

**PRACTICE BEFORE THE NORTH CAROLINA
BUSINESS COURT
(HOW TO GET THERE)**

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While parties and counsel refer to the “North Carolina Business Court,” this shorthand reference can be confusing and potentially misleading to those unfamiliar with the Court and its procedures. Technically speaking, the North Carolina Business Court comprises three special Superior Court Judges designated by the Chief Justice pursuant to G.S. §7A-45.3 to hear complex business cases. The Section provides:

The Chief Justice may exercise the authority under rules of practice prescribed pursuant to G.S. 7A-3.4 to designate one or more of the special superior court judges authorized by G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice. Any judge so designated shall be known as a Business Court Judge and shall preside in the Business Court. If there is more than one business court judge, the Chief Justice may designate one of them as the Senior Business Court Judge. If there is no designation by the Chief Justice, the judge with the longest term of service on the court shall serve as Senior Business Court Judge until the Chief Justice makes an appointment to the position.

G.S. §7A-45.3. Even when a case is “assigned to the Business Court,” it remains pending in the county in which it originally was filed. Moreover, all “Business Court cases” are commenced by filing a complaint (or summons without complaint) in Superior Court in one of the 100 counties in North Carolina.

From 1996 (when it was created) until 2005, the Business Court has had one judge (Judge Tennille). On September 23, 2005, however, by the enactment of Section 7A-45.3, the General Assembly authorized the Chief Justice to designate additional Business Court Judges. Pursuant to that authority, the Chief Justice has designated Judge Diaz and Judge Jolly as the two newest members of the Court. In addition to “expanding” the Business Court in this manner, the General Assembly radically altered the procedures pursuant to which cases are assigned to the Business Court.

Prior to January 1, 2006, Rule 2.1 of the General Rules of Practice provided the only authority pursuant to which a case could be assigned to a Business Court Judge (and thereby to the “Business Court”). Rule 2.1 provides:

The Chief Justice may designate any case or group of cases as (a) exceptional or (b) “complex business.” A senior resident superior court, chief district court judge, or presiding superior court judge may ex mero motu, or on motion of any party, recommend to the Chief Justice that a case or cases be designated as exceptional or complex business.

Until the General Assembly modified the statutory scheme on September 23, 2005 (effective January 1, 2006), to have a case assigned to a Business Court Judge, the parties had to make a motion pursuant to Rule 2.1 and present it to a Superior Court Judge

(normally the Senior Resident Superior Court Judge) in the county in which the case had been filed. The Senior Resident Superior Court Judge would then enter a “Recommendation” for designation of the action as a complex business case. The motion and Recommendation would then be submitted to the Chief Justice (in care of the Administrative Office of the Courts). Copies of typical filings and transmittal letters to accomplish such an assignment are attached as Addendum A to this manuscript.¹

On September 23, 2005, in the same Act authorizing the designation of additional Business Court Judges, the General Assembly passed G.S. §7A-45.4, which alters the historical Rule 2.1 procedure for certain “Mandatory Complex Business Cases.” A copy of the statute is reproduced in full as Addendum B. Essentially, Section 7A-45.4 allows any party to an action, by filing a “Notice of Designation,” to obtain an “automatic” assignment of an action to the Business Court if it “involves a material issue related to”

1. The law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, limited liability companies and limited liability partnerships, including issues concerning governance, involuntary dissolution of a corporation, merges and acquisitions, breach of duty of directors, election or removal of directors, enforcement or interpretation of shareholder agreements, and derivative actions.
2. Securities law, including proxy disputes and tender offer disputes.
3. Antitrust law, except claims based solely on unfair competition under G.S. 75-1.1.
4. State trademark or unfair competition law, except claims based solely on unfair competition under G.S. 75-1.1.
5. Intellectual property law, including software licensing disputes.
6. The Internet, electronic commerce, and biotechnology.

The material issue need not arise as a cause of action or claim for relief in the complaint; the issue can be a defense or arise under any pleading.

¹ Rule 2.1 also contemplates that “exceptional” cases (a different category than “complex business” cases) can be specially assigned to any Superior Court Judge. The amendments do not affect this portion of the Rule in any respect.

