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Data on new court model indicate shorter time to resolve cases

By **CHAD HALCOM**

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Michigan's new business courts may be shaving months off the average time to close lawsuits between companies or their owners and managers, compared with how such cases fared in years past, when they were tried among the pack of other civil suits.

Judges in Wayne, Oakland, Macomb and Washtenaw counties collectively have reviewed and resolved at least 1,443 business court lawsuits assigned to them, in an average resolution time of 136.7 days per closed case, according to data that those courts recently furnished to Crain's.

Attorneys and judges handling those matters said data reviewed at a recent seminar suggest that early conferences, and a focus on alternate dispute resolution, are pushing those cases across the finish line much faster and with more consistency than before those courts existed.

A state law signed by Gov. Rick Snyder in October 2012 mandated special business court dockets at 17 counties statewide, including the four metro Detroit courts.

Signed two years ago last week, the new law created a business court structure specifically to "help all court users by improving the efficiency of the courts" as well as to assign business cases to courts with judicial expertise and create consistency in results. Oakland, Macomb and Kent counties previously had created business courts of their own that had to be modified to fit the new law.

Completion times have ranged from 125 days in Oakland to 163 days in Macomb, one of the oldest local business dockets, and is managed by Circuit Judge John Foster. Attorneys and experts in the region believe the newer courts will align closer to Macomb's figure over time, as they accumulate more cases.

That's still 150 days shorter than the average closure time of various civil lawsuits studied statewide under a study completed by East Lansing-based **Courtland Consulting Inc.** for the

State Court Administrative Office in October 2011, before most business courts existed.

That study collects a wide sampling of civil cases and surveys attorneys, mostly in Southeast Michigan, and doesn't break out the categories of cases that currently get referred to business courts.

"It's unbelievable so far. Some of the closure numbers are going to change, but it's still going to look pretty impressive," said Richard Hurford, owner of Troy-based **Richard Hurford Dispute Resolution Services PC** and former director of litigation general counsel for Taylor-based **Masco Corp.**

"This really is a huge cost saver for the parties, and we're starting to see where this practice is going to be when attorneys get accustomed to this. There are certain things a judge can do that reduces time and cost and adds efficiency. That is increasingly where the cases are going."

The new law required every circuit court in the state with three or more judges to begin placing business and commercial litigation cases, or other cases where every party is a business, on special dockets starting Jan. 1, 2013. The Michigan Supreme Court assigned specific judges to those new court dockets the following April.

The courts handle commercial litigation, automotive supply chain pricing and inventory disputes, shareholder disputes and other categories of litigation involving business enterprises, under the law. That can also include issues of ownership or governance and the finances of nonprofits.

Hurford, who gave a presentation on business court efficiency recently during a seminar by the **Professional Resolution Experts of Michigan LLC**, said the business courts with short average times will probably lengthen over time to approach the averages in Macomb and in Kent County Circuit Court. The averages, after all, do not count cases still pending, and older business courts have had more time to close cases.

But, he notes, the numbers so far suggest the business court model is saving some time when compared to the sampling of civil court cases in



Clark Hill attorney **Linda M. Watson**

the state court office study three years ago.

That report said 396 tort and contract civil lawsuits sampled from six circuit courts statewide had an average resolution time of 404 days. Those that were sent to mediation, or were resolved without using a case evaluation panel (making them more akin to current business court practices, but not part of a business court docket) were resolved in an average of 313 days.

The state does not keep aggregate data tracking average resolution times for all lawsuits statewide, because its annual reports only detail what share of cases got resolved within time limits defined in a **Michigan Supreme Court** administrative order — 728 days, for civil cases (and 96 percent of them did in 2013). The business courts created by the state law are not yet 728 days old.

Hurford said he believes the state's business courts are benefiting from "evidence-based practices," or the use of courtroom procedures and rules that are already tested and have proven beneficial elsewhere.

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These include scheduling an early conference among the parties within 30 days after a business court lawsuit is filed, and early referrals to mediation, arbitration or other alternatives to traditional courtroom procedure.

Opinions and rulings that judges have issued in the 17 business courts also get collected and published online, via the Michigan Court of Appeals website, giving attorneys a reference to see how the business court judges evaluate 24 categories of business disputes.

In time, that record will create a consistency and predictability of legal analysis that will help businesses decide if they even want to take future quarrels to court, said Linda Watson, co-chair of the automotive and manufacturing practice at **Clark Hill PLC**.

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"But one thing that's already helpful is, you get to understand what judges' expectations are in business courts, their process, and how they administer their dockets. And if you pay attention to that, as an attorney, there's tremendous value in it. I've been able to leverage that, interacting with other parties, and other attorneys probably have as well."

Not all the available data suggest business court dockets are bringing such a huge benefit, however — at least not yet.

Oakland County Circuit Court officials report the average time to close a business court case was around 125 days, but the average for similar categories of cases on general, non-business court dockets was 139 days in the same period.

In Macomb County a recent survey of attorneys asked to evaluate its business court procedures said 70 percent found it "shortened the time to resolution," compared with previous practices. The county does not have a way to compute average resolution time for non-business lawsuits.

However, only 16 percent in the Macomb survey found the new business court practices had reaped a huge savings in cost, and 50 percent said it either saved nothing or only a little on cost of litigation.

But that, attorneys said, could reflect that most business litigation claims probably are worth the same in potential damage awards as before. The new model is more likely to influence whether companies feel it is worthwhile to sue in the first place, than what they expect to gain in court.

Doug Toering, managing owner of the Troy-based **Toering Law Firm PLLC** and a

former in-house counsel attorney for **General Motors Co.**, has also compiled data on business court case closure times for a Michigan Bar Journal article, and said he believes the new courts are fulfilling their legal mandate to improve the efficiency of courts and build consistency in results.

"My own experience is consistent with the processing time, but it would not be statistically significant," he said. "But, that said, thinking about it logically, if a judge gets involved in the case in the first couple of months and explores the possibility of an early resolution, as they do in these courts, it would stand to reason that your processing times will get much shorter."

ORDER IN THE BUSINESS COURT

Wayne County Circuit Court

Judges: Daniel Ryan, Susan Borman, Brian Sullivan

Cases filed: 709

Open: 390

Closed: 319

Average completion time: 152 days

Oakland County Circuit Court

Judges: Wendy Potts, James Alexander

Cases filed: 1,377

Open: 501

Closed: 876

Average completion time: 125 days

Macomb County Circuit Court

Judge: John Foster

Cases filed: 377

Open: 189

Closed: 188

Average completion time: 163.5 days

Washtenaw County Circuit Court

Judge: Archie Brown

Cases filed: 128

Open: 68

Closed: 60

Average completion time: 143 days

Completion times are for closed cases only. All case totals are as of Sept. 30 except Washtenaw (as of July 31), and include business court cases in Oakland and Macomb that predated the 2012 law standardizing court formats statewide.

Linda M. Watson is Co-chair of the Automotive & Manufacturing Practice Group. She has been listed as a Super Lawyer in business litigation for three consecutive years and has over 20 years of litigation experience representing small to large privately-held business entities, as well as public corporations both at the trial and appellate level of federal and state courts. Her practice covers all areas of business and commercial litigation, including contracts, employment claims, property matters, construction, intellectual property, trade secrets, and copyright and trademark law. Linda has significant experience in the following industries: automotive, health care, information technology, entertainment and banking. **Contact her at lwatson@clarkhill.com or 248-988-5881.**

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