

Complex Business Litigation Program (CBLP) Case Management Guidelines

Overview

The Complex Business Litigation Program (“CBLP” or “the Program”) is focused on business, commercial and construction cases with significant amounts in dispute or business or commercial cases involving complex factual or legal issues; a large number of separately represented parties; potential numerous pre-trial motions raising difficult or novel legal issues; case management of a large number of lay and expert witnesses or a substantial amount of documentary evidence (including electronically stored information); substantial time required to complete the trial; significant interpretation of a business, commercial or construction statute; or involves other contentions of a complex business, commercial or construction nature.

Eligibility

A case is assigned to the vicinage CBLP judge in the following situations:

Threshold Damages

The CBLP involves disputes with and between business entities where the claims, counterclaims, or third-party claims allege business, commercial or construction claims and an amount in controversy of at least \$200,000.00, unless the court determines a lesser amount is acceptable.

Self Designation

Attorneys or parties completing the Civil Case Information Statement will self-designate actions as Complex Commercial (Case Type 508) or Complex Construction (Case Type 513). These case types will presumptively be assigned to the vicinage’s CBLP judge for case management.

Complex Commercial (508) actions involve claims by, against, and among parties that arise out of business or commercial transactions and involve parties’ exposure to potentially significant damage awards; or where the business or commercial claim involves complex factual or legal issues; a large number of separately represented parties; potential numerous pre-trial motions raising difficult or novel legal issues; case management of a large number of lay and expert witnesses or a substantial amount of documentary evidence (including electronically stored information); substantial time required to complete the trial; significant interpretation of a business or commercial statute; or involves other contentions of a complex business - commercial nature.

Complex Construction (513) actions involve claims by, against, and among owners, contractors, subcontractors, fabricators and installers, architects, engineers, design and construction consultants, and other similar parties associated with a construction project that involves parties’ exposure to potentially significant damage awards because of claimed design and construction defects, delay claims, or where the construction claim involves complex factual or legal issues; a large number of separately represented parties; potential numerous pre-trial motions raising difficult or novel legal issues; case management of a large number of lay and expert witnesses or a substantial amount of documentary evidence (including electronically stored information); substantial time required to complete the trial. Complex construction does not include construction and professional payment and billing claims, change order claims, wrongful termination, quantum merit, construction lien or mechanics lien claims, unless associated with a complex construction claim as herein described.

Actions to establish a constructive trust or impose an equitable lien to satisfy damages are also cognizable in the CBLP, as are cases primarily seeking legal relief in which ancillary injunctive relief is sought. The CBLP encompasses both jury and non-jury matters.

CBLP judges handle cases arising from the following non-exclusive list of circumstances:

- non-consumer Uniform Commercial Code transactions;
- the purchase and sale of assets of businesses or assets of a business, including contract disputes and commercial landlord/tenant claims;
- non-consumer sales of goods or services by or to a business;
- non-consumer bank or brokerage accounts including loan, deposit, cash management, and investment accounts;
- purchase, sale, or lease of commercial personal property, or security interests therein;
- arising out of state securities laws;
- intellectual property disputes;
- business licensing agreement disputes;
- unfair competition disputes;
- sale, purchase of a business or purchase or sale of stock, assets or liabilities of a business;
- mergers and acquisitions disputes;
- franchisee/franchisor relationship and liabilities;
- business torts, including interference with prospective economic advantage, interference with contractual relations, tortious interference with business relationships, breach of implied covenant of good faith and fair dealing, fraud, fraud in the inducement, misrepresentation, and breach of fiduciary duty;
- liability or indemnity of managers (officers, directors, managers, trustees or members or partners functioning as managers) of corporations, partnerships, limited partnerships, limited liability companies or partnerships, professional associations, business trusts, joint ventures or other business enterprises;
- Racketeer Influenced and Corrupt Organizations Act (RICO) claims;
- complex commercial construction disputes;
- other complex disputes of a business or commercial nature.

The CBLP retains the law and equity separation that was recognized in the 1947 Constitution. It does not encroach on the cases traditionally heard in General Equity. The CBLP does not include matters involving:

- internal affairs or governance disputes over management and/or control of business entities;
- dissolution or liquidation rights or obligation between or among owners (shareholders, partner, members);
- statutory and custodial receivership or actions seeking the appointment of special fiscal agents;
- restructuring of a business entity;
- shareholder derivative suits;
- actions to protect the interests of a business, such as non-compete agreements, trade secrets or restrictive covenant agreements.

Also excluded from CBLP are actions primarily involving consumers, labor organizations, personal, physical or mental injury; mechanics' lien actions, and condemnation proceedings. Following is a non-inclusive list of actions that generally are not handled by CBLP judges and are handled by judges regularly assigned to the Law Division, Civil Part:

- class action consumer claims;
- products liability actions;
- personal injury and wrongful death actions;
- commercial landlord verses consumer tenant actions;
- noncommercial real estate matters actions;
- actions by consumers against a business and businesses against consumers;
- enforcement of arbitration awards;
- condemnation actions;
- landlord-tenant matters involving summary dispossession;
- employment Law Against Discrimination actions;
- civil rights actions;
- professional malpractice actions;
- medical device litigation and pharmaceutical litigation;
- Multicounty Litigation (mass tort);
- environmental litigation including environmental insurance coverage actions;
- Conscientious Employee Protection Act actions;
- agreements relating to an individual or collective contract of employment;
- wrongful discharge actions;
- slander of title or product disparagement actions;
- fraudulent transfers under the Uniform Fraudulent Transfers Act;
- consumer residential construction actions.

