

Georgia Business Court To Bring Timely Relief In Pandemic

By **Rosie Manins**

Law360 (July 31, 2020, 6:02 PM EDT) -- Georgia is launching a statewide business court in August, modeled on those in Delaware and North Carolina, and its state-of-the-art remote technology and clear docket are expected to help ease the strain of pandemic-era litigation.

The Georgia State-wide Business Court opens for case filings Aug. 1 and is intended to make resolving major business disputes easier and faster. And, while the court construction isn't yet completed, Judge Walter W. Davis, a Jones Day alum, is at the helm and staffing up with some seasoned veterans of Atlanta-area courts.



Judge Walter W. Davis, a former Jones Day partner, has been tapped to lead the Georgia State-wide Business Court. (Rosie Manins | Law360)

Atlanta-area attorneys expect the court will deal with cases in a fraction of the time usually taken, cutting costs across the board, and with sensible rulings from an experienced business litigator. Court leaders had already planned to leverage technology so parties outside Atlanta don't have to travel there, and the focus on remote accessibility is proving fortunate during an era when more hearings and court proceedings are happening remotely than ever before.

"One of the blessings of the situation we find ourselves in is that we were already planning to use state-of-the-art remote technology and now parties and lawyers are getting much more comfortable doing things remotely," Judge Davis told Law360.

There's a great deal of optimism among Georgia attorneys about the ease and professionalism the new court will bring, and a hope that the court could help ease the backlog in state courts that are further being hampered by the coronavirus pandemic. But some attorneys are concerned the court could be given too few cases in its early years because of a

controversial-in-some-circles requirement that both parties consent to have their cases heard in the court.

This isn't Georgia's first business court. The Metro Atlanta Business Case Division of the Fulton County Superior Court, which takes corporate cases from Georgia's two most populous counties, Fulton and Gwinnett, will continue to operate and will be an option for litigants in addition to the statewide court. Other state courts have judges who specialize in business cases, and all superior courts maintain the ability to create a business court.

The statewide business court should encourage companies to relocate and incorporate throughout Georgia, knowing they can rely on the new forum for complex disputes with a judge well versed in the subject matter, Ashley F. Heintz of Jones Day LLP said.

"This is a significant tool for making our corporate law regime more robust," she said. "I think it's positive for practitioners on both sides of the bar. We needed a forum where we could efficiently resolve these kinds of complex business disputes and where litigants had a consistent application of appropriate business law."

The court emerged after a 2017 legislative review of Georgia's judicial system aimed at improving efficiencies and adopting best practice. Created by a voter-approved constitutional amendment, it is Georgia's first new statewide court in 114 years, since the Georgia Court of Appeals opened in 1906.

Judge Davis, a former longtime partner at Jones Day in Atlanta, was appointed to the business court by Gov. Brian Kemp as someone with extensive litigation experience in the Delaware Court of Chancery and other top business courts around the country. As a first-time judge, he has spent the year to date cherry-picking the best aspects of business courts elsewhere and calling on local experts to help implement them.

"To me, success is when I'm not the only judge of the court, because that means we built it in a way that counsel and litigants want to be a part of it," Judge Davis said. "I have every confidence that the metro Atlanta area will use this court, but success for me is when I get cases from all corners of the state."

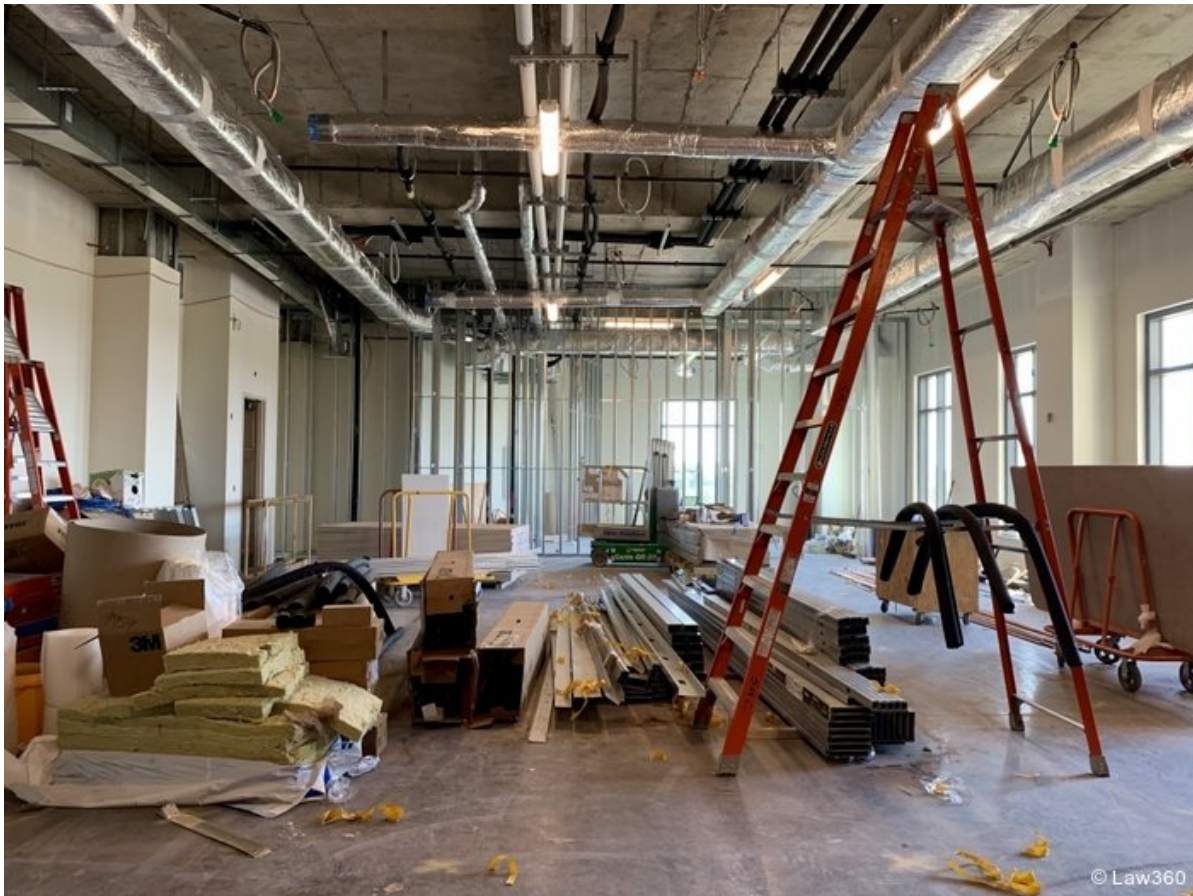
"The court is a positive change for Georgia that should be embraced and supported," Rocco E. Testani of Eversheds Sutherland (US) LLP said.

