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AIMED AT GETTING COMPLEX
CASES IN FRONT OF JUDGES
WHO HAVE EXPERTISE.

JUDGE MICHAEL HUPPERT

COVER STORY

BUSINESS COURT CAPITALIZES ON EXPERIENCE

THE PILOT PROGRAM IS AIMED AT GETTING COMPLEX CASES IN FRONT OF JUDGES WHO HAVE EXPERTISE

BY KENT DARR

The walls were standing when Hillside Elementary School opened in 2004, but within a few years, the West Des Moines Community School District had spent nearly \$2 million in repairs and replacement parts for the new building and went to court to recoup the money.

A lawsuit was filed in 2011, with the school district as plaintiff and a range of contractors and subcontractors as defendants. And once the case filed, there were claims and counterclaims to further muddy the basic question of who should pay what to whom.

To Polk County District Judge Michael Huppert, the case was a perfect fit for a three-year experiment launched by the Iowa Supreme Court to create a docket for complex business lawsuits.

Huppert is one of three judges appointed to the Iowa Business Specialty Court, which was created in 2012 as a trial project. The court hears cases only when there is at least \$200,000 in dispute and all of the parties in the case agree to opt into the trial program.

The Hillside Elementary case is one of 11 enrolled in the project. The school district reached a settlement in which eight contractors agreed to a \$2 million settlement in which they paid for repairs that included replacing windows, fixing a leaking roof and addressing mold that grew because of water issues.



PHOTO BY DUANE TINKEY

If not for that settlement, this fall the case would have gone to a trial that experts estimated would have lasted five to six weeks.

The business court program began accepting cases May 1, 2013. Hillside Elementary was one of 10 lawsuits on the docket during its first year of operation.

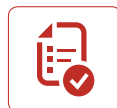
A one-year review by the Iowa Judicial Branch said, "Attracting 10 cases to the pilot project within the first year is a successful start."

Eight of the 10 business court cases met the threshold criterion of claims for damages of more than \$200,000, while five cases met the threshold criterion of seeking injunctive or declaratory relief. Cases must also meet at least one of several additional criteria to qualify for assignment to the business court. Seven cases involved disputed business transactions, such as breach of contract in the Hillside Elementary case, seven involved business tort claims, and six involved disputes regarding the internal affairs of a business.

The business court resulted from an effort launched by the Supreme Court in 2009 to make the judicial system operate more efficiently and, if possible, save costs. Task forces were created to examine a range of legal issues. Another result of that search for efficiency will take effect Jan. 1, when the court hopes to speed the resolution of cases involving up to \$75,000 in claims by establishing new rules for pretrial discovery processes. (See Expedited case rules p. 13)

To find judges for the business court, the Supreme Court said it would select judges based on their educational background, their judicial and trial practice experience in complex commercial cases, and their personal interest in the program.

Huppert said he sought the appointment. During his 15 years as a judge and during his time in private practice with the Patterson Law Firm, he gained considerable experience in business litigation.



CRITERIA FOR HAVING A CASE ACCEPTED IN THE IOWA BUSINESS SPECIALTY COURT PROGRAM

First, both sides of the case have to agree to have the case docketed before the business court. Eligible cases also must involve a claim for at least \$200,000 in compensatory damages or must seek primarily injunctive or declaratory relief. The case must also involve one or more of the following types of 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. Antitrust or securities
- i. Business tort claims between or among two or more business entities

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COVER STORY



BREAKDOWN OF THE FIRST 10 CASES IN THE BUSINESS COURT PROGRAM

Met these thresholds:	Number of cases
Damages over \$200,000	8
Injunctive or declaratory relief sought	5
And met one or more of these criteria:	
Technology licensing agreement	1
Internal affairs of a business	6
Business transactions	7
Shareholder derivative/commercial class action	1
Commercial bank transactions	1
Trade secrets, non-compete, confidentiality	2
Commercial real estate property	0
Antitrust or securities	0
Business tort claims	7



HOW MUCH TIME ARE THE JUDGES SPENDING ON CASES?

The three judges spent 471 hours working on the 10 cases, which is approximately 24 percent of a full-time-equivalent (FTE) judge. The actual number of judge hours per case ranged from 13.5 hours to 95 hours.