Opt-In Motion

Parties may formally move before the CBLP judge for inclusion in the Program where a case is not presumptively assigned to the CBLP but involves complex business related issues and/or the amount in controversy is less than \$200,000. Business or commercial disputes that involve complex factual or legal issues; a large number of parties; discovery issues such as managing large numbers of documents, multiple experts; is likely to have implications for business beyond the decision in the particular case; is likely to result in a significant interpretation of a business or commercial statute; or involves other contentions that the CBLP judge finds compelling may be assigned to the Complex Business Litigation Program. Such motions shall be granted for good cause shown.

Complex Business Litigation Assignment Recommendation

If, upon review, the Assignment Judge or the CBLP judge determines a case is appropriate for the CBLP, the judge may, *sua sponte*, assign it to the CBLP.

Exclusion from CBLP

Initial Case Review

The CBLP judge will review actions presumptively assigned to the CBLP to determine if the case is appropriate for the CBLP. If, after review, the CBLP judge determines that the complex nature of the action or the threshold damages claim amount is not established, the CBLP judge shall remove the case from the Program. The Assignment Judge may also conduct initial CBLP eligibility reviews. Cases removed from the CBLP by the Assignment Judge or the CBLP judge will be reassigned to the appropriate track for case management.

Motion for Removal from the Program

Any party may move for removal from the CBLP on the grounds that the action does not meet the eligibility criteria.

Guidelines

Assignment of Judges

CBLP cases are assigned to a single judge that handles all aspects of the case, including discovery disputes, summary judgment and other motions, and trial.

Court Rules

Cases assigned to the CBLP are governed by Part IV, Chapter XI (“Complex Commercial & Complex Construction Matters”) of the New Jersey Rules of Court. Absent an express contradictory rule contained in Chapter XI, Parts I and IV of the Court Rules shall otherwise apply to any case in the CBLP.

Pre-Case Management Conference Activity

Initial conference preparation is required pursuant to *Rules* 4:103-1 and 4:103-2, comparable to Federal Rule of Civil Procedure 26, to require attorneys to both meet with their clients as well as each other before a meeting with a judge.

The initial meetings between counsel and their clients will provide an understanding of the potential data and information at issue and the time required to accomplish full discovery. In conferring with counsel, attorneys should prepare a Joint Discovery Plan for all discovery as well as an Electronic Discovery Plan, both of which are to be provided to the Court in advance of the Initial Conference. Counsel should also advise the Court of any unresolved discovery issues.

Electronic discovery (eDiscovery): the attorneys should meet and confer to discuss form, scope preservation/destruction, and expense of production; method for asserting or preserving claims of privilege or of protection; confidentiality; and any other electronic discovery issues. The Electronic Discovery Plan should set forth the parties’ agreements as to all eDiscovery.

Initial Conferences

The case will be scheduled for an Initial Conference with the CLBP Judge¹. At that Conference, counsel will meet with the Judge/other court representative to discuss assignment and scheduling of the case. If it is determined that it should not be in the CBLP, the case may be removed at that time. If the case remains in the CBLP, a comprehensive Scheduling Order, setting forth all discovery deadlines, will be entered at that time.

¹ Should the need arise, the utilization of other judicial staff such as law clerks and/or a designated statewide case manager should be considered for overseeing/conducting certain conferences for CBLP cases.

Model Stipulations/Orders

The CBLP Internet website has the following model case management, discovery and protective orders:

- Joint Proposed Discovery Plan;
- Discovery Confidentiality Order (Appendix XXX to the Rules of Court);
- Clawback Stipulation and Order;
- Electronic Discovery Stipulation and Order; and
- Scheduling Order.

Contacting Chambers

At the time of the Initial Conference, the CBLP Judge should advise the parties the appropriate method(s) (phone, letter, email) and bases for contacting chambers. The CBLP Judge should also advise whether joint submissions will be required.

Case Management/Status Conferences

As needed/requested by the parties (within reason). There, the parties will report their discovery progress and address any issues. Prior to such a conference a joint letter should be sent to the Court advising of the status of the case and the issues to be discussed at the Conference.

Discovery and Motions

The Supreme Court has approved Court Rules to govern cases in the Program. Some aspects of discovery and motions in CBLP cases will be handled differently than other civil matters.

Discovery

See *Rules* 4:104-1 through 4:104-9, which provide the timing, limits and confidentiality of discovery in CBLP matters. The Rules also address discovery disputes (*R.* 4:105-4). The parties should first “meet and confer” to try to resolve the issues. If an agreement cannot be reached, counsel should submit a letter to the court explaining the basis for the motion and requesting a telephone or in-court conference before the motion is made. The Rule provides a process to resolve the dispute if not resolved by the court conference.

Motions

See *Rules* 4:105-1 through 4:105-9. These Rules seek to streamline and facilitate the motion practice while also addressing the complexity and need for ease and flexibility of litigants to seek and to obtain extensions. Discovery disputes should be handled as noted above and the Dispositive Motion schedule should be set forth in Joint Proposed Discovery Plan.

Settlement and CDR

Any settlement conferences will be held at the CBLP judge’s discretion. The CBLP judge will also advise whether a settlement conference memorandum is necessary as well as any content and formatting requirements.

CBLP cases are not part of the court’s mandatory civil mediation and arbitration programs. However, the CBLP judge in each vicinage, as part of case management, should encourage the parties to engage in mediation or some type of dispute resolution to facilitate settlement.

Pre-trial and Trial

All CBLP actions shall be pretried and the requirements of *Rule* 4:25 shall apply to the final pretrial conference, which should lead to the formulation of a trial plan, including a plan to facilitate the admission of evidence. With regard to trial exhibits, parties should prepare and submit Joint Exhibits to eliminate redundancy (it does not mean the parties are stipulating to its admissibility).