

## State Court – Are You Kidding Me?

By

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Sarah and Charley hadn't seen each other since law school. Sarah had worked her way up the ladder at the Amalgamated Insurance Company's legal department, overseeing all declaratory judgment actions on commercial general liability policies. Charley was in private practice for years in Philadelphia, but just moved to Orlando to go in-house with United Metadata. He knew Sarah moved home after law school, and decided to look her up. He recognized her as soon as she walked into the coffee shop.

"How's the legal world treating you?"

"Thank heavens for the diversity statute," she sighed.

"Well, wasn't expecting that," he smiled.

"Oh, you'll get it soon enough Mr. In-house counsel. I'd rather be back in final exams than have one of my cases in state court. There's nothing sweeter than the removal statute."

"So you never go to state court – or stay there?"

"If my insured's in Florida, I might have to, but otherwise never. I can't remember the last time that happened – maybe ten years ago."

"And your reasoning?"

Sarah remembered Charley's defining characteristic in law school: don't ask me to believe it, show me. He liked to call himself an empiricist, but the other students called him the Missouri Mule. She recognized he was challenging her belief that you just don't go to state court.

"The judges aren't as sophisticated in state court. They don't see these cases and don't understand insurance law. They get my kind of cases once in a blue moon, and then just fall back on the idea of construing the policy against the insurer to stick it to me. It's just too easy for them not to do the work, and sleep well thinking 'who cares, it's only an insurance company.'"

"Have you ever heard of the Business Court Subdivision in Orlando's Circuit Court Sarah?"

"No, but I'm sure you are about to tell me."

"Have you ever heard of Business Courts at all?"

“Like the Delaware Chancery Court?”

“In a way, but the kind of business courts I’m talking about don’t just deal with corporate takeovers or the business judgment rule. They’re specialized litigation tracks in state trial courts exclusively hearing business and commercial cases – business vs. business cases. And you’ve got one hear in Orlando, a damn good one at that.”

“How does that help me and my dec actions?”

“The business courts, which are really these specialized civil dockets, do two things for you Sarah. They get you the same judge from soup to nuts in a case, just like federal court; and you get a judge who knows what to do with your insurance cases, which you can’t tell me every federal judge would know.”

“That goes against everything I was ever taught about state trial judges. Have I been deceived all these years?”

“Maybe not, if deception involves scientir,” he laughed. “You just haven’t kept current.”

“Guide me oh wise one.”

“There are about 18 states with these specialized business tracks, either statewide or in the larger cities. They started developing up about 15 years ago. Jurisdiction is limited to defined business and commercial case types, and almost always only open their doors to business vs. business cases, not consumer disputes. And in a many of them, including your own court right here in Orlando, that jurisdiction includes declaratory judgment actions involving commercial general liability policies.”

“Ahh. So you’re saying that these judges are going to hear my kind of cases more than once, and that they will actually learn the law.”

“Yup. In my previous life, I litigated and won a dec action for a carrier in Philadelphia’s business court, which has that same jurisdiction.”

“In state court? You’re kidding me!”

“No joke my friend.”

“Don’t big city judges still hate carriers, even if it’s a commercial policy?”

“Look, one thing I’ve learned is that these judges are taking on a lot of the hardest cases on the court’s docket, and they deal with a lot of paper because these cases generate motions. They know they’re in for a demanding job, and that they have to work hard to get it right – but they have self respect, or pride, and they do work hard. In my experience, I might lose a motion

or argument in the business court, but it won't be because the judge took a pass. They even write opinions in a lot of the cases.”

“You really are kidding me. State trial judges writing opinions.” Her sarcasm twisted around each word.

“Not in every business court, but in a lot of them. In Philly, there have been around 800 in the last ten years. I know the business courts in New York, Boston, North Carolina, Rhode Island and Baltimore, at a minimum, issue written opinions.”

“These courts really are all over the place.”

“From Maine to Miami, out to Chicago and Nevada, and even in Alabama and West Virginia. And the numbers are growing.”

“Are you telling me I'm going to win my cases with these judges?” Are you telling your boss Metadata's going to win?

“I'm not an idiot. I can't guaranty you're going to win, or that Metadata is going to win every case we bring or defend in a business court. I'm telling you that these courts provide a forum where your cases will get a full hearing, where the court's going to work to understand what you're saying and then rule based on the law, not on being overwhelmed or biased. Isn't that all you want in federal court?”

“So you, the Missouri Mule, who only believes something after he gets the facts, are going to recommend that Metadata use these courts.”

“I'll weigh my options in bringing suit or choosing to remove -- like I'm supposed to do as a lawyer. But I'm completely comfortable that choosing to litigate in a business court is a real option that I am going to think about in my cases.”

Lee Applebaum is a partner at Fineman, Krekstein & Harris, P.C. in Philadelphia. He is co-chair of the ABA's Subcommittee on Business Court, Chair of the Philadelphia Bar Association's Business Law Section and former Chair of its Business Litigation Committee. In 2008, he was made an Honorary Charter Member of the American College of Business Court Judges.

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