

NO. \_\_\_\_\_

SEVENTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

ANNABELLE UMBERGER,	)	
	)	
Plaintiff,	)	<u>From Surry County</u>
	)	FILE NO. 14-CVS-1202
v.	)	
	)	
PIKE CORPORATION, J. ERIC	)	
PIKE, CHARLES E. BAYLESS,	)	
JAMES R. HELVEY III,	)	
PETER PACE, DANIEL J.	)	
SULLIVAN, JAMES L.	)	
TURNER, COURT SQUARE	)	
CAPITAL PARTNERS,	)	
PIONEER PARENT, INC.,	)	
and PIONEER MERGER	)	
SUB, INC.,	)	
	)	
Defendants.	)	
_____	)	

\*\*\*\*\*

PETITION FOR DISCRETIONARY REVIEW  
UNDER N.C.G.S. 7A-31  
Prior to Determination  
and  
MOTION TO CONSOLIDATE APPEALS  
Filed 5 February 2016

\*\*\*\*\*

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Petitioner Pike Corporation ("Pike") respectfully petitions the Supreme Court of North Carolina, pursuant to N.C.G.S. § 7A-31 and N.C.R. App. P. 15, to certify for discretionary review the Order Granting Award of Attorneys' Fees (the "Attorneys' Fees Order") entered 08 October 2015 in this cause in the General Court

of Justice, Superior Court Division, Surry County, North Carolina, by the Honorable James L. Gale, Chief Special Superior Court Judge for Complex Business Court Cases. Pike also moves under N.C.R. App. P. 40 to consolidate this appeal with appeals of the Attorneys' Fees Order as it applies in three related cases, which were consolidated below, and which are already before the Court.

In support of this Petition and Motion, Pike shows the Court as follows:

1. This cause was commenced by the filing of a Complaint on 25 September 2014. (Consolidated Record on Appeal 2).<sup>1</sup> The Complaint was filed as putative class action by Pike shareholders and concerned a now-final transaction in which substantially all of Pike's outstanding shares were acquired by an affiliate of Defendant (a non-party to these appeals) Court Square Capital Partners (the "Transaction").

2. Also on 25 September 2014, a Notice of Designation of Action as a mandatory complex business case, pursuant to N.C.G.S. § 7A-45.4, was filed in this cause by Respondent Annabelle Umberger ("Respondent"). (Cons. R 106).

3. On 26 September 2014, this cause was designated to the North Carolina Business Court by Order of the Chief Justice. (Cons.

---

<sup>1</sup> Rather than file numerous, duplicative exhibits already on file with the Court to support this Petition and Motion, Pike cites to the Consolidated Record on Appeal (hereafter "Cons. R") filed in Case Nos. 32A16, 33A16 and 34A16, as explained in paragraph 23 below.

R 150). On 30 September 2014, this cause was assigned to Judge Gale. (Cons. R 153).

4. In the weeks before this cause was filed, three other related actions were filed in the General Court of Justice, Superior Court Division, Surry County, North Carolina.

5. The first related action, *Michael Orban v. Pike Corporation et al.*, 14-CVS-1031 ("Orban"), was commenced by the filing of a Complaint on 19 August 2014. (Cons. R 3). On 1 October 2014, Defendants in *Orban* jointly filed a Notice of Designation of Action as a mandatory complex business case. (*Id.* at 154).

6. The *Orban* action was designated to the North Carolina Business Court by Order of the Chief Justice on 2 October 2014. (Cons. R 226). On 2 October 2014, the *Orban* action was assigned to Judge Gale. (Cons. R 229).

7. The second related action, *Collin Lieberg v. Pioneer Parent, Inc. et al.*, 14-CVS-1127 ("Lieberg"), was commenced by the filing of a Complaint on 8 September 2014. (Cons. R 22). On 1 October 2014, Defendants in *Lieberg* jointly filed a Notice of Designation of Action as Mandatory Complex Business Case. (*Id.* at 199).

8. The *Lieberg* action was designated to the North Carolina Business Court by Order of the Chief Justice on 2 October 2014. (Cons. R 228). On 2 October 2014, the *Lieberg* action was assigned to Judge Gale. (Cons. R 231).