Some background explanation concerning the perceived need for this statute and the thought process behind the way it was drafted help explain how the statute “works.” When the Business Court was first created in 1996, largely through the efforts of the North Carolina Commission on Business Laws and the Economy, the members of the Commission had to balance various constitutional, political, statutory and practical considerations in determining how best to organize the Court. For various reasons, the Commission recommended that the Business Court be formed through statutory amendments and amendments to Rule 2.1 of the General Rules of Practice. The members of the Commission recognized that the process of assigning a case to the Business Court Judge pursuant to Rule 2.1 might be cumbersome in certain respects, but no better, feasible options were then available.²

When SunTrust Banks, Inc. (“SunTrust”) launched a hostile bid for Wachovia Corporation (“Wachovia”) in an attempt to break up its merger with First Union Corporation (“First Union”) in April of 2001, the shortcomings of the rules and procedures for assignment of cases to the Business Court became problematic. The parties in the action commenced by First Union in Mecklenburg County Superior Court filed 359 pages of pleadings in nine days and finished a major forum fight before the case could be assigned to the Business Court.

On the afternoon of May 22, 2001, First Union filed suit in Mecklenburg County Superior Court against SunTrust shortly after Wachovia’s board started its meeting to consider SunTrust’s proposal to merge with Wachovia. The next morning, when the Courthouse opened, First Union filed an amended complaint in which Wachovia joined the action as a co-plaintiff. Less than an hour later, SunTrust sued both Wachovia and First Union in the Superior Court of Fulton County, Georgia. SunTrust immediately moved to consolidate its Georgia action with a previously filed shareholder suit in Georgia and asked for a hearing in Georgia. Anticipating a classic “forum fight,” First Union and Wachovia obtained a TRO on May 24 from Judge Robert Johnston, prohibiting SunTrust from moving forward with its second-filed action in Georgia. Aware that the TRO would expire in ten days and that 28 U.S.C. § 2283 (the Anti-Injunction Act) would likely prevent a Federal District Court from entering a preliminary injunction, SunTrust removed the Mecklenburg County action to United States District Court. After extensive briefing and an emergency hearing, Judge Lacy Thornburg granted the motion to remand filed by First Union and Wachovia on May 30. The Superior Court set a hearing on the motion for preliminary injunction for June 1. SunTrust “threw in the towel” on the forum fight and agreed during the night of May 31/June 1 to have the Business Court hear the First Union/Wachovia/SunTrust case.

² The author assisted Russell Robinson from time to time in connection with Mr. Robinson’s service on the various Commissions referenced in the text, and much of the information in the text is drawn from personal knowledge and direct or indirect participation in the matters discussed.

The above-described forum fight took place before the First Union/Wachovia/SunTrust case was assigned to the Business Court because, under the rules and procedures in effect prior to January 1 of this year, Wachovia and First Union had no viable way to quickly “move” the case to that Court. Rule 2.1 envisions a certain degree of cooperation among counsel that was not present (to say the least) in the litigation. While Judge Johnston handled the matter wonderfully with no prejudice to any of the litigants, the process hardly seemed optimal.

In addition, over a dozen “strike suit plaintiffs” filed actions challenging the merger, and the process of having each of those cases assigned to the Business Court (and consolidated with the main action in which SunTrust was asserting its counterclaims challenging the “deal protection” provisions in the merger agreement that would have required SunTrust to pay \$600 million if it merged with Wachovia) became extremely time consuming and frustrating. Counsel for Wachovia and First Union had to make submissions to (and in many instances appearing before) Senior Resident Superior Court Judges in various counties around the state in order to obtain assignments of the cases to the Business Court. In some instances, the plaintiffs opposed the assignment, which was problematic in various respects.

When the Chief Justice appointed a new Commission on the Future of the North Carolina Business Court in 2004, the Jurisdiction Subcommittee of the Commission was assigned the task of developing revisions to the procedures for assignment of cases to the Business Court. Section 7A-45.4 was the result of the Subcommittee’s work (with some tweaks by the General Assembly) and reflects input from Justice Martin (who chaired the Commission), Judge Tennille, Senator Dan Clodfelter, and a number of different lawyers around the state, including several not on the Subcommittee.

