Georgia Law Review

Volume 56 | Issue 1 Article 9

12-2021

Boom or Bust: Ensuring the Georgia State-wide Business Court Fulfills Its Constitutional Promise

Roya Naghepour
University of Georgia School of Law, rn62605@uga.edu

Boom or Bust: Ensuring the Georgia State-wide Business Court Fulfills Its Constitutional Promise

Cover Page Footnote

* J.D. Candidate, 2022, University of Georgia School of Law; B.A. 2019, University of Georgia. The author expresses sincere gratitude to Judge Walter W. Davis for his helpful insight into the development and inner workings of the Georgia State-wide Business Court and for his advice in developing and editing this Note and to Professor Usha Rodrigues, M.E. Kilpatrick Chair of Corporate Finance and Securities Law at the University of Georgia, for her support and guidance in developing this Note.

BOOM OR BUST: ENSURING THE GEORGIA STATE-WIDE BUSINESS COURT FULFILLS ITS CONSTITUTIONAL PROMISE

Roya Naghepour[*]

The United States judiciary includes specialized court systems within its baseline civil and criminal justice structure that provide more efficient and expert adjudication in a wide variety of areas. Since the creation of the Delaware Court of Chancery in 1792, many states have established specialized business courts with jurisdiction over commercial and corporate disputes. Today, many states have business court models, all choosing to employ some version of a specialized forum for corporate and commercial issues for the sake of judicial efficiency. The Georgia State-wide Business Court was established in 2019 with limited jurisdiction over narrow categories of commercial disputes. This Note explores the issues that business courts are intended to resolve and ultimately argues that the Georgia General Assembly should amend the Georgia State-wide Business Court's enabling statute to allow courts to decide sua sponte whether a case should be assigned to the business court, as opposed to a general state or superior court.

[*] J.D. Candidate, 2022, University of Georgia School of Law; B.A. 2019, University of Georgia. The author expresses sincere gratitude to Judge Walter W. Davis for his helpful insight into the development and inner workings of the Georgia State-wide Business Court and for his advice in developing and editing this Note and to Professor Usha Rodrigues, M.E. Kilpatrick Chair of Corporate Finance and Securities Law at the University of Georgia, for her support and guidance in developing this Note.

TABLE OF CONTENTS

I. INTRODUCTION

On January 2, 2009, the Atlanta Hawks traveled to East Rutherford, New Jersey, to play the New Jersey Nets, who at the time had lost seven of their last eight home games.[1] The Hawks were poised to win their seventh game straight, for the first time since 1999.[2] Early on, the Nets had a rough game: the team consistently missed open shot after open shot, Coach Lawrence Frank received two technical fouls and was ejected from the game, and the Nets were one for seven from three-point range by the half.[3] But as the Nets entered the second half, the tide turned, and they put thirty-two points on the board in the third quarter.[4] Then, in the fourth quarter, Devon Harris drained a three-pointer, overcoming a twenty-point halftime deficit to give the Nets a two-point lead.[5] In overtime, the Hawks enjoyed a one-point lead with 5.3 seconds left on the clock, but the Nets had possession.[6] The final in-bounds pass intended for Vince Carter was deflected into the backcourt, putting him too far from the basket.[7] Carter recovered the ball, planted himself at thirty feet, and put up a long three-pointer at the buzzer to seal the deal.[8]

Carter delivered the Hawks a disappointing buzzer-beater that night. But each team played the game by its rules, and the Nets, with the help of Vince Carter, fairly took their place as winners, ending the Hawks' six-game winning streak.[9] The next year, in a different type of court, the Georgia Court of Appeals delivered the Hawks another epic loss. In *Turner Broadcasting System, Inc., v. McDavid*, the court held that the expiration of a letter of intent

---

[1] *Carter's 3 at Buzzer in OT Completes Nets' Rally*, ESPN (Jan. 2, 2009), https://www.espn.com/nba/recap?gameId=290102017 [hereinafter *Hawks Buzzer Beater*]; *see also Brooklyn Nets Schedule 2008-09*, ESPN, https://www.espn.com/nba/team/schedule/_/id/17/season/2009.

[2] *Hawks Buzzer Beater*, *supra* note 1.