9. The third related action, *Edwin Beickert v. J. Eric Pike et al.*, 14-CVS-1161 ("*Beickert*"), was commenced by the filing of a Complaint on 17 September 2014. (Cons. R 46). On 1 October 2014, Defendants in *Beickert* jointly filed a Notice of Designation of Action as Mandatory Complex Business Case. (*Id.* at 176).

10. The *Beickert* action was designated to the North Carolina Business Court by Order of the Chief Justice on 2 October 2014. (Cons. R 227). On 2 October 2014, the *Beickert* action was assigned to Judge Gale. (Cons. R 230).

11. *Orban*, *Lieberg*, and *Beickert*, like this cause (collectively, the "Four Related Cases"), were each filed as putative class actions by Pike shareholders regarding the Transaction.

12. In accordance with a stipulation by the parties, Judge Gale entered an Order consolidating the Four Related Cases on 30 October 2014. (Cons. R 232-39). Judge Gale also designated the Complaint in this cause as operative and appointed Respondent's counsel as interim class counsel. (*Id.*) However, Plaintiffs never dismissed *Orban*, *Lieberg*, or *Beickert*.

13. On 8 December 2014, the parties to the Four Related Cases entered into a Memorandum of Understanding to resolve the consolidated matters in full. (Cons. R 401-22).

14. The Transaction closed on 18 December 2014. (Cons. R 294).

15. On 12 May 2015, Judge Gale entered an Order granting preliminary approval to the settlement and providing for notice to class members and a schedule for consideration of final approval of the settlement. (Cons. R 260).

16. The parties to the Four Related Cases did not reach agreement on Respondent's counsel's requested award of attorneys' fees and expenses. (Cons. R 266).

17. On 15 July 2015, Respondent's counsel submitted a Motion for Final Approval of Settlement, Certification of Settlement Class, Appointment of Class Representative and Class Counsel, and Award of Attorneys' Fees and Expenses (the "Approval Motion"). (Cons. R 266).

18. On 12 October 2015, Judge Gale entered two Orders relating to the Approval Motion. (Cons. R 603-27).

19. First, Judge Gale entered a Final Order and Judgment approving the Settlement, certifying a settlement class and appointing a class representative and class counsel. No party has appealed from the Final Order and Judgment. (Cons. R 619-27).

20. Second, Judge Gale entered the Attorneys' Fees Order. (Cons. R 603-18). The Attorneys' Fees Order applies to each of the Four Related Cases, and Pike filed a timely appeal of the Attorneys' Fees Order in each cause. (Cons. R 603-18, 628-35).

21. Pursuant to the Business Court Modernization Act, Sess. Law 2014-102, appeal lies of right to the Supreme Court of North

Carolina for all cases designated as a mandatory complex business case after 1 October 2014. (See Sess. Law 2014-102, §§ 1, 9, attached hereto as Exhibit A.) Pike consequently has appealed the Attorneys' Fees Order in *Orban, Lieberg and Beickert* to this Court, and those appeals were docketed on 2 February 2016 under Case Nos. 32A16, 33A16 and 34A16, respectively.

22. However, because the instant cause was designated as a mandatory complex business case a few days before 1 October 2014, Pike has appealed the Attorneys' Fees Order in this matter to the North Carolina Court of Appeals. That appeal was docketed on 2 February 2016 and assigned Case No. 16-103.

23. A single, consolidated Record on Appeal, applicable to all four related cases, has been filed in each appeal.

24. For several reasons, it would be reasonable, efficient, and serve the interests of justice and judicial economy to grant this Petition and Motion, certifying this cause for immediate review in this Court and consolidating the Four Related Cases for a single hearing.

25. First, each appeal concerns the Attorneys' Fees Order, and Pike's assignments of error are the same for each appeal, specifically: (1) Did the Trial Court err in finding that it had authority to award attorneys' fees to Plaintiffs' Counsel in an amount greater than \$275,000.00? and (2) Did the Trial Court err

in concluding that Plaintiffs met their burden to show that their requested attorneys' fees award was reasonable?

26. Second, if the instant cause remains in the North Carolina Court of Appeals while the *Orban*, *Lieberg* and *Beickert* appeals proceed in this Court, there would be unnecessary duplication of judicial resources and actual risk of conflicting appellate rulings.

27. Third, should this Court grant this Petition and Motion, Pike and Respondents would be able to conserve party resources by filing a single set of appellate briefs and potentially facing one hearing rather than four.

