Evaluation of Business Court Performance
 - 11 questions on business court performance pertaining to the objectives of the business court.
 - Response ratings: 3= Strongly agree, 2 = Agree, 1=Disagree, 0=Strongly disagree
- C. Evaluation of Other Judicial Qualities
 - 4 questions on the fairness and civility of the primary and settlement judges.
 - Response ratings: 3= Strongly agree, 2 = Agree, 1=Disagree, 0=Strongly disagree
- D. Overall Evaluation
 - 2 questions regarding their overall approval of the business court
 - Response ratings: 3= Strongly agree, 2 = Agree, 1=Disagree, 0=Strongly disagree

Table 6 (below) shows the questions in each of the four sections, the number of responses received on each question, and the *average rating*. A higher average rating (one that is close to 3.0) indicates predominance of “strongly agree” ratings. A low average rating (close to 1.0) indicates a predominance of “disagree” responses.

Note: All thirty respondents did not provide a rating or response to each question because some questions might not have been applicable for each attorney or case. For example only 10 attorneys responded to question B.18 – regarding the judge effectively limiting continuances – because there might not have been any motions for a continuance after the case was assigned to the business court.

Table 6 - Attorneys' Evaluation of the Business Court Pilot Project

A. FACTORS THAT LED ME TO SEEK ASSIGNMENT TO THE BUSINESS COURT		
3 = High expectation, 2 = Moderate expectation, 1 = Low expectation, 0 = No expect.	Responses	Avg Rating
<i>I expected that the business court would be more likely than the regular district court to:</i>		
1. Assign one judge to handle all aspects of the case (except settlement negotiations).	30	2.7
2. Provide a judge with experience in managing complex cases.	30	2.8
3. Provide a judge with expertise in relevant business law issues.	30	2.7
4. Be flexible in developing a case management plan.	30	2.6
5. Effectively manage discovery-related issues.	30	2.4
6. Limit the number of continuances.	30	1.8
7. Employ an effective strategy for settling the case.	30	1.4
8. Employ video or telephone conferencing to reduce attorney time and costs.	30	1.5
9. Effectively manage the trial.	30	2.5
10. Reduce delays in bringing our case to trial or settlement.	30	2.3
11. Achieve a resolution of our case at a lower overall cost (work time and expenses).	30	1.6
B. EVALUATION OF BUSINESS COURT PERFORMANCE		
3 = Strongly agree, 2= Agree, 1 = Disagree, 0 = Strongly disagree, NA = Not applicable	Responses	Avg Rating
<i>The business court achieved the goal of:</i>		
13. Assigning a single judge to manage all aspects of the case (except settlement negotiations).	29	2.9
14. Providing a judge with experience in managing complex business cases.	27	2.8
15. Providing a judge with expertise in relevant business law issues.	26	2.5
16. Providing a judge who was flexible in developing a case management plan.	27	2.8
17. Providing a judge who effectively handled discovery-related issues.	18	2.8
18. Providing a judge who effectively limited the number of continuances.	12	2.7
19. Providing a judge who employed an effective strategy for settling the case.	15	2.5
20. Providing a judge who effectively used tele-video conferencing to reduce attorney time and costs	15	2.3
21. Providing a judge who effectively managed the trial.	10	2.6
22. Bringing our case to trial or settlement in less time <u>than it probably would have required through the regular district court process.</u>	25	2.5
23. Bringing the case to a resolution at a lower overall cost (work time and expenses) <u>than it probably would have cost through the regular district court process.</u>	25	2.3
C. EVALUATION OF OTHER JUDICIAL QUALITIES		
3 = Strongly agree, 2= Agree, 1 = Disagree, 0 = Strongly disagree, NA = Not applicable	Responses	Avg Rating
25. The primary judge displayed <i>civility</i> toward all parties in this case.	29	3.0
26. The primary judge displayed <i>fairness</i> toward all parties in this case.	29	3.0
27. The settlement judge displayed <i>civility</i> toward all parties in this case.	15	2.8
28. The settlement judge displayed <i>fairness</i> toward all parties in the case.	15	2.9
D. OVERALL EVALUATION		
3 = Strongly agree, 2= Agree, 1 = Disagree, 0 = Strongly disagree	Responses	Avg Rating
29. The business court should become a permanent component of the Iowa court system.	30	2.9
30. I will seek assignment of qualifying cases to the business court in the future.	30	2.8

