

ADMINISTRATIVE DIRECTIVE NO. 96

This 28th day of February 1994,

IT APPEARS TO THE COURT:

(1) Governor Thomas R. Carper established a Commission on Major Commercial Litigation Reform (the "Commission") for the purpose of formulating a summary procedure for resolving business disputes;

(2) The Commission has recommended a procedure for expediting resolution of business disputes;

(3) On January 26, 1994, the Delaware General Assembly endorsed the recommendation of the Commission as an important public policy initiative by adopting Senate Joint Resolution No. 28 (the "Joint Resolution"); and on February 7, 1994, Governor Carper signed the Joint Resolution (a copy of the Joint Resolution is attached hereto as Attachment A);

(4) Article IV, § 13 of the Constitution of the State of Delaware provides that the Chief Justice, with the approval of a majority of the Justices of the Supreme Court, shall have the power to adopt rules for the administration of justice and the conduct of the business of the courts of this State, and, subject to the supervisory responsibility of the Chief Justice and the Supreme Court, the Superior Court is empowered to adopt rules of pleading, practice, and procedure in that Court.

(5) The Judiciary supports the Governor's initiative and the Joint Resolution, and hereby undertakes to implement the same until this Administrative Directive is amended or superseded by subsequent administrative directive. The Judiciary is confident that the General Assembly and the Governor will give consideration to the present limited judicial resources within which this experimental initiative is to be undertaken in evaluating the need, if any, for additional resources in the future.

NOW, THEREFORE, IT IS DIRECTED, with the unanimous approval of the Justices of the Supreme Court (Del. Const. art. IV, § 13), that:

A. The Judiciary hereby implements the Joint Resolution until this Administrative Directive shall have been amended or superseded.

B. The guidelines for rules governing summary procedures for commercial disputes annexed hereto as Attachment B (the "Guidelines") are hereby adopted and promulgated to take effect contemporaneously with the adoption of Superior Court Rules as set forth in subparagraph C hereof.

C. The Superior Court is directed to review its Rules and, subject to review by the Supreme Court in accordance with customary practice, to adopt, on or before March 31, 1994, such interim rules as may be necessary to carry out this Administrative Directive.

SUPREME COURT OF DELAWARE

D. The Clerk of the Supreme Court shall forthwith transmit to the Prothonotary in each of the Counties a certified copy of this directive.

E. Norman Veasey
CHIEF JUSTICE

Attachment

cc: (w/attachments)

The Honorable Henry R. Horsey
The Honorable Andrew G.T. Moore, II
The Honorable Joseph T. Walsh
The Honorable Randy J. Holland
Members of the Judicial Conference
Mr. Lowell L. Groundland
Court Administrators
Clerk of the Supreme Court
Mr. Stephen D. Taylor

ATTACHMENT A

SPONSOR: Sen. Sharp; Rep. Amick

**DELAWARE STATE SENATE
137TH GENERAL ASSEMBLY**

SENATE JOINT RESOLUTION NO. 28, JAN. 26, 1994

**RELATING TO EXPEDITED PROCEDURES AS RECOMMENDED BY THE
COMMISSION ON COMMERCIAL LITIGATION REFORM.**

WHEREAS, the State of Delaware is the state of incorporation of a majority of America's "Fortune 500" corporations and state of organization for many financial institutions, partnerships, limited liability companies and other business entities, a sustained and increasing trend which is attributable in large measure to the quality of Delaware's courts and the responsiveness of these courts to the need for swift and predictable judicial action; and

WHEREAS, Delaware businesses and other citizens of this State and Nation are increasingly concerned with the high costs and delays attendant to all litigation, including business and commercial litigation;

WHEREAS, a Commission on Major Commercial Litigation Reform (the "Commission") was created by Executive Order No. 7, dated May 20, 1993;

WHEREAS, as one alternative, the Commission has recommended that a special expedited procedure be established pursuant to Administrative Directives, Rules of the Delaware Superior Court, Court of Chancery and Supreme Court;

WHEREAS, the special expedited procedure would be available in the Superior Court for major commercial and business cases where the amount in controversy exceeds one million dollars and involves at least one party which is a Delaware corporation or other Delaware citizen or entity whereby each such case may be individually assigned to a judge of the Superior Court or, by designation pursuant to Article IV, §13 of the Delaware Constitution, the Court of Chancery;

WHEREAS, the Commission further recommended that the Rules governing the expedited procedure should require the parties to consent to such an expedited procedure, with discovery and motion practice limited and accelerated, without a jury trial and without punitive damages;

WHEREAS, the Judiciary of the State desires to cooperate with the Governor's initiative by implementing a program, pursuant to the authority of Article IV, §13 of the Delaware Constitution;

WHEREAS, additional judicial resources may have to be provided to the courts in the future if the Commission's recommended procedure is substantially employed by commercial and business litigants;

NOW THEREFORE:

BE IT RESOLVED by the Senate and the House of Representatives of the 137th General Assembly of the State of Delaware, with the approval of the Governor, that such proposal is endorsed as an important public policy initiative of the State.

SYNOPSIS

Delaware's corporate, banking, partnership and commercial laws, as well as the quality, responsiveness and fairness of the Delaware judiciary in interpreting these laws, have made Delaware the leader in the development of the nation's business laws. These factors have also played a major role in Delaware becoming the state of organization for thousands of corporations and thousands of other business entities which, through taxes, fees and other direct and indirect means, contribute substantially to the State's revenues.