28. Pike has sought consent to this Petition and Motion from counsel for Respondent and the Plaintiffs in *Orban*, *Lieberg* and *Beickert*. Counsel declined to consent.

WHEREFORE, Petitioner Pike Corporation respectfully petitions this Court to certify for discretionary review the Attorneys' Fees Order entered 08 October 2015 in this cause, and also moves this Court to consolidate the appeals of the Four Related Cases.

Respectfully submitted, this 5th day of February, 2016.

MOORE & VAN ALLEN PLLC

Electronically submitted

Scott M. Tyler

N.C. State Bar No. 23300

Telephone No.: (704) 331-2463

Facsimile No.: (704) 378-1963

Email: [scotttyler@mvalaw.com](mailto:scotttyler@mvalaw.com)  
100 North Tryon Street, Suite 4700  
Charlotte, NC 28202-4003

Glenn E. Ketner, III  
N.C. State Bar No. 36018  
Telephone No.: (704) 331-2315  
Facsimile No.: (704) 409-5668  
Email: [boketner@mvalaw.com](mailto:boketner@mvalaw.com)  
100 North Tryon Street, Suite 4700  
Charlotte, NC 28202-4003



**CERTIFICATE OF SERVICE OF SETTLED CONSOLIDATED RECORD ON APPEAL**

I, Scott M. Tyler, hereby certify that on this date I served the foregoing **PETITION FOR DISCRETIONARY REVIEW UNDER N.C.G.S. 7A-31 Prior to Determination and MOTION TO CONSOLIDATE APPEALS** upon counsel of record to parties to the appeals by mailing a copy of the same to each of them, postage prepaid, through the United States Postal Service, First Class as follows:

David G. Schiller  
N.C. State Bar No. 26713  
Schiller & Schiller, PLLC  
304 East Jones Street  
Raleigh, NC 27601

J. Daniel Albert  
Kessler Topaz Meltzer & Check, LLP  
280 King of Prussia Road  
Radnor, PA 19087

Attorneys for Plaintiffs-Appellees Annabelle  
Umberger and Michael Orban

Paul R. Dickinson, Jr.  
N.C. State Bar No. 20510  
Lewis & Roberts, PLLC  
One Southpark Center, Suite 140  
6060 Piedmont Row Drive South  
Charlotte, NC 28287

Marc Ackerman  
Brodsky & Smith, LLC  
2 Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

Richard A. Maniskas  
Ryan & Maniskas, LLP  
995 Old Eagle School Road, Suite 311  
Wayne, PA 19087

Attorneys for Plaintiff-Appellee Collin Lieberg

Kurt F. Hausler  
Hausler Law Firm, PLLC  
225 East Worthington Avenue, Suite 200  
Charlotte, NC 28203

Brian D. Long  
Rigrodsky & Long, P.A.  
2 Righter Parkway, Suite 120  
Wilmington, DE 19803

Attorneys for Plaintiff-Appellee Edwin Beickert

Adam K. Doerr  
Robinson Bradshaw & Hinson, P.A.  
101 North Tryon Street, Suite 1900  
Charlotte, NC 28246

Attorneys for Non-Appealing Defendants  
(Electronic courtesy copy only)

This the 5th day of February, 2016.

By: Electronically submitted  
Scott M. Tyler

## **EXHIBIT A**

## 2013 N.C. SB 853

Enacted, August 6, 2014

### Reporter

2014 N.C. ALS 102; 2014 N.C. Sess. Laws 102; 2014 N.C. Ch. 102; 2013 N.C. SB 853

NORTH CAROLINA ADVANCE LEGISLATIVE SERVICE > NORTH CAROLINA GENERAL ASSEMBLY OF  
NORTH CAROLINA - SESSION OF 2014 > CHAPTER 102 > SENATE BILL 853

### Notice

---

Added: [REDACTED]

Deleted: Red text with a strikethrough

### Synopsis

---

AN ACT TO MODERNIZE THE BUSINESS COURT BY MAKING TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE PROCEDURES FOR COMPLEX BUSINESS CASES, TO STREAMLINE THE PROCESS OF CORPORATE REORGANIZATION UTILIZING HOLDING COMPANIES, AND TO ESTABLISH A BUSINESS COURT MODERNIZATION SUBCOMMITTEE OF THE JOINT LEGISLATIVE ECONOMIC DEVELOPMENT AND GLOBAL ENGAGEMENT OVERSIGHT COMMITTEE.

