

## **The North Carolina Business Court: North Carolina's Special Superior Court for Complex Business Cases**

Over the past six years, many of North Carolina's top officials, including the Governor of North Carolina and Chief Justice of the North Carolina Supreme Court, have sought to make the state more friendly to business.<sup>1</sup> As part of this effort, the North Carolina Commission on Business Laws and the Economy (Commission) recommended the creation of the North Carolina Business Court. State officials believe the Business Court will attract out-of-state businesses to the state by developing their understanding of North Carolina corporate law.<sup>2</sup> The North Carolina Business Court, created to focus on complex business cases, currently consists of one judge who is considered an expert in business law.<sup>3</sup> By having one judge preside over business disputes, North Carolina hopes to dispose of business cases quickly and efficiently, while at the same time creating a precedent for future cases to follow.<sup>4</sup>

The overall goal of this Note is to educate the reader on why the Business Court has been a successful investment for North Carolina.<sup>5</sup> This Note will first explore why specialized courts exist

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1. *Report on Activities of the North Carolina Business Court 1996-2000* (on file with the N.C. Banking Institute) [hereinafter *Report of NCBC*]. This goal began in April, 1994, when Governor Hunt created the North Carolina Commission on Business Laws and the Economy (Commission) to recommend new "statutes, rules, and regulations" to attract business to North Carolina. *Id.* For more information on the Commission see *infra* note 63.

2. Jacqueline Bueno, *North Carolina to Establish Business Court*, WALL ST. J. (Southeast Ed.), Oct. 25, 1995, at S1, 1995 WL-WSJ 9905195.

3. *Report of NCBC*, *supra* note 1, §§ 3, 4(B).

4. See *infra* notes 25-43, 60-61, 73-74 and accompanying text.

5. Although this Note is being published in a journal focused on banking law, the Note will not concentrate on banking law. Banking law could, however, be affected by decisions of the Business Court. For example, one of the largest cases the Business Court has heard to date involved the merger between two banks. See *infra* notes 140-45 and accompanying text (discussing the Wachovia-First Union-SunTrust merger dispute). In addition, the Business Court would be a good location for litigation involving the new Article 9. If an Article 9 issue is brought before the Business Court a written opinion will be rendered when the case is decided. This written decision will create case law faster than the regular court system, thus giving guidance for businesses that operate under the new Article 9. Interview with Judge

and how these courts, especially business courts, can help the judicial system.<sup>6</sup> This section of the Note will particularly emphasize why a business court will help the business climate in North Carolina.<sup>7</sup> Second, this Note will focus on the history of the North Carolina Business Court, explaining how it originated and describing its goals.<sup>8</sup> Next, this Note will describe the advanced technology used by the court.<sup>9</sup> This Note will then explain how cases are assigned to the Business Court<sup>10</sup> and common misconceptions regarding the Business Court.<sup>11</sup> Finally, this Note will examine what role the court will play in the future for North Carolina.<sup>12</sup>

### I. WILL THE ADVANTAGES OF A SPECIALIZED COURT HELP NORTH CAROLINA?

Specialization in the legal field, although new, is not uncommon.<sup>13</sup> For decades the medical field has specialized, but it was not until recently that the legal profession followed suit.<sup>14</sup> The specialization of legal practitioners, however, is just the beginning. Now, it appears there are benefits to specializing the court system in the United States as well.<sup>15</sup> In fact, many court systems around

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Ben Tennille, Special Superior Court Judge for Complex Business Cases, in Greensboro, N.C. (Jan. 14, 2001).

6. See *infra* notes 13-61 and accompanying text.

7. See *infra* notes 56-61 and accompanying text.

8. See *infra* notes 62-82 and accompanying text.

9. See *infra* notes 83-117 and accompanying text.

10. See *infra* notes 118-39 and accompanying text.

11. See *infra* notes 123-27 and accompanying text.

12. See *infra* notes 140-56 and accompanying text.

13. Ad Hoc Committee on Business Courts, *Business Courts: Towards a More Efficient Judiciary*, 52 BUS. LAW. 947, 948 (May 1997) [hereinafter *Business Courts*].

14. *Id.* The legal profession has become specialized most notably because most lawyers practice either as a litigator or as a counselor. *Id.* at 948-49. Furthermore, most lawyers specialize within these two broad categories. *Id.* Even the American Bar Association now recognizes that the legal profession specializes, as it offers over twenty sections on "separate, substantive field[s] of law" which individual lawyers can join. *Id.* at 949; see, e.g., <http://www.abanet.org/sections.html> (last visited Feb. 23, 2002).

15. See generally *Business Courts*, *supra* note 13, at 951-52. One of the major benefits to creating a specialized court, specifically a business court, is that it creates a more efficient operating system. *Id.*; see also *infra* notes 22-43 and accompanying text (discussing the advantages of creating specialized courts). There are two types of specialization that courts could utilize. In the first, the court would have specialized jurisdiction; it would be managed separately and specific cases would be assigned to

the world are convinced of the benefits of specialization, as evidenced by the number of specialized courts in other countries.<sup>16</sup> Specialized courts in the United States have typically been created to hear family or probate matters, not business or commercial cases.<sup>17</sup>

In 1995, North Carolina became one of the few states in the country to create a specialized court for business and commercial matters.<sup>18</sup> As of 2001, there are ten other states that also have either some sort of business court or special court sessions focusing on complex business cases.<sup>19</sup> All but one of these courts, the Court of Chancery in Delaware, are of relatively recent creation.<sup>20</sup> By creating a special court for complex business cases, North Carolina sent a strong message to the business community that it is welcome in North Carolina.<sup>21</sup>

The American Bar Association has suggested that states form specialized business courts, in part to increase the efficiency of the judiciary.<sup>22</sup> Business courts are appropriate for any complex corporate or commercial transaction where specialized knowledge may be needed.<sup>23</sup> There are two main reasons why this knowledge is helpful for business courts. First, business litigation is frequently complex.<sup>24</sup> If a judge consistently hears a particular type of case,

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it. *Business Courts*, *supra* note 13, at 949. In the second form of specialization, courts can administratively assign judges to hear particular categories of cases, but the judges remain part of a single administrative unit. *Id.*

16. *Business Courts*, *supra* note 13, at 949-50. England, France, Germany, China, and Austria all have commercial courts. *Id.*; Allan Van Gestel, *Why A Business Litigation Session at Suffolk Superior Court*, 45 BOSTON BAR J. 14 (Nov./Dec. 2001).

17. *Business Courts*, *supra* note 13, at 950.

18. *See id.* at 957.

19. These states include California, Connecticut, Delaware, Illinois, Maryland, Michigan, New Jersey, New York, Pennsylvania, and Wisconsin. Van Gestel, *supra* note 16, at 14; Ember Reichgott Junge, *Business Courts: Efficient Justice or Two-Tiered Elitism?* 24 WM. MITCHELL L. REV. 315, 316 (1998).

20. Delaware has had a special court to deal with business issues since 1792. William T. Quillen & Michael Hanrahan, *A Short History of the Delaware Court of Chancery—1792-1992* (1993), available at <http://corporate-law.widener.edu/shorthis.htm> (last visited Feb. 23, 2002).