In revising the rules and procedures, the Subcommittee quickly decided to adopt a process similar to the one set forth under 28 U.S.C § 1441 for removing civil actions from state to federal court. The Subcommittee wanted to structure a statute that would allow any party (acting unilaterally, quickly, and without any requirement that the issue be presented to the Senior Resident Superior Court Judge in the county in which the case was pending), by filing a notice, to “move” certain kinds of actions to the Business Court. In attempting to define the type of actions that would fall within the definition of a “mandatory complex business case,” however, the Subcommittee quickly recognized that achieving a precise definition would be both elusive and perhaps counterproductive. Issues appropriate for Business Court resolution could arise in the complaint, a counterclaim, or a defense. Moreover, the amount in dispute, the novelty of the issues, the location of the parties, and numerous other factors could be relevant when picking cases for the Court. (Like obscenity, cases appropriate for Business Court resolution are apparently easy to identify, but hard to define.) Thus, the Subcommittee decided to suggest a broad statute and to build into the statute the ability for the Chief Justice or a

Business Court Judge to “kick the case back” to the normal Superior Court track that, even though technically within the statutory definition of “mandatory” jurisdiction, truly would not be suitable for the Business Court.

The statute specifically provides that any party to the action may designate a case as a Mandatory Complex Business Case by filing a Notice of Designation in the Superior Court where the action has been filed and simultaneously serving a copy of the Notice on all parties, the Senior Special Superior Court Judge for Complex Business Cases (Judge Tennille) and the Chief Justice (contemporaneously by email or facsimile transmission). The Notice of Designation must set forth the basis for the designation (based on information reasonably available in good faith) and include a certificate that the action meets the criteria for designation. The statute contemplates that the Notice will include several paragraphs explaining why the case should be both assigned to and retained in the Business Court. Thus, the kind of recitations set forth in the “old style” motion attached as part of Addendum A remain appropriate for the Notice of Designation. In fact, more detailed and specific information addressing the factors noted above might be prudent and helpful to the Courts. These recitals will allow the Chief Justice or Business Court Judge to decide on his or her own motion whether to retain the case.

Note that the Notice must be filed by the plaintiff or third-party plaintiff contemporaneously with the filing of a complaint, by an intervener when it files a motion for permission to intervene, and by any defendant within 30 days after receipt of service of a pleading seeking relief from that defendant. Any party, within 30 days after service of the Notice of Designation, may contest the designation and move for a “remand.”

Some issues remain to be worked out concerning the new statute, and the Business Court Rules Committee is in the process of revising the Business Court Rules and drafting a form to be used for designation of actions pursuant thereto. (A preliminary draft of that form not yet presented to the Committee is attached as Addendum C.) The new statute nevertheless represents a giant leap forward in Business Court practice and procedure in North Carolina. Presumably, as the Court and litigants gain experience with the type of cases that fall within (and without) the listing of mandatory cases in §7A-45.4(a), the statutory listing can be revised and refined.

Finally, note that the procedure set forth in the new statute is not exclusive, and cases may still be assigned to a Business Court Judge pursuant to the “old” Rule 2.1 procedure in the event that such assignment would be appropriate (or in the event that the parties miss the deadlines in the statute).³

³ The Court’s website, www.ncbusinesscourt.net, has quite a bit of information on the history of the Court and about practice before the Court. Copies of the Court’s Rules are available on the website, as are the Court’s opinions and copies of pleadings in active cases.

ADDENDUM A

ROBINSON BRADSHAW & HINSON

ROBERT W. FULLER
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DATE

Hon. William D. Albright
Senior Resident Superior Court Judge
Guilford County Superior Court
201 S. Eugene Street
New Courthouse, U-50
Greensboro, NC 27402

Re: *Seashore Investment Group and Meaghan Suprina v. William Porter Paine, David A. Stonecipher, Isaiah Tidwell, William H. Cunningham, Robert G. Greer, Elizabeth Valk Long, Donald S. Russell, Jr., Dennis R. Glass, George W. Henderson, III, Patrick S. Pittard, Jefferson-Pilot Corporation and Lincoln National Corp.*
Civil Action No. 05-CVS-10724

Dear Judge Albright:

We represent the individual defendants (each of whom are members of the Jefferson-Pilot Board of Directors) in the above-referenced action. On behalf of all parties in the action, we are submitting to Your Honor a Consent Motion and Proposed Recommendation for the action to be assigned to one of the Special Superior Court Judges for Complex Business Cases. We are also enclosing a stamped, self-addressed envelope for the convenience of your assistant.