### Text

---

*The General Assembly of North Carolina enacts:*

**SECTION 1.** G.S. 7A-27 reads as rewritten:

"Section 7A-27.

Appeals of right from the courts of the trial divisions.

(a) Appeal lies of right directly to the Supreme Court in any of the following:

(1) ~~all~~ cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.

(2) ~~From any final judgment in a case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts,~~

(3) ~~any case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts,~~

(4) ~~any case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts,~~

(5) ~~any case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts,~~

(6) ~~any case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts,~~

(7) ~~any case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts,~~

(b) Appeal lies of right directly to the Court of Appeals in any of the following cases:

(1) From any final judgment of a superior court, other than the one described in subsection (a) of this section, or one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court martial under G.S. 127A-62.

## 2013 N.C. SB 853

- (2) From any final judgment of a district court in a civil action.
- (3) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding which ~~the~~ does any of the following:
  - a. Affects a substantial right.
  - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
  - c. Discontinues the action.
  - d. Grants or refuses a new trial.
  - e. Determines a claim prosecuted under G.S. 50-19.1.
- (4) From any other order or judgment of the superior court from which an appeal is authorized by statute."

**SECTION 2.** G.S. 7A-45.3 reads as rewritten:

**"Section 7A-45.3.**

Superior court judges designated for complex business cases.

The Chief Justice may exercise the authority under rules of practice prescribed pursuant to G.S. 7A-34 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. ~~The presiding Business Court Judge shall issue a written opinion in connection with any order granting or denying a motion under G.S. 1A-1, Rule 12, 56, 59, or 60, or any order finally disposing of a complex business case, other than an order effecting a settlement agreement or jury verdict.~~"

**SECTION 3.** G.S. 7A-45.4 reads as rewritten:

**"Section 7A-45.4.**

Designation of complex business cases.

- (a) ~~A mandatory complex business case is any civil or equity case that is a mandatory complex business case and~~ 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. Disputes involving the law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, and limited liability companies, including disputes arising under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.~~
  - (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. Disputes involving antitrust law, including disputes arising under Chapter 75 of the General Statutes that do not arise solely under G.S. 75-1.1 or Article 2 of Chapter 75 of the General Statutes.~~
  - (4) ~~State trademark or unfair competition law, except claims based solely on unfair competition under G.S. 75-1.1.~~

2013 N.C. SB 853

(5) ~~Intellectual property law, including software licensing disputes. Disputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies.~~

(6) ~~The Internet, electronic commerce, and biotechnology.~~

(7) ~~Tax law, when the dispute has been the subject of a contested tax case for which judicial review is requested under G.S. 105-241.16 or the dispute is a civil action under G.S. 105-241.17.~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

~~\_\_\_\_\_~~

a. ~~At least one plaintiff and at least one defendant, including any entity authorized to transact business under Chapters 55A, 55B, 57D, or 59 of the General Statutes,~~

b. ~~The complaint asserts a claim for breach of contract or other legal relations under a contract.~~

c. ~~The amount in controversy computed in accordance with G.S. 7A-243 is at least five million dollars (\$ 5,000,000).~~

d. ~~All parties consent to the designation.~~

(b) ~~Any party may designate a civil action or a petition for judicial review under G.S. 105-241.16 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.~~

1. ~~An action involving a material issue related to tax law that has been the subject of a contested tax case for which judicial review is requested under G.S. 105-241.16, or a civil action under G.S. 105-241.17 containing a constitutional challenge to a tax statute, shall be designated as a mandatory complex business case by the petitioner or plaintiff.~~

2. ~~An action described in subsection (5), or (8) of subsection (a) of this section in which the amount in controversy computed in accordance with G.S. 7A-243 is at least five million dollars (\$ 5,000,000) shall be designated as a mandatory complex business case by the party whose pleading caused the amount in controversy to equal or exceed five million dollars (\$ 5,000,000).~~

3. ~~An action involving regulation of pole attachments brought under Chapter 62-50 shall be designated as a mandatory complex business case by the plaintiff.~~

(c) ~~A party designating an action as a mandatory complex business case shall file a Notice of Designation in the Superior Court in which the action has been filed, shall contemporaneously serve 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, and shall contemporaneously send a copy of the notice by e-mail to the Chief Justice of the Supreme Court for approval of the designation of the action as a mandatory complex business case. 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) or (1) of this section.~~

## (d) The Notice of Designation shall be filed:

- (1) By the plaintiff, the third-party plaintiff, or the petitioner for judicial review contemporaneously with the filing of the complaint, third-party complaint, or the petition for judicial review 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.