Testani, the chairman of Georgians for Lawsuit Reform, helped write the court's enabling legislation and is on its rules commission.

"To my mind, it is about fairness to parties across the state," Testani said. "It's also consistent with economic development in parts of the state outside of metro Atlanta. Not having a statewide business court, I thought, was a deficit for our judicial system, and it was a competition issue in a sense because so many states have a statewide business court."

The court is built to hear big controversies: cases with at least \$500,000 in dispute or \$1 million in real estate matters. Cases can be directly filed in the court, moved by consent, or removed from state or superior courts.

The court's relatively high filing fee of \$3,000 — more than in Delaware and North Carolina — is appropriate given the controversy threshold and anticipated benefits of using the court, Atlanta attorneys say.



Construction on the Georgia State-wide Business Court, in the Nathan Deal Judicial Center in Atlanta, is due to be completed in October. (Rosie Manins | Law360)

The court facilities are still under construction within the new \$131 million Nathan Deal Judicial Center in downtown Atlanta, across the road from the Georgia State Capitol. It should be finished in October, although Judge Davis and his team have already moved into their offices and are ready to take cases. They share the building, and a stellar view of the Gold Dome, with Georgia's Supreme Court and Court of Appeals.

While the court's technology is designed to make proceedings accessible across the state, the plan is for the court to eventually use venues around Georgia for some hearings. Judge Davis has started talking to outlying courts and universities about possible arrangements, he said.

Statewide business court clerk Angie Davis was this week appointed by Kemp, who cited her 30-plus years managing courts in Cobb County. Davis told Law360 she's honored to have the opportunity to make an impact on a larger platform, and hopes her success modernizing technology and case management systems ensures the smooth running of the business court.

"The notion of helping to write the rule book is very exciting," she said.

What remains to be seen is how busy the court will get and how quickly parties will begin to use its services.

The decision to require both parties to consent to have their cases heard by the business court was hotly contested in Georgia's legislature. Metro Atlanta's business court had fewer filings than expected under the same rule when it opened in 2005, and its dockets grew once the rule was amended in 2007. Attorneys say the rule change was a turning point for the metro court — a pilot project that is now considered a success.

"It might take a few years to really see whether that consent requirement makes sense," Alexandra S. Peurach of Troutman Pepper Hamilton Sanders LLP told Law360. "If it comes to be that the number of filings aren't commensurate with what they need to sustain themselves it wouldn't surprise me if that rule changed."

Georgians For Lawsuit Reform executive director Meagan Hanson, whose organization worked closely on legislation about the business court, said she doesn't expect two-party consent to change unless the Legislature sees that the court is being underutilized.

Lawyers who favor two-party consent, like Dan Snipes of Taulbee Rushing Snipes Marsh & Hodgins LLC, say it helps to prevent small companies outside Atlanta from being unwillingly dragged into the court by large corporations. Snipes is the immediate past president of the Georgia Trial Lawyers Association and was heavily involved in the consent debate. He said the two-party rule is necessary because the business court has relatively wide subject matter jurisdiction.

"The GTLA has no objection to there being a court for business-to-business disputes, but when you expand the subject matter of the court to include some consumer cases, an individual plaintiff should have to consent to be a part of that," he said.

The new business court shares equity jurisdiction with superior courts over all matters in which it has subject matter jurisdiction, including trade secrets, securities, corporate partnerships, breach of contract, business torts and licensing.

For Judge Davis, two-party consent is a wait-and-see issue. He hopes parties who use the court have a positive experience regardless of whether they win their case or wanted to be there in the first place, and that it becomes known as a premium and trusted forum for corporate litigation.

Helping him achieve that goal is the court's senior staff attorney, Lynette Jimenez, who for the last three years was program director and staff attorney for the metro Atlanta business court. She's confident there are enough large businesses and corporate cases in Georgia to sustain both the statewide and metro business courts without detrimentally gutting state court dockets, and is excited about being part of something new.

"We're constantly learning from one another and developing best practices, and that's the beauty of what we do," Jimenez said. "It's not a competition, it's everybody helping each other and I think we've seen that in bringing this court up."

--Editing by Peter Rozovsky,