

**STATE OF WISCONSIN  
IN THE SUPREME COURT**

**In re Creation of a Pilot Project for  
Dedicated Trial Court Judicial Dockets for  
Large Claim Business and Commercial Cases**

**PETITION 16-05D  
MEMORANDUM**

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The Business Court Advisory Committee (Committee) submits this memorandum in support of its petition to amend the existing Pilot Project for Dedicated Circuit Court Judicial Dockets for Large Claim Business and Commercial Cases ("pilot project"). The petition proposes extending the pilot project for two additional years, until July 1, 2024, extending the court's scheduled review of the operation of this pilot project to accommodate the two-year extension of the project, and amending the Interim Rule to reflect this change.

As background, by order dated April 11, 2017, the court approved this Committee's petition to create the pilot project.<sup>1</sup> The pilot project commenced effective July 1, 2017, and was authorized for a period of three years.

The pilot project was then extended for an additional two years by order dated February 12, 2020.<sup>2</sup> Per that Order, the pilot project was also expanded into the Second and Tenth Judicial Administrative District and the Chief Justice was granted the authority to add additional Judicial Administrative Districts and counties, at the recommendation of the Director of State Courts. Three additional case types were also added to the list of cases that were eligible to be heard in the commercial court docket, namely cases involving

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<sup>1</sup> S. Ct. Order 16-05, 2017 WI 33 (issued Apr. 11, 2017, eff. July 1, 2017)

<sup>2</sup> S. Ct. Order 16-05A (issued February 12, 2020)

receiverships in excess of \$250,000, cases involving confirmation of arbitration awards and involving compelling/enforcing arbitration awards, and cases involving commercial real estate construction disputes over \$250,000. Last, a process was created allowing parties from counties that do not have a dedicated commercial court docket to petition to have their case administered within a commercial court docket.

Additionally, the court issued an Order on March 13, 2020, adding Dane County as an additional county that could hear commercial court docket cases as part of the pilot project.<sup>3</sup>

Based on its experience over the last five years, the Committee continues to believe that a dedicated commercial court docket will benefit the citizens of Wisconsin, the bench, and the bar. However, it also believes that additional time and data is needed to formally reach that conclusion. The Committee seeks to confirm the usefulness of a state-wide commercial court docket, and to identify improvements or changes that may be needed to the rules and statutes before a subsequent rule petition is filed, asking the court to adopt formal rules for the commercial court docket to become a permanent part of the Wisconsin Court System.

The Committee also seeks to clarify that local input is considered before appointments to the commercial court docket are made. Given the complexity of the cases that are filed in the commercial court docket, obtaining input from chief judges of the Judicial Administrative District in which an appointment is to be made, has been vital to choosing judges best suited to hear these cases, and to the overall success of the pilot project.

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<sup>3</sup> S. Ct. Order 16-05C (issued March 13, 2020)

## **Reduced case filings due to the coronavirus pandemic**

On March 11, 2020, the World Health Organization declared a global pandemic due to the spread of the coronavirus disease 2019 (COVID-19) around the world.<sup>4</sup> The pandemic has affected individuals, businesses, and the court system in countless ways. One result of the pandemic that the Committee believes has directly affected the commercial court docket is the general reduction in the amount of civil cases that have been filed in the last two years. In the five years leading up to the pandemic, between 2015 and 2019, the court system saw an average of 32,446 civil filings per year, with an average of 34,028 civil cases disposed. In the last two years, 2020 and 2021, the court system saw a significant reduction in filings, with an average of 23,992 civil cases filed and 25,231 civil cases disposed. The Committee believes this may have resulted in fewer filings being received by the commercial court docket, and therefore less data being available to determine whether the pilot project should continue and expand state-wide. The Committee believes filings will increase over the next couple of years, allowing the necessary data to be collected for the Committee to formally conclude whether the commercial court docket should expand and become a permanent part of the Wisconsin Court System.

## **Data Collection and Reporting**

Attached to this petition are spreadsheets that include the following:

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<sup>4</sup> World Health Organization, WHO Director-General's opening remarks at the media briefing on COVID-19 – 11 March 2020, <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>, (last visited February 5, 2022).

- A. Circuit court data concerning the number of cases that are currently pending and that have been closed since the pilot project was commenced in 2017, in each Judicial Administrative District and County that is a part of the pilot project.
- B. The number of cases that have been filed in each of the case types eligible to be heard in the commercial court docket.

### **Local Input**

Per the Interim Rule, the Chief Justice is solely responsible for choosing judges to appoint to the commercial court docket. However, historically this decision has not been made alone. Local input has been sought, especially from the chief judges of the Judicial Administrative District where an appointment will be occurring.

These chief judges have numerous opportunities to meet with judges in their district, to learn about their background and their judicial experience. Their opinions are invaluable to choosing judges that are best suited to hear these complex cases that are brought in the commercial court docket. The Committee is requesting that the Interim Rule be revised to reflect this on-going practice of soliciting input from chief judges of the Judicial Administrative District before an appointment is made.

### **Summary**

Implementing a state-wide commercial court docket is not a decision that the Committee takes lightly. It desires to confirm that the data and evidence support such an expansion and that it would be a benefit to the people, the bar, and the court system in Wisconsin. Therefore, the Committee requests that the commercial court docket pilot project be extended for an additional two years to afford the Committee additional time to obtain ample data by which to evaluate the success of the project. The Committee also

requests that the Interim Rule be clarified to reflect that local input is sought before judges are appointed to the commercial court docket, to insure that the judges best suited to hear these cases are the ones appointed. The proposed amendment to the Interim Rule for the commercial court docket pilot project accompany this memorandum.

Respectfully submitted,

This \_\_\_\_ day of February, 2022

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Laura A. Brenner, Chair, Business  
Court Advisory Committee