

Delaware Supreme Court Issues Standing Order Cross-Designating the Superior Court's CCLD Panel to Serve as Vice Chancellors for Resolving Certain Commercial Disputes

Client Alert

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According to recent data, since 2017, the Delaware Court of Chancery's total case load (measured in filings) has seen a compound annual growth rate of nearly five percent. The Court of Chancery has also witnessed an increase in the number of expedited matters, with nearly 30 percent of the Court's current case load involving requests for expedition.

Contributing to the Court's increased case load is the number of actions that fall within the Court's statutory jurisdiction pursuant to 8 *Del. C.* § 111, but principally concern a classic breach of contract claim for which money damages are sought, i.e., cases that might otherwise fall within the exclusive jurisdiction of the Delaware Superior Court but for Section 111. A common example of such a case is a post-closing dispute arising under a stock purchase agreement or asset purchase agreement in which the form of relief concerns the release of an escrow, monetary indemnification or contract damages. Such disputes have typically involved working-capital disputes, disputes concerning post-closing adjustments, breaches of representations and warranties and breach of post-closing covenants.

To alleviate the increasing strain on the Court of Chancery, on February 23, 2023, the Delaware Supreme Court issued a Standing Order designating the five Superior Court judges who serve on that court's Complex Commercial Litigation Division (the Honorable Eric M. Davis, Paul R. Wallace, Abigail M. LeGrow, Sheldon K. Rennie, and Meghan A. Adams) as Vice Chancellors empowered to hear and resolve any case filed under Section 111, as selected by the Chancellor of the Court of Chancery and the President Judge of the Superior Court. The CCLD was formed in 2010 with the intent of creating a panel of judges with expertise in resolving complex commercial disputes. Cases assigned to the CCLD are given priority over other types of cases pending on the Superior Court's

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docket and the CCLD has adopted several standing orders and practices to facilitate the prompt and efficient resolution of business disputes. It has been reported that, since its formation, the number of cases filed in the CCLD has grown 142%. The Standing Order will remain in effect for a trial period of one year, and then will be reviewed by the Chief Justice, the Chancellor, and the President Judge as to whether the Standing Order should remain in effect and for how long.

The power to “special designate” a Superior Court judge as a Vice Chancellor, often referred to as “cross-designation,” resides in Article IV, Section 13 of Delaware’s Constitution. Under Article IV, the Chief Justice has the power to designate a judge sitting in one court to serve as a judge in another. Historically, special designations were made sparingly and only upon a proper showing that the criteria for a special designation had been met. Such requests were decided by the Chief Justice upon a written request by the administrative head of the relevant court (i.e., by the Chancellor or the President Judge). The Standing Order obviates the need to specifically request special designations in Section 111 cases, and we would expect such Section 111 cases to be assigned to the Superior Court’s CCLD panel with frequency this year. Notwithstanding the Supreme Court’s recent Standing Order, other instances in which a special designation might be appropriate should not be affected, and the traditional mode of requesting a special designation will remain the same.

Morris Nichols litigators routinely practice before the CCLD panel. This briefing is not intended to provide legal advice, and no legal or business decision should be based on its contents. If you have any questions about the contents of this briefing, please call your regular Morris Nichols partner or one of the contacts listed below.

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