If the enclosed are acceptable to Your Honor, we will greatly appreciate it if you will ask your assistant to return the recommendation to us in the envelope provided, and we will supply it to the Chief Justice through the Administrative Office of the Courts. If Your Honor has any questions or reservations about the request, we would welcome the opportunity for all counsel to meet with Your Honor in Chambers about the matter.

Attorneys at Law

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Hon. William D. Albright
DATE
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Sincerely,

ROBINSON, BRADSHAW & HINSON, P.A.

Robert W. Fuller

RWF/jo
Enclosure
cc (w/enc.): S. Ranchor Harris, III
Edward Avery Wyatt
M. Robert Thornton
B. Warren Pope
Michael Cates
John H. Culver, III

companies. JP and LNC are publicly-traded corporations with their shares listed on the New York Stock Exchange.

2. Plaintiffs allege that they are shareholders of JP and seek to assert claims on behalf of themselves and a class of other JP shareholders. Plaintiffs allege that the individual defendants, as directors of JP, breached their statutory or fiduciary duties by (i) approving the merger agreement with LNC at an adequate price, (ii) including provisions in the merger agreement that the plaintiffs contend are objectionable, including a \$300 million termination fee, and (iii) failing to do a “market check” or otherwise take steps to obtain the highest and best price for the JP shareholders.

3. The defendants believe the Complaint is wholly without merit and anticipate contending that it fails to state a claim, is founded on fundamentally flawed factual misinformation and speculation, and should be dismissed. For example, the individual defendants plan to contend that they thoroughly investigated JP’s various strategic business options, including the option to remain independent, and that they approved the merger agreement with LNC after determining that the merger presented the best opportunity for enhancement of JP shareholder value. They also plan to contend that the termination fee and other provisions in the merger agreement that the plaintiffs find objectionable were included to protect the interests of JP’s shareholders.

4. Putting aside their different views of the case, all parties jointly request that this action be assigned to a Special Superior Court Judge for complex business cases

under Rule 2.1 of the General Rules of Practice (referred to herein as assignment to the “Business Court”). The Business Court was organized to facilitate the development of North Carolina corporate law and to provide published decisions on issues arising under Chapter 55 of the General Statutes for the benefit of the bar and the public. The issues that the plaintiffs seek to present to the Court arise under Chapter 55, with specific focus on the statutory duties of directors of public companies and the manner in which such duties can or should be discharged. (Plaintiffs also contend that certain issues may arise under common law.) These are issues of significant importance in the development of North Carolina corporate law. The commentary to Rule 2.2 specifically states that “It is anticipated that any case involving significant issues arising under Chapters 55, 55B, 57C, 78A, 78B, or 78C of the General Statutes of North Carolina would be designated a complex business case.” Accordingly, designation of this action as a complex business case is consistent with the purpose for the Business Court, as is illustrated by the commentary to Rule 2.2.

5. Designation of this action as a complex business case is also consistent with the Memorandum from Chief Justice I. Beverly Lake, Jr., regarding Guidelines for Assignment of Cases to the North Carolina Business Court. In the Memorandum, the Chief Justice identifies “corporate governance disputes” and “class actions” – both applicable here – as ideal for designation as complex business cases.

6. The Business Court has developed special expertise and facility with the issues presented here and has addressed issues similar to those presented here, involving the proposed merger of publicly-traded companies, in the past. *See, e.g., Marcoux v. Prim*, C.A. No. 04-CVS-920, 2004 NCBC LEXIS 4 (April 16, 2004) (regarding proposed merger of Blue Rhino Corporation and Ferrellgas Partners, L.P.); *First Union Corp. v. SunTrust Banks, Inc.*, Consol. C.A. No. 01-CVS-4486, 2001 NCBC LEXIS 7 (Aug. 10, 2001) (regarding proposed merger of First Union and Wachovia Croproation). This action, like *Marcoux* and *First Union Corp.*, presents precisely the type of issues that the Business Court was organized to handle.

