



COURT of OPINION

Commercial Pilot Showing Progress

By Tom Schuman

Commercial courts were established in Indiana in 2016 with a series of goals in mind. Midway through the current pilot project, an analysis finds early success in achieving some of those objectives with additional work needed to further expand efforts outside of central Indiana.

Indiana Chamber President and CEO Kevin Brinegar served on the task force that developed the commercial court pilot. *BizVoice*[®] first reported on the development of the courts, intended to effectively and efficiently solve business disputes, in the May-June 2016 edition. That story, which earned a national APEX (Association Publishing Excellence) award, is available in the archives at www.bizvoicemagazine.com.

Brinegar, in looking at the first 18 months of the pilot, says, “We are pleased that the Commercial Courts pilot project has been established and we hope that these courts are made permanent at the end of the pilot program. I’ve heard positive feedback from our members about having these courts available to move these more complex business cases forward to a resolution.”

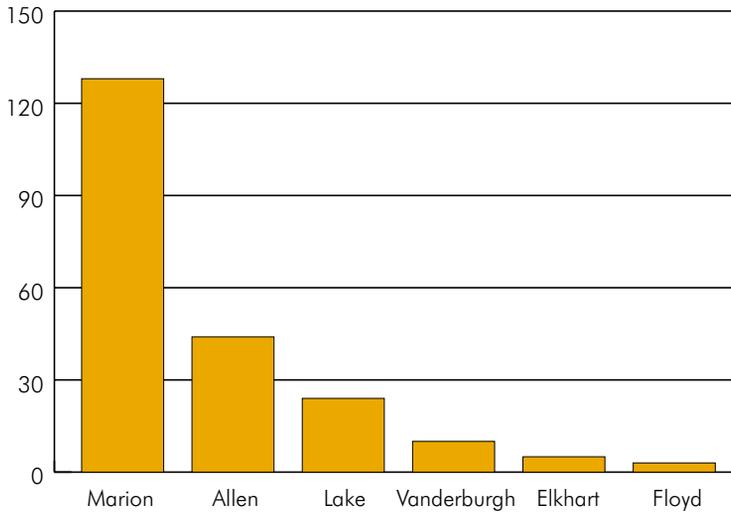
Of the 215 commercial court cases filed between June 1, 2016 and December 31, 2017:

- 128 were filed in Marion County, followed by 44 in Allen County. The other participating counties are Lake (24 cases), Vanderburgh (10), Elkhart (5) and Floyd (3)
- 163 of the cases involved breach of contract (see graphic)

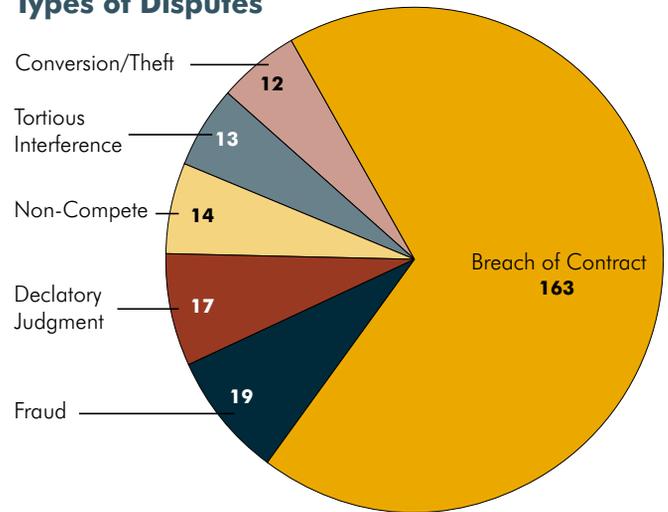
The Indiana Supreme Court defined five areas of emphasis for the commercial courts. They are listed below, followed by best practices that have emerged thus far to address those needs:

- 1. Establish judicial practices that help all court users by improving court efficiency.** *Report: Preliminary attorney conferences set court expectations on conduct during hearings and settle outstanding ancillary issues between parties to focus on substantive claims.*
- 2. Allow commercial disputes to be resolved efficiently with expertise and technology.** *Report: Appearance by conference call has tremendously assisted with the resolution of injunctive matters on several occasions. The commercial courts have been able to intelligently resolve discovery disputes by mandating the use of cutting-edge eDiscovery measures such as predictive coding to pare down an overwhelmingly voluminous number of records to a manageable and relevant pool.*
- 3. Enhance the accuracy, consistency and predictability of judicial decisions in commercial cases.** *Report: Commercial courts have been able to rely on prior research to assist in ruling on similar matters. In particular, the commercial courts have made great efforts in establishing when a business may be entitled to injunctive relief, when a defendant can fall under the personal jurisdiction of the Commercial Courts and how Indiana’s summary judgment and motion to dismiss standards will be applied to commercial disagreements.*
- 4. Enhance economic development in Indiana by furthering the efficient resolution of commercial law disputes.** *Report: The commercial courts issued orders on motions to dismiss in an average of 26.7 days, motions for preliminary injunction in 12.5 days and motions for summary judgment in 22 days. As the commercial courts continue to grow and improve efficiency, we can expect the turnaround time for non-first impression matters to similarly decrease.*

Cases Filed by County



Types of Disputes



5. Employ and encourage electronic information technologies, and early alternative ADR interventions. *Report: Commercial courts are expertly employing ADR (alternative dispute resolution) techniques to settle matters of employee non-compete and trade secret cases.*

Judges and attorneys have been pleased with the progress of the commercial courts. Some of their comments include:

Bryan S. Strawbridge, Frost Brown Todd attorney: “I think the court has been fantastic for commercial litigators – at least in Indianapolis and surrounding counties – so that we have more consistency. By litigating in the same court with the same staff more and more, we can counsel our clients on expected timelines (especially with regards to injunctions and exigent matters), and I encourage clients to take advantage of the commercial court whenever feasible.”



Allen County Superior Court Judge Craig Bobay: “As the commercial courts continue to gain momentum, and as the benefits from the specialization in this type of litigation become more well-known and obvious to the bar, we expect the business entities involved will also become more aware of the process and availability of expediting their cases via participation. The bar in northeast Indiana has been very supportive of the program. The support of the Indiana Supreme Court has been both essential and exceptional.”

Ryan M. Gardner, Beers Mallery Backs & Salin: “The Indiana commercial courts pilot project is a benefit to all commercial litigants. For my own clients, it has proven to be an efficient means to

resolve difficult litigation issues in a quick and efficient manner. With their (law clerk) hands-on assistance and guidance, my clients were able to reach an amicable resolution that otherwise would have taken many months and a great deal of expense to achieve. Again, it has been my experience that this project is a great benefit and tool to the legal community and business clientele.”

The Indiana Supreme Court has supported the pilot program by providing grants for law clerks. In addition to providing legal research and writing for the commercial court judges, these law clerks also are working on a Commercial Courts Benchbook that will be made available for all trial court judges who are dealing with complex business issues. The work of the law clerks is what permits the judges to issue a well-reasoned opinion in a quick fashion.

Marion County Superior Court Judge Heather Welch:

“With the assistance of Odyssey E-Filing and two full-time lawyers as law clerks, I have been able to schedule hearings quickly and issue substantive written opinions in a short time period, in some cases, within weeks of the case being filed. I believe for the above reasons the pilot project has been a success and think it will result in the development of reported decisions on issues that frequently arise in commercial cases.



“This will provide predictability that businesses require in operating their businesses and managing their litigation risks. I hope that a body of detailed decisions by the Indiana commercial courts on these recurring issues will enable businesses to make more informed decisions not just on litigation strategy but also in dealing with recurring issues affecting their business operations in a way that may help avoid litigation in the first place.”

RESOURCE: Learn more about Indiana commercial courts at www.in.gov/judiciary/iocs/2944.htm