Attorneys' Expectations for the Business Court

Section A in Table 6 provides an assessment of what attorneys expected from the business court. They generally expressed high expectations (average rating of 2.5 or higher) that the business court would offer:

- One judge to handle all aspects of the case, excluding settlement negotiations.
- A judge with experience in managing complex cases.
- A judge with expertise in relevant business law issues.
- A judge who would be flexible in developing a case management plan.
- A judge who would effectively manage the trial.

Attorneys generally had lower expectations (average rating of less than 2.0) regarding the likelihood that the business court would:

- Employ an effective strategy for settling the case.
- Limit the number of continuances.
- Achieve a resolution of the case at a lower overall cost in work time and expenses.

Attorneys' Evaluation of Business Court Performance

The responding attorneys *strongly agreed* (average rating of 2.5 or higher) that the business court achieved nine of the eleven performance goals:

- Assigning one judge to handle almost all aspects of the case.
- Providing a judge with experience in managing complex cases.
- Providing a judge with expertise in relevant business law issues.
- Providing a judge who was flexible in developing a case management plan for the case.
- Providing a judge who effectively handled discovery-related issues.
- Providing a judge who effectively limited the number of continuances.
- Providing a judge who employed an effective strategy for settling the case.
- Providing a judge who effectively managed the trial.
- Bringing their case to a resolution at an overall lower cost than would have occurred in the regular district court.

They also tended to agree (average rating of 2.3) that the business court:

- Brought their case to a resolution at an overall lower cost than would have occurred in the regular district court.
- Effectively used tele-video conferencing to reduce attorney time and costs.

Attorneys' Evaluation of Other Judicial Qualities

Twenty-nine attorneys *strongly agreed* that the *primary* judge in their case displayed civility (average rating = 3.0) and fairness (average rating = 3.0). Only about half as many attorneys (15 respondents) provided ratings on the fairness and civility of the *settlement* judge in their case. The number of respondents is small on these issues because, among the ten closed cases (the ones in which attorneys were sent questionnaires): (1) a settlement judge was not assigned in two cases (*Goetsch* and *Promat*) because the attorneys indicated they were ready for trial, and (2) in four of the cases (*Bartling*, *WDM Schools*, *Flemmer*, and *Desert Flour*) the assigned settlement judge did not become involved in each case. (See Table 4 for data on the number of hours reported by the primary and settlement judges.) The ratings of the settlement judges by these 15 attorneys were also very positive: average rating of 2.8 on fairness and 2.9 on civility.

Attorneys' Overall Evaluation of the Business Court

This section of the questionnaire includes just two statements to which attorneys are asked to respond “3 = Strongly agree” – or on the other end of the spectrum -- “0 = Strongly disagree.” On the statement “The business court should become a permanent component of the Iowa court system” – 30 attorneys responded with an average rating of 2.9. On the statement “I will seek assignment of qualifying cases to the business court in the future,” 30 attorneys responded with an average rating of 2.8. Although some of the average ratings discussed earlier on the business court’s performance suggest there are probably areas that require improvement, the overall assessment is strongly supportive of the business court. The 30 attorneys clearly wish to see the business court become a permanent component of the civil litigation system in Iowa.

F. Views of the Business Court Judges on the First Two Years of the Pilot Program

State court administration staff asked the three business court judges to respond to six questions as a means of evaluating the policies and practices of the business court pilot program. Their responses are included below.

Question 1: What feature(s) or practice(s) of the business court have worked well -- or have worked better than expected?

Judge Scieszinski: The scheduling collaboration between districts (district of case vis-a-vis district of Business Court judge) has worked smoothly, given the court administrators' and chief judges' support for the pilot project. The work load of the Business Court has been easier to manage than I anticipated, due to the modest case volume and case progression (lack of trials).