21. *See generally* Mason Peters, *Court Showing N.C. is Serious About Business, Official Says*, THE VIRGINIAN-PILOT & LEDGER STAR (Norfolk, Va.), Sept. 6, 1995, at B1, 1999 WL 8985750.

22. *Business Courts*, *supra* note 13, at 947.

23. *Id.* at 951.

24. *Id.* By only hearing complex business cases, a judge will become proficient in not only the substantive law involved, but also the “case management issues that arise in complex cases.” *Report of NCBC*, *supra* note 1, § 5.

he or she is likely to develop expertise, experience, efficiency, and knowledge in that particular area.<sup>25</sup> The more knowledge a judge has in this complex area, the more quickly he or she can understand the issues particular to the case at bar.<sup>26</sup> A quick understanding of the issues in a case will likely lead to a prompt disposition of the case.<sup>27</sup> Thus, creating a specialized court system in the United States is likely to create a more efficient judiciary: those judges who have mastered the knowledge needed to decide complex cases will be the ones deciding the complex cases.<sup>28</sup>

Second, a judge with specialized knowledge can render timely decisions.<sup>29</sup> Once a decision is made in a business case, it can affect not just one individual or company, but numerous persons, including shareholders, suppliers, and customers of the company.<sup>30</sup> It is often beneficial for these people, not just the individual company, to have a decision rendered as promptly as possible.<sup>31</sup> Once a case is designated to a business court, this speed becomes possible.<sup>32</sup> For example, if a decision needs to be made before the next shareholder meeting, having a judge who can quickly hear the dispute begets a significant benefit on the parties.<sup>33</sup> Thus, it is extremely valuable to businesses, and therefore the economy, to have these cases disposed of as efficiently as possible.<sup>34</sup>

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25. *Business Courts*, *supra* note 13, at 951. This expertise can increase the quality of decisions each judge renders. *Id.* Also, specialized judges will handle every aspect of the case, not just the trial itself. *Id.* This may help the judge make decisions faster, more confidently, and with less research than a judge who is not familiar with the specialized law. *Id.*

26. *Id.* Specifically, commercial cases in New York were disposed of thirty-five percent faster after the creation of a business court. *Id.* at 952. The result of this increased efficiency was that “the work of more than four generalist judges can be accomplished by three specialized business judges.” *Id.*

27. *Id.* at 951.

28. *Id.*

29. *Id.*

30. *Id.* 952-53.

31. *Business Courts*, *supra* note 13, at 953; *Report of NCBC*, *supra* note 1, § 5. In addition, parties litigating in the North Carolina Business Court will benefit since opinions must be drafted, which will lead to greater predictability for future cases. *Id.*

32. *Report of NCBC*, *supra* note 1, § 5.

33. *Id.*; *see also infra* note 145 (explaining the speed during the Wachovia-First Union-SunTrust merger dispute).

34. *Business Courts*, *supra* note 13, at 953.

Removing a case to a specialized court, specifically a business court, can reap many benefits on the parties. First, the case will be better managed, since only one judge hears the dispute.<sup>35</sup> The most significant improvements in case management should occur during pretrial procedures.<sup>36</sup> Because only one judge will hear the case, he will handle all the pretrial motions regarding the case, which could greatly reduce “conflicting decisions on substantive and evidentiary matters.”<sup>37</sup> In addition, since each judge controls his or her docket, the length of time it will take to get to trial should also be shortened.<sup>38</sup> Judges will not have to fit a four to five week trial of a complex business case into an already full calendar.<sup>39</sup> In a trial court with general jurisdiction, criminal cases often preempt civil cases (including complex business litigation) because of the constitutional guarantee of a speedy trial in criminal matters.<sup>40</sup> Without the criminal cases to congest the docket, the docket in the business court should move more quickly. Finally, since the judge will have a better understanding of the facts of each case, it can result in better timing for alternative dispute resolution methods<sup>41</sup> and, perhaps, a greater

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35. *Report of NCBC, supra* note 1, § 5. Having only one judge assigned to the case will be a significant change under North Carolina law. The North Carolina Constitution mandates that its superior court judges rotate within a district. N.C. CONST. art. IV, § 11. Because of this mandate, different judges hear different stages of the litigation, and the parties must reeducate a judge on the complex issues involved in the case for every new motion. *History of the North Carolina Business Court*, at <http://www.ncbusinesscourt.net/history.htm> (last visited Feb. 23, 2002). Since a new judge is constantly hearing different pretrial procedures, there is a potential for conflicting rulings to exist. *Id.*

36. *Report of NCBC, supra* note 1, § 5.

37. *Id.* Specifically, parties will not have to reeducate a new judge for each pretrial motion since the same judge will hear all the motions. *Id.* at § 5; *see also supra* note 35 (explaining the rotation system for superior court judges in North Carolina).

38. *Report of NCBC, supra* note 1, § 5.

39. *Id.* Currently it is difficult to get civil matters on the judicial calendar, as they often lose their priority to criminal cases. *Id.* Having a judge who will hear all the motions and the actual trial in the case will speed up this process. *Id.*

40. *See* U.S. CONST. amend VI.

41. There are many advantages to utilizing alternative dispute resolution (ADR) for businesses. Daniel A. Fulco, *Delaware's Response to Inefficient, Costly Court Systems and a Comparison to the Federal Program*, 20 DEL. J. CORP. L. 937, 942 (1995). First, ADR provides a faster method for solving disputes, which reduces costs. *Id.* Second, there are no juries in ADR, thus the results are more predictable. *Id.* at 942-43. Another advantage is that ADR is confidential, thus allowing a business to shield the dispute from its customers and competitors. *Id.* at 943. ADR

number of settled cases.<sup>42</sup> Overall, the benefits of case management should result in a “more efficient and less costly disposition of cases.”<sup>43</sup>

There are, however, downsides to creating specialized courts, specifically those courts specializing in business.<sup>44</sup> Some critics voice concerns over creating business courts because their effectiveness is still unproven.<sup>45</sup> Few states around the country have business courts, and of those that do, all but one is less than ten years old.<sup>46</sup> Those opposed to the creation of a business court

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also helps eliminate cases from crowded court dockets. *Id.* Fifth, ADR can help maintain business relations since both sides are working towards a mutually agreeable relationship. *Id.* Finally, ADR is easy to use. *Id.* at 944.

When New York created its commercial division, it also created a role for ADR programs within the division. Robert L. Haig, *Can New York's New Commercial Division Resolve Business Disputes as Well as Anyone?* 13 *TOURO L. REV.* 191, 199-200 (1996). For example, some sort of ADR procedure is mandatory for most participants. *See id.* at 200. Parties are free to choose the form of ADR in which they wish to participate and the neutral before whom the proceeding is conducted. *The Commercial Division Operating Statement*, at <http://www.courts.state.ny.us/nycdldr/opstcd1099.html#anchor27021>, at § O (last visited Mar. 3, 2002) (on file with the N.C. Banking Institute). Potential litigants before the commercial division are given a list of ADR options that they are encouraged to take advantage of before the case gets to trial; they can obtain the list in person from the commercial division or electronically. *Id.* To keep costs down for those who choose mediation, volunteer mediators are provided, although parties can still choose to use a private mediator. Haig, *supra*, at 199-200. New York has had no difficulty finding volunteer mediators for the program; a few weeks after this program was announced, a panel of over 150 mediators was assembled. *Id.*

In North Carolina, mediation is mandatory for all civil cases in superior court, including those cases assigned to the North Carolina Business Court. *See* N.C. GEN. STAT. § 7A-38.1 (1999). Judge Tennille encourages settlement by requiring that parties to the lawsuit attend the case management conference. Interview with Judge Ben Tennille, *supra* note 5. At this conference, Judge Tennille talks to the parties about different ways to solve their disputes and encourages settlement. *Id.* He reminds the parties that “business judgments are better than legal judgments.” *Id.*

42. *Report of NCBC*, *supra* note 1, § 5. Currently about 95% of the cases brought before the North Carolina Business Court settle. Interview with Judge Ben Tennille, *supra* note 5.

