

From: [Bassak, Andrew](#)
To: [TCBAC](#)
Cc: ["Ericson, Bruce A."](#); ["Jeff Chanin"](#); ["James Kleinberg"](#); ["Robert H. Bunzel"](#)
Subject: Comments re Agenda Item 5 for TCBAC May 18, 2015 Meeting From Association of Business Trial Lawyers - Northern California Chapter's Board Committee re Complex Court Funding
Date: Friday, May 15, 2015 1:50:55 PM
Attachments: [ABTL Comments to TCBAC 05_18_15.pdf](#)

To: **California Trial Court Budget Advisory Committee**

From: **Association of Business Trial Lawyers - Northern California Chapter's Board Committee re Complex Court Funding (Jeff Chanin, Kecker & Van Nest (Chair), Hon. James Kleinberg (Ret.), Andrew A. Bassak, Manatt Phelps & Phillips, Robert H. Bunzel, Bartko Zankel Bunzel & Miller, Bruce A. Ericson, Pillsbury Winthrop Shaw Pittman)**

Re: **Comments re Agenda Item 5 for May 18, 2015 Agenda**

A Committee of the Board of the Northern California Chapter of the Association of Business Trial Lawyers re Complex Court Funding previously submitted comments to the California Judicial Council's Workload Assessment Advisory Committee with respect to Item 4 on the WAAC's Agenda for its Open Meeting held on May 12, 2015. At that meeting, Committee Chair Judge Alksney stated that the issues raised by ABTL's comments were outside of the scope of WACC's mandate from the Judicial Council, and that the ABTL's comments had been forwarded by email to the TCBAC for consideration.

The ABTL's comments bear upon Agenda Item 5 for the TCBAC meeting to be held on May 18, 2015, and relate to the caseload to be given to complex civil cases to be used in the Resource Assessment Study workload computation. To ensure the ABTL's comments are before the TCBAC for its meeting on May 18, 2015, I am attaching the comments previously submitted to and by the WAAC to this email. Thank you for your consideration. Please let me know if you have any questions.

Very truly yours,

Andrew A. Bassak
2015 President - Association of Business Trial Lawyers
Northern California Chapter

Andrew A. Bassak, Esq.
Partner

Manatt, Phelps & Phillips, LLP
One Embarcadero Center
30th Floor

San Francisco, CA 94111

D +1 415 291 7449 **F** +1 415 291 7632

ABassak@manatt.com

manatt.com

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NORTHERN CALIFORNIA

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To: California Trial Court Budget Advisory Committee
 From: Association of Business Trial Lawyers - Northern California Chapter's Board Committee re Complex Court Funding
 Re: Comments re Agenda Item 5 for May 18, 2015 Meeting
 Date: May 15, 2015

With respect to Agenda Item 5 for the TCBAC Open Meeting on May 18, 2015, a Committee of the Board of the Northern California Chapter of the Association of Business Trial Lawyers re Complex Court Funding poses the following comments/issues/questions for the Committee's consideration and response:

1. The ABTL understands that the Complex Case Departments have annually generated more revenue from their higher filing fees than the incremental funding they have received annually from the IMF's Complex Civil Litigation Program, such that they are profit centers as compared to the courts of unlimited civil jurisdiction. Is that correct for both the SF Bay Area Complex Case Departments and the Los Angeles Departments, and if so, how much was this incremental revenue on average and has that incremental revenue gone into the Trial Court Trust Fund for the use of all courts, or has each County Court been able to keep its own Complex Case Department revenues for its own use?
2. How will the TCBAC account for these incremental complex case fee filings when determining the additional funding that each County will receive for its complex case departments using the interim case-weight solution described in "Rationale for recommendation 7" of the TCBAC's Report to the Judicial Council for its April 17, 2015 meeting?
3. Has the TCBAC evaluated whether the incremental fee revenues generated by the existing Complex Case Departments could be used to fund whatever additional staffing and other costs they incur as compared to a court of unlimited civil jurisdiction within each specific county? Is the answer different across different counties? If the Complex Case Departments of each County can fund their own budget, using incremental filing fee revenue, why isn't that an appropriate mechanism for funding them in the future?
4. If each complex-designated case were assigned a caseweight equivalent to that of an asbestos case (3,546 minutes) for funding purposes, how much more or less funding will that generate for each affected county as compared to what each county now receives from the IMF for its Complex departments? Is that question a factor that the WAAC should use to recommend whether the full asbestos case-weighting should be given to each complex case, and if so, how will that factor be used?

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5. Could the appropriate case-weighting for complex cases be even higher than that in asbestos cases, given that complex cases are not cookie-cutter in nature and vary greatly in terms of their life cycle, the number of parties, likelihood of trial, etc?
6. Has the TCBAC, or the Judicial Council, evaluated the staff efficiencies and time savings generated from Complex case assignment? In the ABTL's experience, treating cases as complex results in greater staff and judicial familiarity with the parties, their counsel, and the nature of each case, allowing many scheduling, procedural and substantive issues to be resolved more quickly – how are those efficiency savings measured, and will they be incorporated into case-weighting and funding?
7. If the Complex divisions were to lose their incremental funding or it were to be reduced, what would be the resulting loss of fee revenue contributed to the Trust Fund? What would the financial consequences be if the litigants who are now litigating their complex cases in the Complex Case Departments were a) to bring them in the courts of unlimited jurisdiction, or b) bring them in other forums (federal courts, other states, ADR)?
8. Complex division staff regularly have to handle issues with dozens of different cases in a single day – have you calculated how much time (and lost efficiency) would be spent just tracking the amount of time spent on each case?
9. Will the new funding mechanism account for the excess funding that some county courts receive from county funds, such as is the case for Los Angeles County?
10. The ABTL believes that the daily work of the complex courts (both judges and staff) is unique and highly specialized, and is concerned that decisions about the complex courts are being made without a proper appreciation of their daily activities? Would members of the Judicial Council, or staff, be willing to spend time in some of our state's Complex Case divisions observing them on a first-hand basis, before making any final decisions about the funding or de-funding of those courts?
11. What would be the labor relations impact of forcing the clerks to now keep track of their time on a minute-by-minute basis?
12. Why are asbestos cases being used as a benchmark, since only a few of the complex courts handle these cases, and they have been around in the thousands for so long that processing them is now routine (or should be)?

Respectfully submitted,

Andrew A. Bassak, Manatt Phelps & Phillips

2015 President – Association of Business Trial Lawyers, Northern California Chapter

Jeff Chanin, Kecker & Van Nest (Committee Chair)

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