For many years Delaware's business citizenry -- as well as most of America's business -- has been concerned about the cost and delay of civil litigation. Other states, such as New York and Pennsylvania, have recently created or proposed creation of special commercial courts to expedite the resolution of business litigation. The Governor's Commission on Major Commercial Litigation Reform was formed in May of 1993 to address the concerns expressed by Delaware's business citizenry regarding litigation cost and delay.

For six months the Commission examined the costs and time involved in litigating many types of business disputes. The commission circulated a questionnaire to approximately 150 corporate counsel soliciting their views on the issue and personally contacted many local and national corporate counsel. Those contacted uniformly acknowledged the problems with litigating major commercial disputes and recognized the need to address these problems. They endorsed the concept of limited discovery and summary proceedings as a way by which consenting parties can practically and efficiently resolve business disputes. The Commission also worked closely with, and received the important help and cooperation of, the Delaware judiciary in reviewing these issues, and the judiciary in fact suggested the use of an administrative directive of the Supreme Court and amendments to court rules as a means of developing a special "summary procedure" by which the Delaware courts could address these issues.

The Commission's proposals, which the judiciary will put into effect by court directive and rule amendment, include: (i) limited discovery and expedited proceedings in matters within the subject matter jurisdiction of the Superior Court of Delaware (except matters asserting personal, physical or mental injury) where the amount in controversy exceeds one million dollars as to at least one party, exclusive of interest and costs, and when the parties, at least one of which is a Delaware citizen, corporation or other business entity, have consented, by written agreement or stipulation, to the matter being adjudicated under this process, (ii)

individual assignment of these types of cases to members of a panel consisting of judges of the Superior Court or, by designation pursuant to Article IV, § 13 of the Delaware Constitution, the Court of Chancery, (iii) the payment of a nonrefundable \$5,000 filing fee paid at the time the complaint in one of these types of cases is filed and an equal apportionment of this fee among the parties upon a determination that the parties have consented to the proceedings (with the Superior Court maintaining the ability to entertain matters under the process which do not exceed one million dollars to the extent judicial resources are available as well as the ability to not require a \$5,000 filing fee in appropriate circumstances) and (iv) appeal of judgments to the Delaware Supreme Court. The Commission's recommendations to establish a "Summary Procedure" to be used by businesses to resolve major disputes more quickly and cost effectively than traditional commercial litigation have been endorsed by the Governor and the Chief Justice of the Delaware Supreme Court and have been positively received by the Delaware Business Review, The Wall Street Journal and other national business press as well as by the national business community.

This Joint Resolution constitutes the General Assembly's recognition of the important contribution made by this initiative to Delaware maintaining its leadership on issues affecting the nation's businesses and constitutes the General Assembly's endorsement of this important public policy initiative.

AUTHOR: Sen. Sharp

ATTACHMENT B
GUIDELINES FOR RULES AND PRACTICE REGARDING
SUMMARY PROCEDURES FOR COMMERCIAL DISPUTES

1. Except as otherwise provided herein, any matter within the subject matter jurisdiction of the Superior Court, wherein the amount in controversy exceeds \$1,000,000 as to at least one party, exclusive of interest and costs, shall be subject to expedited proceedings, under Rules of the Superior Court to be promulgated regarding summary procedures for commercial disputes (the "Summary Procedure Rules"), when the parties (at least one of which is a Delaware citizen, corporation, or other business entity) have consented thereto, by written agreement or stipulation.

2. Claims asserting damages for personal injury (whether physical or mental) and claims of whatever nature for punitive damages shall be excluded from the Summary Procedure Rules. Jury trials shall not be available under the Summary Procedure Rules, and shall be expressly waived by all parties.

3. The Superior Court may, at its discretion, to the extent judicial resources are available, entertain matters under the Summary Procedure Rules wherein the amount in controversy does not exceed \$1,000,000. The filing fee with respect to such cases shall be reduced proportionately.

4. Any consent to personal jurisdiction pursuant to the Summary Procedure Rules shall be solely for the purpose of actions brought under the Summary Procedure Rules and shall not be deemed to be a submission by a party to the jurisdiction of the courts of the State of Delaware for any other proceeding or purpose.

5. Each case subject to the Summary Procedure Rules shall be individually assigned by the President Judge of the Superior Court to a member of the Superior Court or to a member of the Court of Chancery (when judges of the latter court shall have been designated to the Superior Court for purposes of such assignment by the Chief Justice pursuant to Article IV, § 13 of the Delaware Constitution).

6. Complaints filed under the Summary Procedure Rules shall be accompanied by a nonrefundable \$5,000 filing fee, which shall be subject to the provisions relating to taxing of costs under Rule 54 of the Rules of the Superior Court.

7. All judgments resulting from proceedings under the Summary Procedure Rules which shall have been properly appealed to the Supreme Court shall be expedited in the Supreme Court in accordance with the existing rules and practice of the Supreme Court in expedited matters. There shall be no interlocutory appeals, unless all parties consent to such appeal, the Superior Court approves such appeal, and the Supreme Court accepts such interlocutory appeal pursuant to Supr. Ct. R. 42.

8. The acceptance and handling of cases pursuant to this Administrative Directive and the Summary Procedure Rules shall be managed in such a manner that other cases shall not be substantially delayed or prejudiced as a consequence of the operation of this Administrative Directive and the Summary Procedure Rules.