(4) By any party whose pleading seeks the amount in controversy mandated by G.S. 7A-243 to be designated as a mandatory complex business case, in the pleading.

(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 complex business case. The opposition to the designation of the action shall assert all grounds on which the party opposing designation objects to the designation, and any grounds not asserted shall be deemed conclusively waived. Within 30 days after the entry of an order staying a pending action pursuant to subsection (g) of this section, any party opposing the stay shall file an objection with the Business Court asserting all grounds on which the party objects to the case proceeding in the Business Court, and any grounds not asserted shall be deemed conclusively waived. Based on the opposition or ex-mere-motu, on its own motion, the Business Court Judge may shall rule by written order on the opposition or objection and determine that whether 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. In accordance with G.S. 7A-243.

(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.

(g) If an action required to be designated as a mandatory complex business case pursuant to subsection (b) of this section is not so designated, the Superior Court in which the action has been filed shall, by order entered sua sponte, stay the action until it has been designated as a mandatory complex business case by the party required to do so in accordance with subsection (b) of this section.

(h) Nothing in this section is intended to permit actions for personal injury, property damage, or to be designated mandatory complex business case to confer, enlarge, or diminish the jurisdiction of the court.

**SECTION 4. G.S. 7A-305 reads as rewritten:**

**"Section 7A-305.**

**Costs in civil actions.**

- (a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

...

- (2) For support of the General Court of Justice, the sum of one hundred eighty dollars (\$ 180.00) in the superior court and the sum of one hundred thirty dollars (\$ 130.00) in the district court except that if the case is assigned to a magistrate the sum shall be eighty dollars (\$ 80.00). If a case is assigned to a special

superior court judge as a complex business case under G.S. 7A-45.3, upon assignment the party filing the notice of designation pursuant to G.S. 7A-45.4 or the motion for complex business designation shall pay an additional one thousand dollars (\$ 1,000) for support of the General Court of Justice; if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3 by a court on its own motion, upon assignment the plaintiff shall pay an additional one thousand dollars (\$ 1,000) for support of the General Court of Justice. If a case is designated as a mandatory complex business case under G.S. 7A-45.4, upon assignment to a Business Court Judge, the party filing the designation shall pay an additional one thousand one hundred dollars (\$ 1,100) for support of the General Court of Justice. If a case is designated as a complex business case under Rule 2.1 and Rule 2.2 of the General Rules of Practice for the Superior and District Courts, upon assignment to a Business Court Judge, the plaintiff shall pay an additional one thousand one hundred dollars (\$ 1,100) for support of the General Court of Justice. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and fifty cents (\$ 1.50) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (\$ .95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

...

- (d) The following expenses, when incurred, are assessable or recoverable, as the case may be. The expenses set forth in this subsection are complete and exclusive and constitute a limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

...

~~(d2) The fee assessed pursuant to subdivision (2) of subsection (c) of this section upon assignment of a case to a special superior court judge as a complex business case.~~

...."

SECTION 5. G.S. 7A-343 reads as rewritten:

"Section 7A-343.

Duties of Director.

The Director is the Administrative Officer of the Courts, and the Director's duties include all of the following:

...

- (8) Prepare and submit an annual report on the work of the Judicial Department to the Chief Justice, and transmit a copy to each member of the General Assembly. The annual report shall include the activities of each North Carolina Business Court site, including the number of new, closed, and pending cases, the average age of pending cases, and the annual expenditures for the prior fiscal year.

~~(8a) Prepare and submit a semiannual report on the activities of each North Carolina business court site to the Chief Justice and to each member of the General Assembly. The semiannual report required under this subdivision shall be separate from the report required under subdivision (8) of this section and shall include the total number of civil cases pending in each business court site over three years after being designated as a mandatory complex business case, motions pending over six months after being filed, and civil cases in which bench trials have been concluded for over six months without entry of judgment, including any accompanying explanation provided by the Business Court.~~

...."