7. Rule 2.1(d) lists the following factors that militate in favor of designation of this action as a complex business case:

the number and diverse interests of the parties; the amount and nature of anticipated pretrial discovery and motions; whether the parties voluntarily agree to waive venue for hearing pretrial motions; the complexity of the evidentiary matters and legal issues involved; whether it will promote the efficient administration of justice; and such other matters as the Chief Justice shall deem appropriate.

All parties have agreed to waive venue for hearing of pretrial motions, so all these factors weigh heavily in favor of assignment of this action to the Business Court.

8. The General Assembly recently enacted G.S. §7A-45.4, pursuant to which this action would presumptively be assigned to the Business Court. The statute does not become effective until January 1, 2006, so the parties are seeking assignment of this action to the Business Court under the traditional Rule 2.1 process and procedure.

WHEREFORE, for the foregoing reasons, the parties respectfully request that the Court petition and recommend that the Chief Justice of the North Carolina Supreme Court issue an Order designating this matter as a complex business case to be assigned to a Special Superior Court Judge for complex business cases.

This is the ____ day of December, 2005.

S. Ranchor Harris, III, Esq.

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Attorneys for Jefferson-Pilot Corporation

Of Counsel:

M. Robert Thornton
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B. Warren Pope
Georgia Bar No. 583723
Michael Cates
Georgia Bar No. 116356

The Court makes this recommendation based upon the following findings:

1. On October 10, 2005, defendants Jefferson Pilot Corporation (“JP”) and Lincoln National Corporation (“LNC”) announced a planned merger of the two companies. JP and LNC are publicly-traded corporations with their shares listed on the New York Stock Exchange.

2. Plaintiffs allege that they are shareholders of JP and seek to assert claims on behalf of themselves and a class of other JP shareholders. Plaintiffs claim that the individual defendants, all of whom are directors of JP, allegedly breached their statutory or fiduciary duties by (i) approving the merger agreement with LNC at an inadequate price, (ii) including provisions in the merger agreement that the plaintiffs contend are objectionable, including a \$300 million termination fee, and (iii) failing to do a “market check” or otherwise take steps to obtain the highest and best price for the JP shareholders.

3. The defendants categorically deny the material allegations of the Complaint and will contend that it fails to state a claim, is founded on fundamentally flawed factual misinformation and speculation, and should be dismissed. For example, the individual defendants contend that they thoroughly investigated JP’s various strategic business options, including the option to remain independent, and that they approved into the merger agreement with LNC in order to enhance JP shareholder value. They contend that the termination fee and other provisions in the merger agreement the plaintiffs find objectionable were included to protect the interests of JP and its shareholders.

4. The issues that the plaintiffs seek to present to the Court arise under Chapter 55, with specific focus on the statutory duties of directors of public companies and the manner in which such duties can or should be discharged. (Plaintiffs also contend that certain issues may arise under common law.) These are issues of significant importance in the development of North Carolina corporate law. The commentary to Rule 2.2 specifically states that “It is anticipated that any case involving significant issues arising under Chapters 55, 55B, 57C, 78A, 78B, or 78C of the General Statutes of North Carolina would be designated a complex business case.” Accordingly, designation of this action as a complex business case is consistent with the purpose for the Business Court, as is illustrated by the commentary to Rule 2.2.

5. Designation of this action as a complex business case is also consistent with the Memorandum from Chief Justice I. Beverly Lake, Jr., regarding Guidelines for Assignment of Cases to the North Carolina Business Court. In the Memorandum, the Chief Justice identifies “corporate governance disputes” and “class actions” – both applicable here – as ideal for designation as complex business cases.

6. The Business Court has developed special expertise and facility with the issues presented here and has addressed issues similar to those presented here, involving the proposed merger of publicly traded companies, in the past. *See, e.g., Marcoux v. Prim*, C.A. No. 04-CVS-920, 2004 NCBC LEXIS 4 (April 16, 2004) (regarding proposed merger of Blue Rhino Corporation and Ferrellgas Partners, L.P.); *First Union Corp. v.*

SunTrust Banks, Inc., Consol. C.A. No. 01-CVS-4486, 2001 NCBC LEXIS 7 (Aug. 10, 2001) (regarding proposed merger of First Union and Wachovia Corporation). This action, like *Marcoux* and *First Union Corp.*, presents precisely the type of issues that the Business Court was organized to handle.

