

## **THE IMPORTANCE OF COMPLEX COURTS**

### **PERSPECTIVE**

By Brian S. Kabateck and Ronald I. Karz

Complex courts have become an important, albeit indispensable part of the California Superior Court landscape. These courts in California and throughout the nation developed specialized departments in response to a growing need to handle managerially challenging and time-consuming cases. The unique nature of litigation with multiple parties, multiple claims, or claims that are substantively intricate demand courts that are equipped with the tools needed to efficiently dispose of these matters.

A variety of commercial, tort and business litigation, such as pharmaceutical mass torts and class actions, require a tremendous amount of time, resources and managerial expertise that general Superior Court civil departments cannot provide without wreaking havoc. Giants like *In re Vioxx Class Cases* and the *Pellicano* class action, which could potentially encompass a class of thousands, overshadow typical civil cases by their sheer size, and would otherwise cripple civil case calendars. Courts specialized in complex litigation provide the best solution for the efficient adjudication of these cases while also ensuring that they do not clog up general civil departments.

Prior to commencement of the California Complex Court Pilot Program in 2000, the California Judicial Council introduced Rule of Court 3.714(b) to move civil matters through the judicial system more expeditiously. The rule is specifically aimed at providing judges with time limit goals for case disposition. A few years earlier, in 1996, former Chief Justice Malcolm M. Lucas appointed the California Business Court Study Task Force to investigate the creation of specialized business courts. The Task Force ultimately advised against the creation of separate business courts and posited that complex civil litigation departments would better serve the public.

A year later, the California Judicial Council implemented a Complex Civil Litigation Task Force focused on exploring ways in which trial courts could most efficiently manage complex litigation. In 1999, the Judicial Council approved the Task Force's recommendations and adopted a set of rules in the California Rules of Court specifically for complex litigation. The Task Force also developed the "*Deskbook on the Management of Complex Civil Litigation*" as a handbook for state judges. The Pilot Program started a year later with seven judges in Los Angeles County.

California is not the only state with a specific docket for complex cases. In fact, California's model is only the most recent in a line of specialized courts. For example, New York has a specialized court for business and commercial cases. Likewise, the Delaware Court of Chancery specializes in business litigation. California's Pilot Program, however, is set apart by the broad scope of cases that qualify as complex. It includes more than just commercial and business cases - judges in the California program hear mass tort cases, class actions, and other managerially complex cases.

The California Rules of Court define a complex case as "an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel." Essentially, the determination hinges on the potential need for heavy judicial involvement and case management in all stages of litigation.

A plaintiff may initially designate a case as complex simply by filing and serving a civil case cover sheet with the complaint, indicating that the action is a complex case. An objecting defendant may counter-designate the action as not complex if the court has not previously deemed the action to be a complex case. The ultimate and formal designation rests on the judge, who must consider numerous factors in the decision-making process. The indicia of complexity, listed as factors in Rule 3.400, include potential coordination with related actions in other courts, the existence of novel and time-consuming legal issues, and management of volumes of documentary evidence. Certain cases are deemed provisionally complex, meaning that they are presumed to be complex unless a judge rules otherwise after review of the initial proceedings. These cases include antitrust, mass torts, class actions, and environmental or toxic tort claims involving multiple parties.

Complex court provides both litigants and the courts with tremendous benefits that stem from relocating the cases to the specially designated courts. The judicial officers assigned to these courts are typically the best and the brightest both substantively and from a management point of view. For example, the current presiding judge of the Los Angeles Superior Court was once a judge in the complex courts. These judges are also required to have thick skin because many of their decisions are the subject of appellate scrutiny because of the unique complex issues involved. At first blush it may seem these judges have a reduced caseload, but the very nature of those cases are complex and require the time to develop an unparalleled expertise in case management.

Active judicial management is a key component to the efficient disposition of complex matters. Judges oversee a case from almost its initial filing, and while they employ different strategies to move the case through to final resolution, they are actively involved early on. As a result, the judges acquire a deeper understanding of their cases, and cases are resolved faster than in a conventional civil department. Judges are also more available to litigants - another benefit that ultimately leads to improved productivity and the timely resolution of complex cases.

In a recent conversation about complex courts, Judge Carl J. West, who has served on the Los Angeles Superior Court Complex Litigation Panel since 2002, said he firmly believes in a hands-on approach to case management. Judge West recently ruled that the unintended acceleration lawsuits filed in California state courts against Toyota Motor Corp. should be coordinated into a single proceeding after finding that coordinated management of the cases by a single judge would benefit the litigants and the court. Judge West said he believes that judges can promote the efficient and effective management of large-scale litigation by promoting a collaborative approach that fosters a more cooperative and productive environment. To this end, he and the other judges on the complex panel work with the parties and their counsel to identify and resolve or decide significant or potentially dispositive issues, manage discovery, and generally promote the efficient management of cases that can easily get out of hand.

Complex courtrooms succeed in part because of the human and technological resources available; including advanced case management tools such as web services that help facilitate

communication between the judge and the parties, as well as centralized document depository systems that are especially useful for mass-scale litigations that may involve thousands of pages of documents. Judges also employ full-time research attorneys that provide the support needed to understand convoluted matters. However, it is probably the experience of the judges themselves in managing these titanic orchestrations that is a major component of the success of the complex court program.

Recent well reported state court budgetary constraints have forced the Los Angeles Superior Court to eliminate one of its complex court departments; indeed, the department of the longest sitting of the complex court judges, Peter D. Lichtman. The loss of Judge Lichtman is substantial because of the loss of his intellect and case management skills on these kinds of cases. Now the other judges must carry an increased workload. The whole purpose of the courts is to make the workload management easier for the litigants, the judicial officer and his or her staff. From this perspective, we need more complex courts, not fewer.

Even though California tacked toward including substantively different cases such as mass torts, antitrust and environmental all within the umbrella of the complex courts, other states have gone the route of greater specialization. An example is the New York State Court Commercial Division, which resolves complicated commercial disputes. Perhaps the success of the complex courts could lead to expansion. Why not have specialized courts to handle intricate insurance or property issues or issues that tend to accumulate and resonate in particular regions, like water rights in Central Valley? Of course, the cost of these programs in the short run is often the barrier to the long-range benefits.

At a time when budgetary considerations are leading to court staff furloughs, dark days, and outright elimination of some departments or divisions, complex courts have now been a proven method to advance the cause of judicial economy. Complex courts excise the logjam of cases that stifle the dockets of other courts. Even when budgets are tight, allocating funds for expansion and longevity of the program would only make sense.