43. *Report of NCBC*, *supra* note 1, § 5.

44. Junge, *supra* note 19, at 318.

45. *Id.*

46. As of 2001, only a few states have a business court or special session focusing on complex business cases. *See* Van Gestel, *supra* note 16. These states include California, Connecticut, Illinois, Maryland, Michigan, New Jersey, New York, North Carolina, Pennsylvania, and Wisconsin. *Id.* at 14; Junge, *supra* note 19, at 316. Delaware, however, has had a special court to deal with business issues since 1792. Quillen & Hanrahan, *supra* note 20.

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believe that business courts create an elite form of justice.<sup>47</sup> A two-tiered judicial system is created, with one course for the corporate litigants and another course for the average citizen.<sup>48</sup> In addition, having a specialized business court “runs contrary to the [judicial] goal of court unification and simplification.”<sup>49</sup> Critics argue that the judiciary already has the power, through case management techniques, to accomplish the goals of the business court.<sup>50</sup> Finally, there is concern that business courts may have a bias towards commercial parties during commercial litigation.<sup>51</sup> This may leave the individual, non-business litigant at a disadvantage.

Many of these critics have failed to find support once a business court is created. For example, when New York created its commercial division, the potential creation of an elitist system was the primary concern raised by tort lawyers.<sup>52</sup> Specifically, tort lawyers in New York were concerned that a “better quality of justice” would be provided to commercial litigants.<sup>53</sup> These issues, however, did not prevent the commercial division from getting started in New York, and they arguably have not held true. New York has not put large amounts of money into its new division—only about \$100,000 out of a \$980 million court budget.<sup>54</sup> Furthermore, the judges for the commercial division were selected because of their great “interest, aptitude and experience in handling commercial cases. In other words, the tort cases continue to receive the attention of judges best able to deal with them.”<sup>55</sup> Thus, although there was concern an elitist judicial system would be created, it has not held true.

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47. Junge, *supra* note 19, at 318.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. Haig, *supra* note 41, at 203. In addition, the tort lawyers were troubled by the fact that the new commercial division would be more technologically savvy than the other courtrooms. *Id.* at 201. In response to the commercial division being more technologically innovative than other courtrooms, New York points out that the technology is being tried on an experimental basis in the commercial division and, if successful, will be expanded. *Id.* at 201. For more information on the technology available in the North Carolina Business Court, see *infra* notes 83-117 and accompanying text.

53. Haig, *supra* note 41, at 203.

54. *Id.*

55. *Id.*

For North Carolina, creating a specialized business court was likely the right decision. The benefits of creating the court in North Carolina outweigh the drawbacks. For example, North Carolina has a goal of attracting businesses to its state.<sup>56</sup> Creating a business court that makes the state legal system more predictable to outside businesses is one way of attracting business.<sup>57</sup> In addition, the creation of a specialized business court will help the state save money; a specialized court that disposes of cases quickly and efficiently will cut down on court costs.<sup>58</sup>

The creation of the business court should also lead to better results for cases assigned to the business court. The judges who decide these cases will have more expertise on complex business matters, and should therefore make better decisions on the merits.<sup>59</sup> Furthermore, the North Carolina Rules of Superior and District Courts mandate that opinions of the Business Court be written.<sup>60</sup> Written decisions help to create consistent decisions and should result in more predictable results.<sup>61</sup>

## II. HISTORY OF THE NORTH CAROLINA BUSINESS COURT

The North Carolina Supreme Court created the Business Court in 1995<sup>62</sup> after a report by the Commission<sup>63</sup> suggested that

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56. Doug Campbell, *Home Court*, NEWS & RECORD (Greensboro, N.C.), May 3, 1998, at E1.

57. Bueno, *supra* note 2, at S1. In fact, one of the reasons so many corporations choose to incorporate in Delaware is that it has the Court of Chancery, which has established itself as specializing in business issues. Van Gestel, *supra* note 16. For more information on the Court of Chancery, see *infra* note 62.

58. See *supra* notes 25-43 and accompanying text (explaining that specialized courts are more efficient than regular courts). Cost savings should be an important consideration for North Carolina. In 2001, North Carolina recently cut the state budget for the court system. *Court Agency Announces Wide Ranging Budget Cuts*, AP NEWSWIRE, Oct. 30, 2001. Creating a business court could help the state during this budget crisis. See *infra* notes 153-56 and accompanying text (discussing the budget problem in North Carolina).

59. *Business Courts*, *supra* note 13, at 952.

60. N.C. SUPER. & DIST. CT. R. 2.1(b).

61. See *Report of NCBC*, *supra* note 1, § 5. In addition, a written opinion can also help the appellate courts. When an appeals court has a written opinion explaining a trial court's decision, it makes the appellate judge's job easier. Interview with Judge Ben Tennille, *supra* note 5; see *infra* notes 73-74 and accompanying text.

62. The history of the North Carolina Business Court varies considerably from how the Delaware Court of Chancery developed. See Quillen & Hanrahan, *supra* note 20. The Delaware Court of Chancery was established by the Delaware

to improve the business culture in North Carolina, such a court should be created.<sup>64</sup> The creation of the North Carolina Business Court intended to solve two problems the Commission had found existed in North Carolina.<sup>65</sup> First, the North Carolina Constitution mandates that superior court judges work on a rotation basis.<sup>66</sup> This system of rotating through different counties is inefficient for

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Constitution to create a separate jurisdiction for cases in equity. *Id.* The Court of Chancery was modeled after the High Court of Chancery in Great Britain. *Id.* Delaware's Court of Chancery, however, was different from the Court of Chancery in Great Britain since it did not "become so bound by procedural technicalities and restrictive legal doctrines that it has failed the fundamental purpose of an equity court—to provide relief suited to the circumstances when no adequate remedy is available at law." *Id.* In the nineteenth century, the corporation became the preferred form of business organization, and Delaware became the preferred place to incorporate. *See id.* The number of corporations formed in Delaware was likely critical to the Court of Chancery's survival. *Id.* The remedies available in equity in Delaware during the nineteenth century included many "remedies sought and defenses raised in corporate disputes." Quillen & Hanrahan, *supra* note 20. Thus, the Court of Chancery provided a distinguished place for the settlement of corporate disputes. *Id.*

Delaware's small size allowed the equity to be administered in a single, centralized, chancery court, as opposed to multiple county courts. *Id.* In 1792, the court consisted of a single Chancellor. *Id.* During the nineteenth century, the Court of Chancery operated as an institution of three judges. *Id.* During the corporate litigation boom of the 1980s, a fourth chancellorship was created. *Id.* During the litigation frenzy of the Eighties, the Court of Chancery became known for deciding complex legal issues arising from complicated transactions, often in a matter of days. Quillen & Hanrahan, *supra* note 20. The court "proved it was up to the task of deciding quickly and coherently whatever corporate America and its advisors could concoct." *Id.* In the end, it is the corporate opinions of the Court of Chancery that has attracted the most attention to the court, although the court still hears cases as a traditional court of equity. *Id.* The fact that Delaware has such a strong history of business opinions is one of the major reasons corporations choose to incorporate in Delaware. *See* Van Gestel, *supra* note 16.

