

STATE OF DELAWARE



EXECUTIVE DEPARTMENT  
DOVER

EXECUTIVE ORDER  
NUMBER SEVEN

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: COMMISSION ON MAJOR COMMERCIAL LITIGATION REFORM

WHEREAS, the State of Delaware enjoys a national reputation for the excellence of its judicial system; and

WHEREAS, the State of Delaware is the state of incorporation of a majority of America's "Fortune 500" corporations, in large measure because of the quality of Delaware's courts, particularly the Court of Chancery, and the responsiveness of these courts to the business community's need for swift and predictable judicial action; and

WHEREAS, Delaware corporations and businesses are increasingly concerned with the high costs and delays attendant in traditional commercial litigation and the unpredictability and size of judgments entered in courts outside of Delaware, all of which contribute to what is commonly termed "the litigation crisis"; and

WHEREAS, these corporations and businesses have sought to cope with the litigation crisis by using forms of alternative dispute resolution, including for profit "rent-a-judge" services; and

WHEREAS, these alternative dispute resolution techniques have been criticized as an imperfect resolution to the litigation crisis because of inconsistent decisions, the failure to follow evidentiary rules, a variation in the quality of the decisionmakers and the inability to appeal erroneous legal decisions; and

WHEREAS, addressing the litigation crisis will benefit Delaware corporations and businesses, and improve Delaware's economy by making Delaware an even more attractive place to do business and to incorporate; and

WHEREAS, given the Court of Chancery's international reputation as an efficient and highly expert business court and the Superior Court's success in handling complex insurance coverage litigation, the State of Delaware may be able to address some important elements of the litigation crisis by creating legislation that would expand the Court of Chancery's and/or the Superior Court's jurisdiction to allow those courts to determine major commercial disputes under rules of procedure that strictly limit pre-trial discovery and delay; and

WHEREAS, the creation of a Commission that brings together prominent corporate counsel and litigators could lead to other worthy improvements in our system of justice to address the litigation crisis.

NOW, THEREFORE, I, THOMAS R. CARPER, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

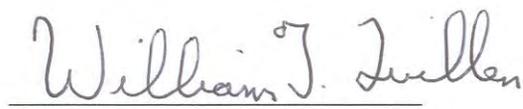
1. The Commission on Major Commercial Litigation Reform is created.
2. The Commission shall consist of at least ten members appointed by the Governor to serve at his pleasure. The membership of the Commission shall include prominent Delaware litigation attorneys and senior corporate counsels of Delaware corporations and businesses. The Governor shall designate one of the appointees to serve as Chairperson of the Commission, and two of the other appointees to serve as Reporters for the Commission.
3. The Commission shall:
  - (a) meet on a regular basis as determined by the Chairperson;
  - (b) consult with Delaware corporations and businesses regarding their need for dispute resolution mechanisms that are less costly and time consuming than traditional litigation;
  - (c) consult with members of Delaware's judiciary regarding the most effective form of legislation to allow the Court of Chancery and/or the Superior Court to hear major commercial disputes under rules of procedure that strictly limit pre-trial discovery and delay;
  - (d) propose such legislation for the Governor's review by September 30, 1993; and
  - (e) make other recommendations for legislation to help Delaware corporations and businesses cope with the litigation crisis.

4. All state agencies shall cooperate in providing data and assistance to the Commission as is requested by the Commission with the approval of the Governor.

APPROVED this ~~20~~<sup>21</sup>th day of May, 1993.

  
Governor

ATTEST:

  
Secretary of State

