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CLIENT ALERT

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## CUYAHOGA COUNTY'S COMMERCIAL DOCKET IS OPEN FOR BUSINESS COME FEBRUARY 1, 2009

BY ROBERT J. HANNA & MICHAEL C. BRINK

Beginning February 1, 2009, all new cases filed in the Cuyahoga County Court of Common Pleas concerning disputes between businesses (or certain kinds of disputes between businesses and individuals) will be assigned to the Court's commercial docket. This new docket is expected to minimize the length, cost, and unpredictability of litigating commercial disputes in Ohio. Two very experienced and well-respected judges, Judge Richard J. McMonagle and Judge John P. O'Donnell, will preside over Cuyahoga County's new commercial docket. They are expected to bring a pragmatic approach to resolving business disputes.

The new commercial docket is a four-year pilot program and is not limited to Cuyahoga County; Franklin, Hamilton, and Lucas County are also participating. This program is modeled after the successful implementation of commercial dockets (or business courts) in several other states, including Delaware, New York, Pennsylvania, North Carolina, and Maryland. The types of cases handled by Cuyahoga County's commercial docket will include:

1. the formation, governance, dissolution, or liquidation of a business entity;

2. the rights or obligations between owners, shareholders, partners, or members of a business entity;

3. trade secret, non-disclosure, non-compete, or employment agreements involving a business entity and an owner, sole proprietor, shareholder, or partner, or member;

4. the rights, obligations, liability, or indemnity of an officer, director, manager, trustee, partner, or member of a business entity owed to or from the business entity; and

5. disputes between two or more business entities or individuals as to their business or investment activities relating to contracts, transactions, or their relationships.

Claims for personal injury or wrongful death, consumer-product claims, employment law claims (such as discrimination or wage-and-hour claims), and tax and real estate claims are excluded from the commercial docket. While the commercial docket can only handle disputes involving "commercial entities," business cases of all types are eligible for the docket –

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SAN FRANCISCO

regardless of the size of the case or complexity of the issues.

Several features of the commercial docket – like assigning the case to an experienced judge and a targeted resolution date of 18 months – have the potential to ease the financial burden Ohio companies experience in commercial cases. The judges will have special training in business law. They have the ability to appoint a special master, and their opinions will be published on the Ohio Supreme Court’s website, accessible to all. In short, the pilot project is designed to give commercial cases to judges with greater expertise in managing commercial disputes, greater familiarity with the applicable law, and a better understanding of the business context of those disputes. A more efficient court system and educated court can only benefit businesses mired in a commercial dispute.

The pilot program is scheduled to run through July 1, 2012, subject to extension, modification, or withdrawal by the Ohio Supreme Court.

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