63. The North Carolina Commission on Business Laws and the Economy was established on April 19, 1994 by an executive order of the Governor. N.C. SUPER. & DIST. CT. R. 2.2 cmt. The purpose of this commission was to recommend:

[A]ny needed changes in existing statutes and regulations which affect the operation of businesses in North Carolina . . . and to recommend any needed new statutes, rules and regulations designed to assure that North Carolina offers a legal environment which provides the flexibility and support to allow businesses to operate successfully in this state and which will attract them to locate and incorporate here.

*Id.*

64. *History of the North Carolina Business Court*, *supra* note 35.

65. Interview with Judge Ben Tennille, *supra* note 5.

66. *Id.*

complex cases.<sup>67</sup> Second, the Commission wanted to establish a body of case law to serve as guidance on business issues to the business community.<sup>68</sup> Although the process took longer than people expected it to, North Carolina has established a body of case law and created an efficient means for disposing of complex cases.<sup>69</sup>

To establish the Business Court, the North Carolina Supreme Court amended the General Rules of Practice for the Superior and District Courts.<sup>70</sup> When cases are deemed appropriate for the North Carolina Business Court,<sup>71</sup> they are given to a specialized superior court judge to hear.<sup>72</sup> Once a

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67. *Id.*

68. *Id.* This goal is different than the goal of other states that create business courts. Other states create business courts to improve the administration of complex cases, not to develop case law. *Id.*

69. *Id.* Judge Tennille and others believed they could accomplish in three years what it actually took them five years to accomplish. *Id.*

70. *History of the North Carolina Business Court*, *supra* note 35. At the same time the legislature amended Rules 2.1 and 2.2 to create the North Carolina Business Court, Rule 23.1 was also added to the General Rules of Practice for the Superior and District Courts. *Report of NCBC*, *supra* note 1, § 5. Rule 23.1 creates a summary procedure for significant commercial disputes. N.C. SUPER. & DIST. CT. R. 23.1. The summary procedure shortens the amount of time attorneys have to research a dispute and to file motions. Bueno, *supra* note 2, at 2. A judge, with the consent of all the parties, can order the summary procedure provided certain requirements are met. *See, e.g.* N.C. SUPER. & DIST. CT. R. 23.1(a), (h). The biggest difference between the summary procedure rule and the rule designating cases as complex business cases is that for a summary proceeding, the amount in controversy must exceed a half-million dollars and parties must waive their right to a jury trial. N.C. SUPER. & DIST. CT. R. 23.1(a). The goal of the legislature in creating the summary procedure rule was to create an alternative procedure for resolving commercial disputes and improving the efficiency of the court system. N.C. SUPER. & DIST. CT. R. 23.1, comment. It should be noted, however, that the procedures for a summary proceeding and designating a case as a complex business case are separate and distinct and should not be read together. *Report of NCBC*, *supra* note 1, § 5.

71. *See infra* notes 118-22 and accompanying text (discussing how a case gets assigned to the North Carolina Business Court).

72. N.C. SUPER. & DIST. CT. R. 2.1. In January 1996, Ben F. Tennille was appointed Special Superior Court Judge. *History of the North Carolina Business Court*, *supra* note 35. Judge Tennille was appointed for a five-year term after the legislature apportioned funds for such a term. *Id.* Judge Tennille graduated, with honors, from the University of North Carolina School of Law in 1971, where he was a member of the North Carolina Law Review and Order of the Coif. *Id.* He practiced business law and litigation with a North Carolina law firm from 1971-1985. *Id.* In 1985, he became part of the in-house legal team of a Fortune 500 company. *Id.* For eight years, he managed the litigation division of that company and for two years he worked in a business capacity for the company. *Id.* During this time he also

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decision has been made in the case, the judge is required to write an opinion explaining the final disposition of the case.<sup>73</sup> The purpose of the written opinion is to create a precedent for the Business Court; it will help businesses that decide to operate in North Carolina predict how their cases will turn out if assigned as a complex business case.<sup>74</sup>

During the first years of the Business Court's existence, the General Assembly did not provide any funding beyond Judge Tennille's salary.<sup>75</sup> Thus, from 1996-1997, Judge Tennille worked from a home office without any assistance.<sup>76</sup> For these first three years, whenever Judge Tennille needed a courtroom, he would call around to different courthouses to find an empty room to use.<sup>77</sup> After three years, funds were raised from private foundations to pay for equipment for the court; however, the Business Court still needed a home and a staff.<sup>78</sup>

The Business Court did not find a permanent home until 1999, when it leased a space in Greensboro that had previously belonged to the United States Bankruptcy Court for the Middle District of North Carolina.<sup>79</sup> Since this space had previously functioned as a courtroom, the layout did not need to be changed to house the Business Court.<sup>80</sup> In 1999, the General Assembly provided funds to pay for a one-year lease and to help implement

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“attended executive education programs at the University of North Carolina and the University of Michigan business schools.” *Id.*

73. N.C. SUPER. & DIST. CT. R. 2.1.

74. *Report of NCBC, supra* note 1, § 5. The opinion, however, is likely not binding on other courts in North Carolina. Thus, the only precedential effect it will have is within the Business Court itself. Interview with Judge Ben Tennille, *supra* note 5. Exactly what the precedential value of the opinion is, however, is an open issue that the legislature or the Supreme Court should resolve. *Id.*

75. *Report of NCBC, supra* note 1, § 3.

76. *Id.*

77. Chris Serres, *A Clear Winner: The Court*, NEWS & OBSERVER (Raleigh, N.C.), July 24, 2001, at 1D, 6D. The process of calling courthouses to find available space still exists when the Business Court hears cases in another county. Interview with Judge Ben Tennille, *supra* note 5; *see infra* note 125.

78. *Report of NCBC, supra* note 1, § 3.

79. *Id.*

80. *Id.* The space had judge's chambers, three offices, a jury/library/conference room, and a copy room/break room. *Id.* Because the layout of the space was what the Business Court needed, money was saved since renovations did not need to be done. *Id.*

technology into the courtroom.<sup>81</sup> Making the courtroom technologically savvy became known as the “technology project.”<sup>82</sup>

### III. THE NORTH CAROLINA BUSINESS COURT’S UTILIZATION OF ADVANCED TECHNOLOGY

One of the major differences between the Business Court and other courts in North Carolina is the technology factor.<sup>83</sup> Because of the unique nature of its docket, the Business Court creates the ideal courtroom for advanced technology.<sup>84</sup> There are three major areas that the technology was meant to improve.<sup>85</sup> First, the project created an electronic filing system, with the ultimate goal being a paperless courtroom.<sup>86</sup> This system is currently in place and will serve as a way to test how well electronic filing works and if it would be appropriate for other

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81. *Id.*

82. *The North Carolina Business Court Technology*, at <http://www.ncbusinesscourt.net/technology.htm> (last visited Feb. 23, 2002).