7. Rule 2.1(d) lists the following factors that militate in favor of designation of this action as a complex business case:

the number and diverse interests of the parties; the amount and nature of anticipated pretrial discovery and motions; whether the parties voluntarily agree to waive venue for hearing pretrial motions; the complexity of the evidentiary matters and legal issues involved; whether it will promote the efficient administration of justice; and such other matters as the Chief Justice shall deem appropriate.

The parties have waived venue for purposes of hearing pretrial motions, so these factors weigh heavily in favor of assignment of this action to the Business Court.

8. The General Assembly recently enacted G.S. § 7A-45.4, pursuant to which this action would presumptively be transferred to the Business Court. The statute does not become effective until January 1, 2006, so the parties are seeking assignment of this action to the Business Court under the traditional Rule 2.1 process and procedure.

IT IS THEREFORE RECOMMENDED to the Chief Justice of the North Carolina Supreme Court that this action be designated as a “complex business case” pursuant to Rule 2.1 of the General Rules of Practice.

IT IS ORDERED that the parties shall communicate this Recommendation to the Chief Justice through the Administrative Office of the Courts.

This the ___ day of _____, 2005.

Honorable W. Douglas Albright
Senior Resident Superior Court Judge

ROBINSON BRADSHAW & HINSON

ROBERT W. FULLER
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DATE

VIA FEDERAL EXPRESS

Chief Justice I. Beverly Lake, Jr.
c/o Mr. David F. Hoke
Assistant Director
Administrative Office of the Courts
Justice Building
Post Office Box 2448
Raleigh, NC 27602

Re: *Seashore Investment Group and Meaghan Suprina v. William Porter Paine, David A. Stonecipher, Isaiah Tidwell, William H. Cunningham, Robert G. Greer, Elizabeth Valk Long, Donald S. Russell, Jr., Dennis R. Glass, George W. Henderson, III, Patrick S. Pittard, Jefferson-Pilot Corporation and Lincoln National Corp.*
Civil Action No. 05-CVS-10724

Dear Chief Justice Lake:

We represent the individual defendants in the above-referenced action. Enclosed please find a Joint Motion to designate the action as a complex business case in accordance with Rule 2.1 and Judge Albright's Recommendation in favor of such designation. In addition, for your convenient reference, we are enclosing a copy of the Complaint in the action. (Except for motions to enlarge time, no other pleadings have been filed.)

As a courtesy to Judge Albright, we offered to forward the enclosed to Your Honor's attention. We are also providing a courtesy copy of this letter and the enclosures to Judge Tennille.

Thank you for your consideration of this matter.

Attorneys at Law

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Chief Justice I. Beverly Lake, Jr.

DATE

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Sincerely,

ROBINSON, BRADSHAW & HINSON, P.A.

Robert W. Fuller

RWF/jo

Enclosure

cc (w/enc.): All Counsel of Record
Hon. Ben F. Tennille
Hon. William D. Albright

ADDENDUM B

§ 7A-45.4. Designation of mandatory complex business cases

(a) A mandatory complex business case is an action that involves a material issue related to:

- (1) The law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, limited liability companies, and limited liability partnerships, including issues concerning governance, involuntary dissolution of a corporation, mergers and acquisitions, breach of duty of directors, election or removal of directors, enforcement or interpretation of shareholder agreements, and derivative actions.
- (2) Securities law, including proxy disputes and tender offer disputes.
- (3) Antitrust law, except claims based solely on unfair competition under G.S. 75-1.1.
- (4) State trademark or unfair competition law, except claims based solely on unfair competition under G.S. 75-1.1.
- (5) Intellectual property law, including software licensing disputes.
- (6) The Internet, electronic commerce, and biotechnology.