Judge Huppert: The opt-in process appears to be working very smoothly. The routine appointment of a settlement judge is a practice I would strongly recommend continue going forward, as it is a feature not generally available in civil litigation and would help differentiate

the BC program from both litigation generally and other ADR options like arbitration. CourtCall has also been a very valuable option, especially when litigants/counsel and the court are located far from each other.

Judge Telleen:

- a) Experienced/quality judge (modesty aside);
- b) Early judge involvement in each case;
- c) Prompt scheduling of motions/trials;
- d) Tailoring the schedule to meet the unique needs of each case;
- e) Somewhat more informal contact with the Court (e.g. direct email communication) regarding scheduling issues;
- f) Very involved settlement conference judge willing to devote the time needed to resolve a complex case. In this regard, I definitely recommend we appoint a settlement judge for each case.

Question 2: What feature(s) or practice(s) of the business court have not worked well -- or not as well as you had expected?

Judge Scieszinski: It has been awkward not to have someone organize us, and while we haven't needed much organization and we three judges communicate well with one another, it feels like we're floating around with little direction or challenge.

Judge Huppert: As I have stated before, I think the selection criteria for the BC program should be enhanced to allow other more complex litigation (business and non-business) to be included so as to afford litigants access to the program. The benefits of the Business Court would appear to be equally advantageous to other types of complex litigation.

I continue to wonder whether the opt-in process should continue to be voluntary, as it seems that one party or attorney may simply want to veto the decision based on unjustified grounds, such as the requesting party would have some sort of advantage with the court if the case went into the BC program. The decision could be delegated to the chief judge in each district to provide some sort of screening process to identify those cases that should be in the program.

Judge Telleen: I have no significant criticisms. There have, of course, been a few small bumps in the road. Sometimes a local judge will not realize the case has been assigned to business court and issue an order or rule on a motion without realizing it is a business court case. The business court judges have to remember to periodically check the docket on our various cases to see if anything requiring attention has been filed, but for the most part, the clerks have been good about alerting me if a motion has been filed. I would also suggest that Court Administration in each district automatically request EDMS access for us after the case is assigned to business court.

Question 3: To what extent do you believe your business court workload involving cases outside your own district has created a burden on other judges in your district?

Judge Scieszinski: Since the bulk of my work on the Business Court has been with 8th District cases, I believe little out-of-district work has fallen on my colleagues. I'm not sure that's the perception, since folks assume that a pilot project of substance translates into a major time commitment (which it does), and they don't necessarily realize that I'm actually working 8th District cases when I am. They also do not have a clue how much time I put in outside of what many judges think of as their work-day hours.

Judge Huppert: Not at all. This is in large part because most of the out-of-district cases have all resolved without the need for a trial out of district. I've also benefited from the timing of these assignments--most of the work I've had to do was when I was on a general trial assignment. This year, I've been assigned to family law, but have only really had to pay attention to one case (which involves Des Moines counsel and has not required any travel).

Judge Telleen: I have tried two significant week-long cases out of my district with significant time required on the trial themselves and issuing a ruling in the bench trial. However, I have heard no complaint that this has created an undue burden on the other judges. Of course, someone is required to take on the cases I would have otherwise handled, but I have very cooperative colleagues and have heard no complaints. Ideally, the trial weeks could be treated as a judge exchange whereby the district/county with the business court case would send a judge (if needed) to the district/county of the assigned business court judge.

Question 4: What do you believe is the most significant contribution the business court project has made at this point in the project?

Judge Scieszinski: This experiment has yielded some additional insight on the merits of specially-assigned judges who proactively address complex litigation needs.

Judge Huppert: Expanding the notion of specialized courts from family law, juvenile and criminal to the civil litigation arena. Allowing access to CourtCall as a means to provide quality communication from a number of remote locations and still maintain the integrity of the record.

Judge Telleen: One of the things we set out to do was to give litigants an experienced judge with at least some level of expertise in business related matters so they could be confident in a fair outcome. One of our goals was also to develop further judicial expertise. I think the business court has met these goals, but it is still a work in progress. For instance, in a relatively short period of time I have become far more familiar with commonly faced business issues, such as breach of fiduciary duty, oppression of minority shareholders, events giving rise to a dissolution of a corporation, fair value buyout, and the derivative nature of some claims. This business expertise adds value to our judicial system along with our other specialty courts.

