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Commentary

Odd Man Out

New Jersey is surrounded by states that have seen the benefits of business courts

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In his classic 1982 song “Atlantic City,” Bruce Springsteen wrote:

“[E]verything dies, baby that’s a fact
But maybe everything that dies someday
comes back.”

It was prophetic that 21 years later in Atlantic City, the prospect of a business court in New Jersey was resurrected by Chief Justice Deborah Poritz. In her address to the New Jersey State Bar Association on May 23, 2003, Poritz announced that the Administrative Office of the Courts would expand a pilot business court program initiated in Essex County in 1993.

The expanded program is set to start in the Burlington, Mercer, Hudson and Ocean vicinages on Sept. 7. While the expansion is a good first step and will benefit the judiciary and business litigants, what is really needed is a

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statewide specialized business court. Such a program would attract businesses to the state by closing the gap, in the eyes of the business community, between the Garden State and neighboring jurisdictions that have created business courts in one form or another.

How will the pilot program help the judiciary and business litigants? Unlike the previous pilot programs in Essex and Bergen counties, the new plan will assign each designated complex commercial case to a general equity judge, experienced in commercial cases, who will receive enhanced training for the new responsibilities.

The program will allow complex commercial cases to be handled by judges experienced in similar matters and will free up overburdened Law Division judges. The program will place experienced jurists, familiar with the issues presented in the business context, in positions to more efficiently administer business disputes.

In contrast, the current system in New Jersey provides for the rotation of judges from civil matters to criminal matters to matrimonial matters, etc., which deprives judges of the opportunity to develop expertise.

Perhaps this is why, in a 1997 study on commercial case management by the Ad Hoc Committee on Business Courts, the committee chair, U.S. District Judge Stephen Orlofsky, wrote:

“The halcyon days of *laissez-faire* case management in complex commercial cases are long gone. ... Unless a program is created to deal with these cases, staffed by judges with commercial experience and appropriate technological support, such cases will languish and die a slow death on the already over-

burdened dockets of the Law Division.”

When New Jersey experimented with specialized business courts in Essex County in 1993, all commercial matters were assigned to one judge for management and trial.

Its success prompted New Jersey lawmakers to propose legislation in each of the past three legislative sessions that would have created a Business Division in the Superior Court. Unfortunately, each such piece of legislation died when the sessions ended, principally because there was no politically expedient way to fund the 12 new judgeships required by the legislation.

While the pilot program is a good start with potential benefits to the judiciary and business litigants, a statewide specialized court would create a more efficient forum for business disputes — a forum that would in turn make New Jersey a more attractive location for businesses.

One example is Delaware, nationally known for its business-friendly system, which receives about 20 percent of its annual revenue from nonresident businesses in the form of taxes and fees. Philadelphia also has successfully implemented a Commerce Case Management Program, patterned after New York’s Commercial Division and partially inspired by Delaware’s Chancery Court.

A business court in New Jersey would remove the disadvantage with neighboring states that have developed such business-friendly forums. And then as Bruce Springsteen predicted, maybe everything will someday come back, including more business to the state. ■