[3] *Id.*; *see also Box Score*, ESPN (Jan. 2, 2009), https://www.espn.com/nba/boxscore/_/gameId/290102017.

[4] *Hawks Buzzer Beater*, *supra* note 1.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

executed by the parties addressing David McDavid's intent to purchase the Atlanta Hawks, Atlanta Thrashers, and certain operating rights at Philips Arena did not preclude McDavid from holding Turner Broadcasting System, Inc. (TBS) liable for breach of an oral agreement.[10] This time, the Hawks thought that they were on the winning side of a buzzer-beater deal, and the ultimate loss felt like the referee just missed a few contractual interpretation play calls.[11] Nothing foreign to Georgia sports fans.[12] While in sports it is a loss on a team's record, a missed chance at a national title, or a missed bonus on salaries, for TBS it was $281 million in damages.[13]

In the deal world, material terms are constantly in limbo. It is imperative that the parties are able to negotiate and can appropriately bargain to meet the demands of each side so that all are satisfied in the end.[14] Months-long negotiations and puffery are commonplace, and the understanding that material terms are not

---

[10] *See* Turner Broad. Sys., Inc. v. McDavid, 693 S.E.2d 873, 888 (Ga. Ct. App. 2010) (affirming the lower court's award of damages to McDavid in the breach of contract dispute).

[11] *Id.* at 877 ("Turner contends that the uncontroverted evidence established that the parties manifested an intent to be bound only in writing, and that the parties never reached agreement on all material terms of the sale.").

[12] *See, e.g.*, Scott McDonald, *Feel Cursed? Try Feeling Like a Fan of Georgia Sports Teams*, NEWSWEEK (Oct. 19, 2020, 1:18 AM), https://www.newsweek.com/feel-cursed-try-feeling-like-fan-georgia-sports-teams-1540142 ("The sports teams [in Georgia] might actually be cursed. Maybe the devil really did go down to Georgia—in the name of the Crimson Tide, Los Angeles Dodgers and, well, that 28-3 blown Super Bowl lead still comes to mind."). *But see* Alden Gonzalez, *Atlanta Braves Finish off Houston Astros for First World Series Championship Since 1995*, ESPN (Nov. 2, 2021), https://www.espn.com/mlb/story/_/id/32538651/atlanta-braves-beat-houston-astros-first-world-series-championship-1995 ("On this night, in Game 6 of the World Series, [the Atlanta Braves] connected on the final out that cemented a 7-0 victory over the Houston Astros and capped the Braves' improbable ascendance."); Mark Bradley, *Mighty Georgia Runs down Bama to Claim Its Long-Sought Championship*, ATLANTA J.-CONST. (Jan. 11, 2022), https://www.ajc.com/sports/mark-bradley-blog/mighty-georgia-runs-down-bama-to-win-its-long-sought-championship/EO6X4LNRIBDGFG4LTNMVOFRTDU/ ("When last Georgia won a national title, Kirby Smart was five years and eight days old. Georgia hired him away from Alabama to win a championship. It took six seasons, but here he stands, the new king of college football. Here the Bulldogs stand, champions again, champions at last.").

[13] *See Turner*, 693 S.E.2d at 886–88 (discussing the $281 million jury verdict).

[14] *See* Jason Scott Johnston, *Communication and Courtship: Cheap Talk Economics and the Law of Contract Formation*, 85 VA. L. REV. 385, 388 (1999) (referring to the deal making process as "courtship," which is "at the most fundamental level a process by which parties acquire and communicate information to each other in an attempt to discern whether the deal is one which they both wish to make and, if so, on what terms").

final until written and signed in an agreement is routine, especially in high-value transactions[15] like the sale of two major league sports teams and the operating rights to an arena in the commercial capital of the Southeast.[16]

Many factors impact the trajectory of a given case: the questions of law at issue, the scope of discovery, the necessity of expert evidence—the list goes on.[17] In matters of complex commercial and corporate disputes, complicated legal issues and extensive discovery are consistently in the frontcourt.[18] Accordingly, to better address the complex issues embedded in business disputes, many states have incorporated specialized business courts within their state legal systems.[19] The American specialized business court model

---

[15] *Id.* at 412–13 (defining "cheap talk" in the negotiation process as "a message that does not directly affect the payoff of either the message's sender or receiver," and explaining that "the whole point of sending such a message may be to influence buyer responses and hence expected payouts from the process").