83. In fact, the technology present in Judge Tennille’s courtroom has been given national attention. In July 2001, the Foundation for the Improvement of Justice awarded \$10,000 to the Business Court in order to add more upgrades. Rick Smith, *Ben Tennille Takes North Carolina’s Business Court into Cyberspace*, METRO MAGAZINE, Nov. 2000, at 19, available at [http://www.metronc.com/Volume\\_I/metro\\_num\\_9/tennille/index.html](http://www.metronc.com/Volume_I/metro_num_9/tennille/index.html) (last visited Feb. 23, 2002). This was only one of nine such honors the group handed out. *Id.*

84. *North Carolina Business Court Technology*, *supra* note 82.

85. The North Carolina Business Court’s website discusses four areas technology is meant to improve: (1) electronic filing and internet access; (2) case and document management; (3) courtroom presentation; and (4) trial judge resources. *North Carolina Business Court Technology*, *supra* note 82. For the purposes of this Note, only the three mentioned in the Report will be discussed. In addition to the three goals discussed in this Note, there are other areas of focus with regard to technology by the Business Court. These include: (1) public access to the court files over the internet; (2) eliminating paper records on appeal; (3) accessibility to an electronic library from remote locations; (4) the creation of a faster, more efficient, and more economical court system; (5) instant access to all court opinions without the delay and expense caused by publication; and (6) internet access to the court calendar. *Report of NCBC*, *supra* note 1, § 6.

86. *Report of NCBC*, *supra* note 1, § 6; see Smith, *supra* note 83, at 19 (explaining that the court now is capable of trying a case from beginning to end without creating a single piece of paper). Some lawyers may be concerned with the uncertainty of electronic filing. For example, what will happen if the server for the Business Court is down all afternoon and a document needs to be filed by five o’clock? Possible solutions could include faxing a copy to the Business Court itself or manually filing in the county where the case originates. Interview with Mark P. Shaughnessy, Vice President CX Corporation, in Greensboro, N.C. (Jan. 14, 2001).

courts in North Carolina to switch to an electronic filing system.<sup>87</sup> One of the major benefits of electronic filing is the cost savings.<sup>88</sup> When documents are filed electronically, it eliminates the need for people to handle the paper.<sup>89</sup> Copies of paper files are no longer needed since all the files are stored electronically and can be accessed electronically by the staff.<sup>90</sup> Having the documents in electronic form has another advantage: the documents can be searched by keywords instead of sifting through mounds of paper.<sup>91</sup> Moreover, storage space is no longer needed, which saves money since space does not have to be rented to store accumulated files.<sup>92</sup> Once a paperless courtroom is created fewer people are needed to handle the files, which results in lower costs for litigants and the court.<sup>93</sup>

In addition, a paperless courtroom should eliminate errors caused by manual filings, which will increase the speed and efficiency of courtroom procedures.<sup>94</sup> Currently, those parties who choose to file electronically with the Business Court must still file a paper copy with the clerk in the county of origin.<sup>95</sup> However, the

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87. *Report of NCBC, supra* note 1, § 6.

88. *Id.*; see also *infra* notes 153-56 and accompanying text (describing how North Carolina needs to save costs because of a decrease in the court budget).

89. *Report of NCBC, supra* note 1, § 6.

90. Smith, *supra* note 83, at 19. Documents filed electronically are in a format that can be read by Microsoft Word, WordPerfect, and other word processing programs. Interview with Mark P. Shaughnessy, *supra* note 86. Having files in this type of format means that litigants do not have to buy a special word processing program to utilize the Business Court's technology. *Id.*

91. Smith, *supra* note 83, at 19.

92. *Id.* In fact, Judge Tennille notes that after electronically filing a document with the Business Court, many litigants will then fax or mail a copy to the court as well. This extra paper is not necessary and the Business Court does not have room to store numerous paper documents. Interview with Judge Ben Tennille, *supra* note 5.

93. Smith, *supra* note 83, at 19.

94. *Report of NCBC, supra* note 1, § 6; Smith, *supra* note 83, at 19. The technology used by the Business Court is set up so that documents can only be filed properly. Interview with Mark P. Shaughnessy, *supra* note 86. Once a litigant has applied to electronically file documents, they are given an authorization number. *Id.* From then on, whenever a document is filed electronically the authorization number is used. *Id.* The authorization number does not allow litigants to file anything that is not needed or allow them to file documents in the wrong place. *Id.* This prevents the misfiling that occurs in a regular court filing system. *Id.*

95. *Report of NCBC, supra* note 1, § 6. It should be noted that electronic filing is not mandatory at the Business Court. Interview with Judge Ben Tennille, *supra* note 5.

court is set up to collect filing fees, so the hope is that one day this paper filing need not be done at all.<sup>96</sup>

The Business Court recently surveyed the users of its electronic filing system to determine how well the technology was working; the results were positive. Most lawyers and their staff thought the advance in technology was “beneficial and inevitable.”<sup>97</sup> Of the people surveyed, seventy-eight percent were proponents of electronic filing;<sup>98</sup> of those people who had used the technology, eighty-two percent would use electronic filing in the future if given the choice.<sup>99</sup> The main areas of concern with electronic filing included unease that the electronic filing would not be received and hesitations regarding the reliability of computers and servers.<sup>100</sup> These two concerns, however, can be alleviated. First, once an attorney has electronically filed a document it is immediately available on the Business Court’s website.<sup>101</sup> Thus, it is easy to check to see if the document was filed correctly. Second, although computers can be unreliable, the traditional process of driving a car to the courthouse to file a document can also be unreliable. Litigants should attack the problem of the server being down the same way they would resolve the problem of a flat tire on their way to file in the courthouse.<sup>102</sup> Ultimately, these concerns can be handled fairly by the Business Court.<sup>103</sup>

The second goal of the technology project was to improve the technology inside the courtroom itself.<sup>104</sup> The objective was to

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96. See *Report of NCBC*, *supra* note 1, § 6.

97. *The North Carolina Business Court, Technology Survey Results*, at <http://www.ncbusinesscourt.net/survey/Techsurvey.pdf>, at 2 (Jan. 11, 2002) (last visited Feb. 28, 2002).

98. *Id.* at 14.

99. *Id.* at 16.

100. *Id.* at 15. Thirty-five percent of respondents were apprehensive about an electronic filing not being received; 28.3% were concerned with reliability. *Id.* Other areas of concern (listed from highest to lowest) include: personal knowledge level, loss of control of the filing process, the learning process, the complexity of the technology, the inability to effect electronic filing, having an electronic filing altered, the reorganization that will need to be done, an inferior work product, and the cost of the technology. *Id.*

101. Interview with Mark P. Shaughnessy, *supra* note 86.

102. *Id.*; see also *supra* note 86 (listing possible solutions to the problem of the server being down).