Judge Annette Scieszinski - spent 232 hours (12 percent of an FTE judge)

Judge Michael Huppert - spent 136 hours (7 percent of an FTE judge)

Judge John Telleen - spent 105 hours (5 percent of an FTE judge)

Note: Judge Telleen recused himself from cases involving his former law firm, Lane & Waterman LLP, of Davenport.

It is important that one judge handle such cases from beginning to end, he said. In Polk County, dockets are rotated every two years. In many rural counties, dockets can rotate every month, with multiple judges handling one case.

Trial attorneys praise the ability under the program to present a case to one judge, especially one who is familiar with issues such as shareholder rights, the way businesses run, the manner in which business disputes are resolved, patent infringement and trade secrets.

William Miller, an attorney with Dorsey & Whiteny LLP, said one of the two cases his firm has had in the business court was in a rural county, and could have had several judges considering motions if the case had not been assigned to the business docket.

Des Moines attorney Steve Wandro said experience goes a long way in moving complex cases through the process.

"I think it does help to have some experience," he said. "You have a quicker understanding of what's really going on."

For that reason, Wandro said, "I do want to get in front of it."

However, other attorneys have said their clients have not wanted to go before the business court because they have not wanted it to move through the system in a timely manner.

It is important to realize that business benefits from having cases heard from start to finish by the same judge, attorneys say.

"Anytime you can put in place a mechanism that allows business to have disputes resolved in a more efficient manner, that is big help because you can focus on building your business ... You can have your head in the boardroom instead of the courtroom," said Matt McKinney, an attorney with BrownWinick law firm in Des Moines.

Halley Van Loon, an attorney with BrownWinick, said another benefit of the business court that might spill over to the entire judicial system is its use of the equivalent of videoconferencing to bring all sides together when schedules might not allow for in-person meetings.

Business court cases also are heard by Judge Annette Scieszinski of the 8th Judicial District in southern Iowa and Judge John Telleen of the 7th Judicial District in eastern Iowa. The judges hear the cases in the counties in which they are scheduled, but because they also handle a full docket of civil and criminal cases, it can be more convenient to conduct meetings over a conference call.

Van Loon said the business court experiment with technology could result in it being used in other civil and criminal cases.

The Iowa Judicial Branch review of the program noted that it will have a better understanding of how attorneys are reacting to the program after more cases are entered.

Ed Remsburg of the Ahlers & Cooney P.C. law firm in Des Moines represented the West Des Moines Community School District in the Hillside Elementary lawsuit. He is a supporter of the business court program.

"Depending on how long a judge has been on the bench or what their practice was before becoming a judge, they might not have had significant experience with a case that had 15 parties," Remsburg said.

Huppert made himself available whenever the multiple defendants in the case had a scheduling conflict.

"He gave us prompt attention," Remsburg said. "It just worked out extremely well for all of the parties involved." ■



MEET THE JUDGES

Judge Michael Huppert was appointed to the 5th Judicial District bench in December 1999. Prior to his appointment, Huppert was a partner with the Patterson Law Firm in Des Moines, where he maintained a general civil litigation practice.

Judge Annette Scieszinski is a former Monroe County Attorney who has served 18 years as judge in the 8th Judicial District. She was in private practice for 15 years in Albia.

Judge John Telleen was appointed to the 7th Judicial District bench in 2011. Prior to that, he was in private practice with Lane & Waterman, LLP in Davenport, serving as an associate from 1984 through 1989 and a partner from 1990 until 2011. Telleen's primary practice area was civil litigation.



EXPEDITED CASE RULES GO INTO EFFECT JAN. 1

Under the expedited civil action rules, the case must be tried in one year or less, and the award is limited to \$75,000. Pretrial procedures are limited. At trial, the case will be heard by a six-person jury, and the attorneys on each side will have a six-hour limit to present the facts of the case.

Both sides are required to participate in a conference with each other shortly after the lawsuit is filed. After the conference, they are required to provide initial disclosures and a plan for the litigation. The initial disclosures must include identification of people with information about the case and copies of relevant documents. This is intended to avoid surprises and get basic information about the facts of the dispute out early.

Des Moines attorney Steve Wandro said the limits on discovery will help to save money because that process is the most expensive aspect of commercial litigation.

When the amount of recovery in some civil cases is no more than \$25,000 or \$30,000, "you have to talk about whether it's worth litigating," Wandro said.



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