SECTION 6.(a) Article 11 of Chapter 55 of the General Statutes is amended by adding a new section to read:



"Section 55-11-03,"

"Section 55-11-03,"

"Section 55-11-03,"

"Section 55-11-03,"

(2) "Constituent corporation" means the original corporation incorporated under the laws of this State or limited liability company organized under the laws of this State that is a party to a merger that is intended to create a holding company structure under a plan of merger that satisfies the requirements of this section.

(3) "Holding company" means a corporation incorporated under the laws of this State or limited liability company organized under the laws of this State that from its incorporation or organization until consummation of a merger governed by this section was at all times a direct or indirect wholly owned subsidiary of the constituent corporation and whose capital stock is issued in the merger.

(4) "Manager" has the same meaning as in G.S. 57D-1-03.

(5) "Organizational documents" means the articles of incorporation and organizational documents of a limited liability company.

(6) "Surviving entity" means the corporation incorporated under the laws of this State or limited liability company organized under the laws of this State that is the surviving entity in a merger of a constituent corporation with or into a single direct or indirect wholly owned subsidiary of the constituent corporation, which immediately following the merger is a direct or indirect wholly owned subsidiary of the holding company.

(7) Notwithstanding the requirements of G.S. 55-11-03, unless expressly required by its articles of incorporation, no vote of shareholders of a constituent corporation is required to authorize a merger with or into a single direct or indirect wholly owned subsidiary of the constituent corporation if all of the following conditions are satisfied:

(1) The constituent corporation and the direct or indirect wholly owned subsidiary of the constituent corporation are the only constituent entities to the merger.

(2) Each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of a share of capital stock of a holding company having the same designations, rights, powers, and preferences, and the qualifications, limitations, and restrictions thereof, as the share or fraction of a share of the capital stock of the constituent corporation being converted in the merger.

(3) The constituent corporation and the constituent wholly owned subsidiary are both incorporated or organized under the laws of this State.

(4) The articles of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles of incorporation and bylaws of the constituent corporation immediately prior to the effective time of the merger other than provisions, if any, regarding any of the following:

(a) The incorporation or organization of the constituent corporation.

(b) The organizational documents of the constituent corporation.

(c) The organizational documents of the constituent corporation.

(d) The organizational documents of the constituent corporation.

2013 N.C. SB 853

- (5) Any provisions contained in any amendment to the articles of incorporation that were necessary to effect a change, exchange, reclassification, subdivision, combination, or cancellation of stock, if the change, exchange, reclassification, subdivision, combination, or cancellation has become effective,
- (6) As a result of the merger the constituent corporation or its indirect wholly owned subsidiary of the holding company.
- (6) The directors of the constituent corporation at the effective time of the merger.
- (7) Except as provided in subsections (c) and (d) of this section, the organizational documents of the surviving entity immediately following the effective time of the merger contain provisions identical to the articles of incorporation of the constituent corporation immediately prior to the effective time of the merger other than provisions, if any, regarding any of the following:
- a. The incorporator or incorporators.
  - b. [REDACTED]
  - c. [REDACTED]
  - d. [REDACTED]
  - e. [REDACTED]
  - f. [REDACTED]
  - g. [REDACTED]
  - h. References to the directors.
  - i. Any provisions contained in any amendment to the articles of incorporation that were necessary to effect a change, exchange, reclassification, subdivision, combination, or cancellation of stock, if the change, exchange, reclassification, subdivision, combination, or cancellation has become effective.
  - j. [REDACTED]
  - k. [REDACTED]
- (8) Notwithstanding the provisions of subdivision (7) of this section, the organizational documents of the surviving entity do not contain the following provisions requiring all of the following:
- (a) Any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members, or other members of the governing body of the surviving entity, that requires for its adoption under this Chapter or its organizational documents the approval of the shareholders or members of the surviving entity shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this Chapter or by the organizational documents of the surviving entity. For purposes of this subdivision, any surviving entity that is not a corporation shall include in the amendment a requirement that the approval of the shareholders of the holding company be obtained for any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members, or other members of the governing body of the surviving entity, which would require the approval of the shareholders of the surviving entity if the surviving entity were a corporation subject to this Chapter.
  - (b) Any amendment of the organizational documents of a surviving entity that is not a corporation that would, if adopted by a corporation subject to this Chapter, be required to be included in the articles of incorporation of the corporation shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this Chapter or by the organizational documents of the surviving entity.