103. Interview with Mark P. Shaughnessy, *supra* note 86.

104. *Report of NCBC*, *supra* note 1, § 6; *North Carolina Business Court Technology*, *supra* note 82.

create an atmosphere where the attorneys need not bring any equipment into the courtroom at all, since it would already be present.<sup>105</sup> Currently, the court is wired for videoconferencing<sup>106</sup> and each participant in the trial has individual access to his or her own technology.<sup>107</sup> The judge has two laptop computers on his desk: one runs his own programs, while the other lets him control the technology in the courtroom.<sup>108</sup> The judge's computer gives him override controls on all of the technology in the courtroom, so he can stop a presentation if something appears which the jury should not view.<sup>109</sup> Attorneys also have technology available to them, as their rostrum is equipped with items such as a CD-ROM player, a videotape machine, and a floppy disk drive, all controlled through a computer touch screen.<sup>110</sup> The computer touch screen allows attorneys to access exhibits or connect to videoconferencing simply by using the screen in front of them.<sup>111</sup> Finally, witnesses

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105. *Report of NCBC, supra* note 1, § 6; *North Carolina Business Court Technology, supra* note 82. If an attorney wishes to bring equipment to the courtroom, the room is equipped for an attorney to use their laptop computers. Interview with Mark P. Shaughnessy, *supra* note 86.

106. *Report of NCBC, supra* note 1, § 6. Videoconferencing allows attorneys or participants in remote locations to participate in the trial without having to travel. *Id.* If all parties do not consent to videoconferencing, the court determines if the "circumstances permit and warrant testimony by videoconference." *Id.* Videoconferencing is specifically allowed under the General Rule of Practice and Procedure for the North Carolina Business Courts. *See* N.C. Business Ct. R. 10.1. So far litigants have been willing to take advantage of the videoconferencing and it has been used more frequently, especially after September 11. Interview with Judge Ben Tennille, *supra* note 5. Videoconferencing is cost-effective and makes it easier to schedule hearings and meetings since litigants do not have to work around travel schedules. *Id.* Most large law firms, especially those with multiple offices, already have the technology used for videoconferencing available so they are comfortable using it. *Id.* It is likely the use of videoconferencing will only expand in the future. *Id.*

107. Paul Nowell, *Special Business Court Offers High-Tech Help for Merger Litigants*, AP NEWSWIREs, June 13, 2001.

108. *Id.*

109. Interview with Mark P. Shaughnessy, *supra* note 86.

110. *Id.* Nowell, *supra* note 107.

111. Nowell, *supra* note 107. For example, an attorney (or a witness) could pull up a digital image of an exhibit and, using a pen "like those seen marking up replays on televised football games, . . . draw on and annotate [the] exhibit." Smith, *supra* note 83. Attorneys also have the opportunity to store information they wish to present to the court on CD-ROM and display images using the courtroom technology. Interview with Mark P. Shaughnessy, *supra* note 86. For example, a lawyer could have depositions put on CD-ROM and when the lawyer is referring to part of the

also have use of the technology-advanced courtroom. Witnesses have a touch screen available to them, which can “help them illustrate their testimony. For example, a witness can use the screen to highlight an important element on a photograph or document.”<sup>112</sup> As one lawyer participating in the Wachovia-First Union-SunTrust case put it, “[t]his court may be the most state-of-the-art of its kind in the country.”<sup>113</sup>

The final goal of the technology project was to create an online database for the court’s opinions.<sup>114</sup> This goal has also been achieved, as anyone who wants to read an opinion from the Business Court can find it on the court’s website.<sup>115</sup> People across the country have utilized this technology. After Judge Tennille issued his sixty-three page ruling throwing out a challenge by SunTrust to the First Union-Wachovia merger, the website got over 1,000 hits before 9 a.m.<sup>116</sup> More than 30,000 people visited the website that day, including law firms from as far away as San Mateo, California.<sup>117</sup>

#### IV. WHAT CASES ARE ASSIGNED TO THE NORTH CAROLINA BUSINESS COURT?

When the Commission recommended the Creation of the Business Court, it did so to attract businesses to North Carolina.<sup>118</sup> However, not every case with a business issue is automatically assigned to the Business Court. Amended Rule 2.1 of the General Rules of Practice for the Superior and District Courts allows the Chief Justice of the North Carolina Supreme Court to designate

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deposition, he or she can show the actual deposition to the courtroom just by touching the screen in front of them. *Id.*

112. Nowell, *supra* note 107.

113. *Id.* This quotation was given by Richard Ellis, an attorney representing SunTrust Banks, Inc. *Id.* Russell Robinson, who represented First Union, readily agreed. *Id.*

114. *Report of NCBC, supra* note 1, § 6.

115. *Id.* To read the court’s opinions, visit the website at <http://www.ncbusinesscourt.net>. *Id.*

116. Serres, *supra* note 77, at D1.

117. *Id.*; Interview with Mark P. Shaughnessy, *supra* note 86.

118. *See, e.g.,* Peters, *supra* note 21.

certain cases as “complex business cases.”<sup>119</sup> There are two ways a case can come before the Chief Justice for this designation. First, a superior court judge can recommend that the Chief Justice assign the case to the Business Court if that judge believes there is a “complex business” issue at stake.<sup>120</sup> Alternatively, one or both of the parties can request that the Chief Justice designate the case as a complex business case.<sup>121</sup> Thus, it only takes one participant to request that a case be designated as a complex business case and assigned to the Business Court.<sup>122</sup>

There are some misconceptions regarding the Business Court that may prevent litigants from requesting a complex business designation. First, many litigants believe that they need to waive their right to a jury trial in order to have the case designated as a complex business case.<sup>123</sup> The Business Court does hear jury trials and the courtroom in Greensboro is equipped to accommodate jury trials. Many business lawyers also believe they have to travel to Greensboro to have a case heard by the Business Court.<sup>124</sup> Instead, the judge and his staff do the traveling.<sup>125</sup> When a case is filed in a particular county, it will stay in that county to be tried unless the lawyer asks for a change of venue.<sup>126</sup> Finally, the

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119. N.C. SUPER. & DIST. CT. R. 2.1.

120. N.C. SUPER. & DIST. CT. R. 2.1(a).

121. N.C. SUPER. & DIST. CT. R. 2.1(a). The process for designating a case as a complex business case is the same as the process for designating a case as “exceptional” under North Carolina law. N.C. SUPER. & DIST. CT. R. 2.1(a); *Report of NCBC*, *supra* note 1, § 5.

122. Interview with Judge Ben Tennille, *supra* note 5. In fact, in one case all parties objected to the complex business designation. *Id.* However, because the superior court judge believed it was an appropriate complex business case, he recommended to the Chief Justice that the case be designated and it was so designated. *Id.*

123. *Id.* The confusion here is likely because under the new summary procedure rule, litigants do have to waive their right to a jury trial in order to get a speedy disposition of the case. *Id.*; see N.C. SUPER. & DIST. CT. R. 23.1. The summary procedure rule and the rules creating the Business Court were adopted by the legislature at the same time, which is likely why attorneys get the two rules confused. Interview with Judge Ben Tennille, *supra* note 5; see also *supra* note 70 (explaining the summary procedure rule).