[16] *See Turner*, 693 S.E.2d at 876 (depicting the parties' deal for the purchase of the Atlanta Hawks, Atlanta Thrashers, and rights to what was then named Philips Arena).

[17] *See, e.g.*, Mark K. Osbeck, *Lawyer as Soothsayer: Exploring the Important Role of Outcome Prediction in the Practice of Law*, 123 PENN ST. L. REV. 41, 66 (2018) (discussing some different elements that can shift the outcome of a case despite an attorney's case assessment early on, including the weight and admissibility of evidence).

[18] *See* Joseph R. Slights III & Elizabeth A. Powers, *Delaware Courts Continue to Excel in Business Litigation with the Success of the Complex Commercial Litigation Division of the Superior Court*, 70 BUS. LAW. 1039, 1042 (2015) (noting that the Delaware Court of Chancery's "focus on high-stakes business litigation has caused it to be sensitive to the unique challenges presented by complex civil litigation and to adapt its case management practices to address these challenges"). In basketball, the frontcourt is defined as the offensive half of the court or refers to players who play offensively in that half of the court. *See, e.g.*, *Frontcourt*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2014) (defining frontcourt as "a basketball team's offensive half of the court," or "the positions of the forwards and center on a basketball team; *also*: the forwards and center themselves").

[19] *See* Slights & Powers, *supra* note 18, at 1041–45 (explaining the modern trend of adopting business courts in the United States); *see also Recent Developments in Business Commercial Courts in the United States and Abroad*, A.B.A. (May 22, 2014), https://www.americanbar.org/groups/business_law/publications/blt/2014/05/01_renck/ ("There currently are functioning business courts of some type either in cities, counties, regions, or statewide in several states, including the following: Alabama, Colorado, Delaware, Florida, Georgia, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, and West Virginia.").

originated with the Delaware Court of Chancery,[20] the nation's leading forum for corporate matters.[21] Accordingly, every business court in the country is geared toward accomplishing one goal: providing an efficient, specialized forum for complex business disputes.[22] But these courts differ significantly in jurisdictional reach, creating a high degree of variation in the number and kind of cases that reach each court's docket every year.[23] Some courts annually accept cases in the low hundreds, while other courts, such as the Circuit Court of Cook County's Chancery Division in Chicago, accept up to 3,700 cases a year.[24] Some courts mandate particular subject matter requirements, certain amount-in-controversy

---

[20] *See* WILLIAM T. ALLEN, REINIER KRAAKMAN & VIKRAMADITYA S. KHANNA, COMMENTARIES AND CASES ON THE LAW OF BUSINESS ORGANIZATION 101–02 (6th ed. 2021) (explaining how New Jersey's corporate statutes once made it a popular state for incorporation but that Delaware's model proved more successful overtime (quoting 2 WILLIAM W. COOK, A TREATISE ON STOCK AND STOCKHOLDERS, BONDS AND MORTGAGES, AND GENERAL CORPORATION LAW 1604–05 (3d ed. 1894))).

[21] *See* Maurice A. Hartnett, III, *The History of the Delaware Court of Chancery*, 48 BUS. LAW. 367, 370 (1992) ("[T]he Delaware Court of Chancery has emerged as a nationally recognized forum for the trial of corporate litigation."); *see also* STATE OF GA. CT. REFORM COUNCIL, FINAL REPORT 19 (2017) [hereinafter GEORGIA COURT REFORM COUNCIL REPORT] (noting that "Delaware remains the "'godfather" of business courts' with its Chancery Court, which developed as 'the original' business court because corporate governance cases 'generally raise the kinds of questions with which equity deals: the duty of disclosure, the duty of good faith, and the like'" (quoting Anne Tucker Nees, *Making a Case for Business Courts: A Survey of and Proposed Framework to Evaluate Business Courts*, 24 GA. ST. U. L. REV. 477, 480–81 (2007))).