- SECTION 6.(b) G.S. 55-11-06(a) reads as rewritten:

Effect of merger or share exchange.

- (a) When a merger pursuant to G.S. 55-11-01, 55-11-04, 55-11-07, [REDACTED] takes effect:

**SECTION 7.** G.S. 1A-1, Rule 8(a)(2) reads as rewritten:

**"Rule 8.**

General rules of pleadings.

...

...

- (2) A demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. ~~In all actions involving a material issue related to any of the subjects listed in G.S. 7A-45.4(a)(1), (2), (3), (4), (5), and (8), the pleading shall state whether or not relief is demanded for damages incurred or to be incurred in an amount equal to or exceeding five million dollars (\$ 5,000,000). In all negligence actions, and in all claims for punitive damages in any civil action, wherein the matter in controversy exceeds the sum or value of ten thousand dollars (\$ 10,000), the pleading shall not state the demand for monetary relief, but shall state that the relief demanded is for damages incurred or to be incurred in excess of ten thousand dollars (\$ 10,000). However, at any time after service of the claim for relief, any party may request of the claimant a written statement of the monetary relief sought, and the claimant shall, within 30 days after such service, provide such statement, which shall not be filed with the clerk until the action has been called for trial or entry of default entered. Such statement may be amended in the manner and at times as provided by Rule 15."~~

**SECTION 8.(a)** A Subcommittee on Business Court Modernization ("Subcommittee") is created within the Joint Legislative Economic Development and Global Engagement Oversight Committee ("Committee").

**SECTION 8.(b)** The Subcommittee shall consist of no fewer than six members, with an equal number of Senate and House members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives from among their respective chambers' membership on the Committee. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate one member to serve as co-chairs of the Subcommittee. The Subcommittee may meet at any time upon the call of either co-chair. A co-chair or other member of the Subcommittee continues to serve until a successor is appointed. Members of the Subcommittee serve at the pleasure of the appointing officer.

**SECTION 8.(c)** The Subcommittee may study the implementation of this act and its efforts to modernize complex business cases and legislative improvement to the operations and management of the General Court of Justice.

**SECTION 8.(d)** A quorum is a majority of members of the Subcommittee. No action may be taken except by a majority vote at a meeting at which a quorum is present.

**SECTION 8.(e)** The Subcommittee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Subcommittee may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

**SECTION 8.(f)** Members of the Subcommittee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, 138-5 and 138-6, as appropriate.

**SECTION 8.(g)** All expenses of the Subcommittee shall be paid from the Legislative Services Commission's Reserve for Studies. Individual expenses of five thousand dollars (\$ 5,000) or less, including per diem, travel, and subsistence expenses of members of the Subcommittee, and clerical expenses shall be paid upon the authorization of a co-chair of the Subcommittee. Individual expenses in excess of five thousand dollars (\$ 5,000) shall be paid upon the written approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

**SECTION 8.(h)** The Legislative Services Officer shall assign professional and clerical staff to assist the Subcommittee in its work. The Director of Legislative Assistants of the House of Representatives and the Director of Legislative Assistants of the Senate shall assign clerical support staff to the Subcommittee.

**SECTION 8.(i)** The Subcommittee may submit an interim report on the results of its study, including any proposed

legislation, to the Committee at any time. The Subcommittee shall submit a final report on the results of its study, including any proposed legislation, to the Committee prior to the convening of the 2015 General Assembly. The Committee shall submit a final report of its findings and recommendations to the 2015 General Assembly by filing the report with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Legislative Library. The Subcommittee shall terminate upon the convening of the 2015 General Assembly or upon the filing of its final report with the Committee, whichever occurs first.

**SECTION 9.** Section 1 of this act becomes effective October 1, 2014, and applies to actions designated as mandatory complex business cases on or after that date. Sections 3 and 4 of this act become effective October 1, 2014, and apply to actions commenced or petitions filed on or after that date. Section 6 of this act becomes effective October 1, 2014, and applies to plans of merger adopted on or after that date. Section 7 of this act is effective when it becomes law and applies to actions commenced on or after that date. Unless otherwise provided by this act, the remainder of this act is effective when it becomes law.

## History

---

Approved by the Governor August 6, 2014

## Sponsor

---

Rucho

NORTH CAROLINA ADVANCE LEGISLATIVE SERVICE

Copyright © 2016 LexisNexis. All rights reserved.