124. Interview with Judge Ben Tennille, *supra* note 5.

125. *Id.* When a judge needs to schedule a trial or a hearing in another county he must call the clerk’s office to schedule a time when space is available for him. *Id.* If the parties agree, pretrial hearings can be conducted via videoconferencing or at the courtroom in Greensboro. *Id.*

126. Asking for a change of venue to have the case tried in Greensboro has only happened twice. Interview with Judge Ben Tennille, *supra* note 5. One time the

use of the Business Court's technology is not mandatory.<sup>127</sup> Everything can be done "the old-fashioned way" with paper if the lawyer so chooses.

When the Business Court was created, the North Carolina Supreme Court chose not to define "complex business cases" believing that the absence of a definition would allow litigants to seek designation whenever they believed special judicial experience in business matters would be needed.<sup>128</sup> The absence of a definition also gave courts the flexibility to respond to cases that are appropriately "complex business cases" but may not have been so designated if the rule had been more specific.<sup>129</sup> Some direction has been given to the Chief Justice when deciding whether to designate a case as a complex business case. The North Carolina Supreme Court recognized that cases involving certain statutes in North Carolina, ranging from the Business Corporation Act to the Tender Offer Disclosure Act, would be complex business matters.<sup>130</sup> In addition, when the Chief Justice determines which other cases should be designated as "complex business cases" he ascertains whether "the outcome will have implications for business and industry in making their business decisions."<sup>131</sup> If the answer to this question is affirmative, the case will likely be assigned to the Special Superior Court Judge for Complex Business Cases, a position appointed by the Chief Justice under amended Rule 2.2 of the General Rules of Practice for the Superior and District Courts.<sup>132</sup> The case will then remain with the

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litigants asked for the change of venue in order to take advantage of the technology in the Greensboro courtroom. *Id.*

127. *Id.*

128. *History of the North Carolina Business Court, supra* note 35.

129. *Id.*

130. N.C. SUPER. & DIST. CT. R. 2.2, cmt. Chapters designated as "complex business" in North Carolina include: (1) Chapter 55, Business Corporation Act; (2) Chapter 55B, Professional Corporation Act; (3) Chapter 57C, Limited Liability Company; (4) Chapter 59, Uniform Partnership Act; (5) Chapter 78A, North Carolina Securities Act; (6) Chapter 78B, Tender Offer Disclosure Act; and (7) Chapter 78C, Investment Advisers. *Id.*

131. *History of the North Carolina Business Court, supra* note 35.

132. N.C. SUPER. & DIST. CT. R. 2.2; *Report of NCBC, supra* note 1, § 5. Assigning a case to a specific judge is different than the assignment if the case had been found to be exceptional under North Carolina law. *Report of NCBC, supra* note 1, § 5. Had the case been assigned as exceptional, it could have been assigned to any judge, not necessarily a specialized judge. *Id.*; N.C. SUPER. & DIST. CT. R. 2.1.

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Business Court until its disposition,<sup>133</sup> with appeals from the Business Court's decisions following the same appeals procedure as appeals from other courts in North Carolina.<sup>134</sup>

There are three main types of cases that get assigned to the Business Court. The first type can be classified as "corporate domestic disputes."<sup>135</sup> These cases are mostly disputes between shareholders and small companies that will have a significant impact on the company.<sup>136</sup> The second type of case is a class action, mainly because of the amount of management needed in the case.<sup>137</sup> Finally, cases that are paper intensive and/or motion intensive are assigned to the Business Courts.<sup>138</sup> These cases are assigned because they often require prompt disposition and are a burden on the regular system.<sup>139</sup>

#### V. WHAT IS THE FUTURE FOR THE NORTH CAROLINA BUSINESS COURT?

It is still early to tell what effect the North Carolina Business Court will have on complex commercial litigation. However, the outlook seems positive. In July 2001, Judge Tennille rendered an opinion in a case where the merger between First Union and Wachovia was challenged.<sup>140</sup> In his ruling, Judge Tennille upheld "key provisions" of the merger between First

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133. *Report of NCBC, supra* note 1, § 5. If the case goes to trial, it is tried in the county where it is filed unless a party requests a change of venue. *Id.*; *see supra* notes 124-26 and accompanying text.

134. *Report of NCBC, supra* note 1, § 5. Any final judgment rendered in a civil action may be appealed to the North Carolina Court of Appeals. N.C. GEN. STAT. § 7A-27(c) (1999). Litigants may then have an automatic appeal to the North Carolina Supreme Court if there was a dissent issued by the Court of Appeals or the issue directly involves either the United States Constitution or the North Carolina Constitution. N.C. GEN. STAT. § 7A-30 (1999). The North Carolina Supreme Court can also hear appeals at its discretion. *See* N.C. GEN. STAT. § 7A-31 (1999). For more details concerning the appeals process in North Carolina, *see* N.C. GEN. STAT. § 7A-26 to -32 (1999). There is, however, some speculation that there should be a special, expedited appeals procedure for complex business cases in North Carolina. *Report of NCBC, supra* note 1, § 5(B).

135. Interview with Judge Ben Tennille, *supra* note 5.

136. *Id.*

137. *Id.* Judge Tennille expects that the role state courts will play with regard to class actions to expand over the next few years. *Id.*

138. *Id.*

139. *Id.*

140. Serres, *supra* note 77, at D1.

Union and Wachovia and “threw out” the arguments by SunTrust Banks challenging the merger.<sup>141</sup> Once the opinion was issued and posted on the Business Court’s website, more than 30,000 people visited the website.<sup>142</sup> The decision was important, not just because it made the country notice the North Carolina Business Court, but also because it proved to be a quick disposition to a difficult case.<sup>143</sup>

Once SunTrust announced it would try to take over Wachovia, it was clear that the dispute would lead to trial. Had the North Carolina Business Court not been in existence, the case would have had to proceed through the normal court system and it could have taken much longer to reach a decision. Instead, all the parties agreed to have the case heard by the North Carolina Business Court.<sup>144</sup> By utilizing the courtroom technology available to the Business Court, the parties in the case could prepare for a hearing in less than a week.<sup>145</sup> Thus, not only was an important area of corporate law in North Carolina clarified, but it was done quickly and efficiently.

The hope is that the North Carolina Business Court will continue to resolve complex cases like the Wachovia-First Union-SunTrust merger quickly. In order to achieve this goal, however, the Business Court will need to be expanded. Specifically, more judges need to be designated as Special Superior Court Judges for

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141. *Id.* For more information regarding the Wachovia-First Union-SunTrust merger dispute see Lijun Yang, Note, *First Union v. SunTrust Banks: The Fight for Wachovia and Its Impact on North Carolina Corporate Law*, 6 N.C. BANKING INST. 335 (2002).