(b) Any party may designate a civil action as a mandatory complex business case by filing a Notice of Designation in the Superior Court in which the action has been filed and simultaneously serving the notice on each opposing party or counsel and on the Special Superior Court Judge for Complex Business Cases who is then the senior Business Court Judge. A copy of the notice shall also be sent contemporaneously by e-mail or facsimile transmission to the Chief Justice of the Supreme Court for approval of the designation of the action as a mandatory complex business case and assignment to a specific Business Court Judge.

(c) The Notice of Designation shall, in good faith and based on information reasonably available, succinctly state the basis of the designation and include a certificate by or on behalf of the designating party that the civil action meets the criteria for designation as a mandatory complex business case pursuant to subsection (a) of this section.

(d) The Notice of Designation shall be filed:

- (1) By the plaintiff or third-party plaintiff contemporaneously with the filing of the complaint or third-party complaint in the action.
- (2) By any intervenor when the intervenor files a motion for permission to intervene in the action.
- (3) By any defendant or any other party within 30 days of receipt of service of the pleading seeking relief from the defendant or party.

(e) Within 30 days after service of the Notice of Designation, any other party may, in good faith, file and serve an opposition to the designation of the action as a mandatory business case. Based on the opposition or ex mero motu, the Business Court Judge may determine that the action should not be designated as a mandatory complex business case. If a party disagrees with the decision, the party may appeal to the Chief Justice of the Supreme Court.

(f) Once a designation is filed under subsection (d) of this section, and after preliminary approval by the Chief Justice, a case shall be designated and administered a complex business case. All proceedings in the action shall be before the Business Court Judge to whom it has been assigned unless and until an order has been entered under subsection (e) of this section ordering that the case not be designated a mandatory complex business case or the Chief Justice revokes approval. If complex business case status is revoked or denied, the action shall be treated as any other civil action, unless it is designated as an exceptional civil case or a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

S.L. 2005-425, § 4, provides:

"Sections 1.1 and 1.2 of this act become effective January 1, 2006, and apply to fees assessed or collected on or after that date. Section 2 becomes effective January 1, 2006, and applies to cases filed on or after that date. Sections 3.1 and 3.2 of this act are effective when they become law. Judges elected in 2006 and thereafter take office accordingly, and as provided by Section 10 of Article VI of the North Carolina Constitution and G.S. § 128- 7, those in office on the first Monday in December of 2006 or 2008 shall continue until their successors' terms begin and are duly qualified."

ADDENDUM C

STATE OF NORTH CAROLINA
COUNTY OF

IN THE GENERAL COURT OF JUSTICE
COURT DIVISION
CIVIL ACTION NO:

John Doe,

Plaintiff,

v.

ABC Corporation,

Defendant.

NOTICE OF DESIGNATION OF ACTION
AS MANDATORY COMPLEX BUSINESS
CASE UNDER G.S. § 7A-45.4

Pursuant to N.C.G.S. §7A-45.4, (insert name of party) hereby designates the above-captioned action as a mandatory complex business case. In good faith and based on information reasonably available, (insert name of party) , through counsel, hereby certifies that this action meets the following criteria for designation as a mandatory complex business case pursuant to N.C.G.S. §7A-45.4(a), and should be adjudicated in the Business Court:

- (1) The law governing corporations, partnerships, limited liability companies, and limited liability partnerships.
- (2) Securities law.
- (3) Antitrust law, except claims based solely on unfair competition under G.S. 75-1.1.
- (4) State trademark or unfair competition law, except claims based solely on unfair competition under G.S. 75-1.1.
- (5) Intellectual property law.
- (6) The Internet, electronic commerce, and biotechnology.

Briefly explain (attach additional sheets if necessary) why the action falls within the specific categories of G.S. 7A-45.4(a) checked above, as well as any additional information you believe may be helpful to the Court in determining whether the Business Court should retain jurisdiction of this matter:

A copy of all pleadings filed to date in this action listed in North Carolina Rule of Civil Procedure 7(a) are attached hereto as Appendix A for the convenience of the Court.

This ____ day of _____, 20____.

Attorney for _____

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF DESIGNATION UNDER G.S. §7A-45.4** has been served upon each of the parties to this action by depositing the same in the United States mail, postage prepaid, in [an] envelope(s) addressed as follows:

This _____ day of _____, 20_____.