Question 5: What two or three changes would you recommend for improving the business court's policies or practices?

Judge Scieszinski:

A) For case eligibility, I'd like to see us embrace "complex litigation" and ease away from the defined classes of cases set out in our application process. I hear a fair amount of comment that the categories are too precise, and I also observe that we have not adhered strictly to our own definitions. The pilot project could engender more enthusiastic support in the legal and judicial communities if it were better seen as a resource to help the courts process complex cases that otherwise drain resources from other dockets.

B) For case opt-in, I would like to see us progress to a system whereby a Chief Judge refers a complex case to this docket and then parties are allowed reasonable opportunity to object to the referral--with fair warning that an absence of objection may be deemed to be a consent. The dynamic of parties (and often counsel) at the outset of litigation is not conducive to agreeing on an opt-in; plus, attorneys struggle to envision how the Business Court can help them, and worry that it might complicate matters due to the remoteness of an assigned judge.

C) The specialty bench that handles Business/Complex cases could deliver more value, and be more sustainable, if it featured a judge from each of the judicial districts. This would better accomplish all of the goals of the Memorandum of Operation. Same-district judges would reduce or eliminate logistical issues (like inter-district scheduling, travel expense and time, and balancing the judges' normal workload). The assignment should factor in a judge's suitability (efficient, hard-working, training and experience in effective case management) and interest (willingness to be pro-active and embrace non-traditional techniques that really move litigation along).

Judge Huppert: (a) Expanding selection criteria (see above), and (b) Allowing for a "less than voluntary" process to be included in the BC program (see above).

Judge Telleen: I am open to allowing for a "less-than-voluntary" process to be included in the business court program, as suggested by Mike and Annette. However, at least at this juncture, I have significant reservations about expanding our mandate to include complex civil litigation in general. One of the main reasons for this concern is that I want to continue to develop my expertise relating to business matters. We are starting to develop a critical mass, and diverting our attention to complex tort matters, or simply difficult cases in general, may well hinder further development of expertise in business matters.

Question 6: How can state court administration improve its support for the business court judges and (or) the business court project in general?

Judge Scieszinski: The support has been fantastic; however, if we are to develop a body of rulings, we need dedicated law-clerk support with continuity from year to year. Also, we need to make sure our current support staff (my court reporter, for example, who is my point person) gets adequate consideration in scheduling for the extra work involved.

Judge Huppert: SCA has been very supportive up to now; I'm not sure how that could improve except for its support of some of the proposed changes that may be suggested as the pilot program goes into its third year.

Judge Telleen: I agree that Court Administration has been extremely supportive and I have no significant suggestions for improvement, other than it would be nice if someone would automatically get us EDMS access each time a case is assigned to us. Also, I recently tried a case in which no settlement conference judge had been assigned and I think we should assign a settlement conference judge to every case.

G. Conclusions and recommendations

Some conclusions and recommendations are appropriate at this time:

1. A substantial majority of attorneys who have litigated cases in the business court to the point of case disposition strongly support making the business court a permanent component of the civil litigation system in Iowa. Attorneys also provide very positive ratings on the business court's performance related to accomplishment most of its goals (see Table 6).
2. While the business court has demonstrated an ability to settle a case in as little as three months (*Desert Flour* in D6) and to conduct a trial within as little as four months (*Goetsch* case in D3), it has also shown that it does not guarantee a timely resolution in every case (e.g., the *Willenborg* in D1). Additional information about the nature of the issues and parties in the *Willenborg* case is needed to understand the reasons for the delay in reaching a resolution.
3. Although there is no urgent need for changes in the business court rules (e.g., criteria for assignment to the business court), further discussion of the "voluntary opt-in" rule for the business court is warranted.
4. The pilot project team should discuss the value of, and possibly a strategy for, adding more judges from other districts to improve regional representation on the business court, which could help promote use of the business court.
5. The supreme court, state court administration, and the chief judges of the judicial districts should develop a strategy to more effectively promote the business court.
6. State court administration should continue to support business court judges' attendance at judicial education programs that focus on business specialty courts and other complex litigation.