142. Interview with Mark P. Shaughnessy, *supra* note 86. In fact, the technology of the Business Court ultimately helped the market when this decision was announced. Interview with Judge Ben Tennille, *supra* note 5. All the developments in the case were posted on the Business Court website when the market was closed giving everyone equal access to the information. *Id.* Having the information equally available to everyone while the market was closed resulted in no advantages to a single party. *Id.*

143. The court was able to hear and decide the case before the next shareholder meeting. *See infra* note 145.

144. David Boraks, *In Battle for Wachovia, Many Suits, Many Goals*, AM. BANKER, June 4, 2001, at 11.

145. Interview with Mark P. Shaughnessy, *supra* note 86. The brief for the hearing was due on a Thursday at noon. *Id.* The responses were due the following Monday at noon and the hearing was held the next day. *Id.* The technology, which was fully utilized by all parties, allowed each party to have access to the documents filed by the opposing party through the Business Court’s website. *Id.*

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Complex Business Cases.<sup>146</sup> Adding two new judges to the Business Court could help improve the Business Court process. For example, many of the cases currently assigned to the Business Court originate in Charlotte.<sup>147</sup> Having a judge based out of Charlotte could get more lawyers to ask for the complex business case designation.

There are three other main reasons having another judge would benefit the Business Court. First, if Judge Tennille has a conflict of interest, the case cannot be heard in the Business Court and will instead proceed through the regular system.<sup>148</sup> Second, there is a limit on the number of cases one judge can handle.<sup>149</sup> Judge Tennille currently handles about twenty-five to forty cases at one time.<sup>150</sup> Although only three to four cases go to trial each year, it would be difficult for the number of cases assigned to the Business Court each year to increase. Finally, because so many of the cases assigned to the Business Court settle, it is difficult to build a large body of written opinions.<sup>151</sup> If more cases could get assigned to the Business Court, more cases would go to trial, and the amount of case law would increase.<sup>152</sup> More cases can only be assigned, however, if there are more judges assigned to hear complex business cases.

The likelihood of another judge being assigned to the Business Court in the future is not very high. In 2001, when the state legislature created its budget, the Administrative Office of the Courts was told to cut \$12 million from its budget.<sup>153</sup> These cuts were announced despite the fact that North Carolina has continuously spent less of its budget on the court system, even though caseloads have increased.<sup>154</sup> In order to comply with the \$12 million decrease in its budget, the state court system has cut its costs in many ways ranging from a hiring slowdown to cutting back

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146. Interview with Judge Ben Tennille, *supra* note 5.

147. *Id.* In addition, it may make sense to have a new judge in the Research Triangle Park area who has expertise regarding high-tech issues. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.* When creating the Business Court, one of the goals was to create a body of written opinions. *See supra* notes 60-61, 73-74 and accompanying text.

152. Interview with Judge Ben Tennille, *supra* note 5.

153. *Court Agency Announces Wide Ranging Budget Cuts*, *supra* note 58.

154. *Justice for the Courts*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 4, 2001, at A30.

on travel.<sup>155</sup> Even after all of these cuts, the court still has not reached its original \$12 million goal.<sup>156</sup> Thus, it seems unlikely that the state will have the money to pay the salary for a new judge.

## VI. CONCLUSION

Thus far the Business Court has been largely successful in North Carolina. Although it is difficult to tell if new businesses have come to the state because of this court, the majority of the state's goals when creating the court have been met.<sup>157</sup> Once the court gets more publicity, it is likely that litigants, especially those who embrace the use of technology, will ask to be assigned to the Business Court. In order to comply with this increased demand, the court will need to expand geographically, particularly to Charlotte.<sup>158</sup> Once people become comfortable with the new arena for business cases, the demand for more business court judges will likely increase.

One of the main goals when creating the North Carolina Business Court was to create a better business climate in North Carolina.<sup>159</sup> In 2001, Site Selection Magazine chose North Carolina

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155. The first cuts were to drastically trim an office that finds alternatives to prison sentences for nonviolent criminals. Anne Saker, *Trying Not to Cut Days, Courts Snip Here, There*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 31, 2001, at A3. In addition, as of December 1, 2001, the courts are beginning a 120-day hiring slowdown. *Id.* Reimbursement for mileage is reduced from 34.5 cents per mile to 26 cents per mile. *Id.* The court will also cut down on travel for conferences that are further than seventy-five miles away; the court is hoping to utilize teleconferencing for these conferences instead. *Id.* Two superior court judgeships that were supposed to be filled this year are being postponed. *Id.*

156. *Id.* To meet the required \$12 million budget cuts, North Carolina Supreme Court Chief Justice I. Beverly Lake, Jr. believes that the number of days the courts are open will need to be reduced. *Id.* This appears to be a drastic measure, and one that the Governor is not willing to approve. *Id.* Chief Justice Lake has expressed concern that more cuts in the court system may interfere with their "constitutional requirement to dispose of cases that are filed in the courts in an orderly and fair manner." *Id.*

157. See *supra* notes 65-69, 85-87, 104-07, 114-15 and accompanying text.

158. Interview with Judge Ben Tennille, *supra* note 5.

159. In addition to creating the North Carolina Business Court and the summary procedure rule, North Carolina has also limited the way shareholders of a company can call a special meeting. See N.C. Sess. Laws 2001-201, § 15 (codified as amended at N.C. GEN. STAT. § 55-7-02(a)(2)). The new law provides that only the articles of incorporation of a public company can authorize someone other than the board of directors or an officer of the company to call a special meeting of its shareholders.

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as having the best business climate in the country.<sup>160</sup> This ranking was based upon numerous factors, including new and expanded corporate facilities and interviews with corporate real estate executives nationwide.<sup>161</sup> Thus, according to at least one source, one of the goals<sup>162</sup> when creating the Business Court has been achieved.

The creation of the North Carolina Business Court was a good business decision for North Carolina. Not only had the American Bar Association recently recommended that states create specialized business courts,<sup>163</sup> but top officials in North Carolina were calling for a better business climate as well.<sup>164</sup> Establishing the Business Court created a court that handles complex business cases quickly and with fewer costs.<sup>165</sup> At a time when the North Carolina court system budget is being cut, having a court that will lower costs is a benefit to the state.<sup>166</sup>

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*Id.* See generally Thomas L. Hazen, *Silencing the Shareholders' Voice*, 80 N.C. L. REV. (forthcoming Fall 2002) (manuscript on file with N.C. Banking Institute).

160. Ron Starner, *North Carolina Claims No. 1 Business Climate Ranking*, SITE SELECTION, Nov. 2001. Site Selection uses five criteria to determine the best business climate in the country:

[(1) the] total new and expanded corporate facilities in 2000[; (2) the] total new and expanded corporate facilities for 1998 through 2000[; (3) the] total new and expanded facilities per [one] million residents for 1998 through 2000[; (4) the] total new and expanded facilities per 1,000 square miles . . . for 1998 through 2000[; and (5) the] results from *Site Selection's* annual survey of corporate real estate executives who work for companies with nationwide operations.

*Id.* The executive survey counts for fifty percent of the overall ranking, with the first four criteria accounting for the other fifty percent of the overall ranking. *Id.* The executive survey asked the question, "Based upon your experience, what are the top ten state business climates, taking into consideration such factors as lack of red tape, financial assistance and government officials' cooperation?" *Id.* Although North Carolina claimed the fifth spot in this survey, its high marks in the other four categories was enough to propel it into first place overall. *Id.*

161. *Id.*

162. *Report of NCBC*, *supra* note 1, § 3.

163. See *supra* note 22 and accompanying text.

164. See *supra* notes 62-69 and accompanying text.

165. See *supra* notes 22-43, 58, 145 and accompanying text.

166. See *supra* notes 43, 58 and accompanying text.

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