[22] *See* Lee Applebaum, Mitchell Bach, Eric Milby & Richard L. Renck, *Through the Decades: The Development of Business Courts in the United States of America*, 75 BUS. LAW. 2053, 2054 (2020) ("All business courts are 'primarily designed to provide timely and well-reasoned case management and disposition' . . . . One description of business court objectives is 'to provide an efficient forum for the just, expeditious, and consistent resolution of complex commercial or business cases . . . .'" (first quoting Lee Applebaum, *The Steady Growth of Business Courts*, *in* FUTURE TRENDS IN STATE COURTS 70, 70 (Nat'l Ctr. State Cts. ed., 2011); and then quoting Nees, *supra* note 21, at 479)).

[23] *See* Applebaum et al., *supra* note 22, at 2055 n.8 (explaining that the popularity of business courts varies because some business courts, like the Metro Atlanta Business Court, accept relatively few cases (e.g., 239 over a ten-year period), while others—including courts in Philadelphia, Chicago, Manhattan, and Massachusetts—accept exponentially more cases (e.g., almost 700 in a single year in Philadelphia), with the Manhattan Commercial Division even raising its amount-in-controversy requirement by $350,000 to try to manage its docket).

[24] *Id.*

thresholds, or more specific criteria and duties outlined in enabling legislation and local rules.[25]

The basic limitations outlined in the different jurisdictional models employed by American business courts can be summarized in three categories: (1) courts with specific subject matter requirements and a specified amount-in-controversy requirement (the Baseline Model), (2) courts with complex business or commercial subject matter classification requirements (the Gatekeeping Model), and (3) courts following rules as outlined by enabling legislation and corresponding authority but with discretion to allow non-mandatory business cases onto the docket (the North Carolina Model).[26]

The Georgia State-wide Business Court (GSBC) received approval from Georgia voters through a constitutional referendum in 2018.[27] Shortly thereafter, the Georgia General Assembly crafted and passed the GSBC's enabling statute, and the court began officially hearing cases on August 3, 2020.[28] The GSBC loosely follows a fusion of the Baseline Model and the North Carolina Model.[29] The GSBC mandates specific subject matter requirements but provides supplemental jurisdiction over claims falling outside the statute's defined limitations, as well as an established amount-in-controversy requirement.[30]

At the time of the *Turner* decision, Georgia did not yet have a statewide business court. Years later, in a joint hearing of the

---

[25] *Id.* at 2055 ("The second model [for state business courts] is more subjective. The case must be a business or commercial case, but only is permitted in the business court if it is a 'complex' business or commercial case.").

[26] *See id.* at 2055–56 (categorizing the American business court system into "three basic models" and describing each accordingly).

[27] *History*, GA. STATE-WIDE BUS. CT., https://www.georgiabusinesscourt.com/history/ (last visited Nov. 13, 2021) [hereinafter *GSBC History*].

[28] *Id.*

[29] *Id.*; *see also* GEORGIA COURT REFORM COUNCIL REPORT, *supra* note 21, at 23 ("The Subcommittee recommends a mixture of North Carolina's and Georgia's Fulton County business courts. North Carolina's model combines the objectivity and predictability of a defined list of parameters with the subjectivity and flexibility in determining 'complexity' standards. Additionally, the Subcommittee proposes an amount in controversy requirement as another jurisdictional gatekeeper for the [GSBC]." (footnote omitted)).

[30] *See* O.C.G.A. § 15-5A-3 (2021) (enumerating the jurisdictional requirements of the GSBC); *see also* GEORGIA COURT REFORM COUNCIL REPORT, *supra* note 21, at 23 (recommending certain threshold requirements for GSBC jurisdiction).

Georgia House and Senate Judiciary Committees on August 14, 2019, the committees unanimously, and with bipartisan support, confirmed the appointment of Judge Walter W. Davis as the inaugural judge of the GSBC.[31] Judge Davis began his term on January 1, 2020, making history as the first and, to date, only judge of the GSBC,[32] a court with statewide, but limited, jurisdiction.[33] The Georgia General Assembly included many restrictions within the GSBC's enabling statute "aimed at ensuring that smaller, less complex cases, among others," do not land on the court's docket.[34] In creating the GSBC, the Georgia legislature intended for the court to balance having the "objectivity and predictability" of hearing cases focused on the enumerated subject matter requirements with the "subjectivity and flexibility" of determining which cases are "complex" commercial matters falling within its discretion.[35] While the GSBC strikes a balance in terms of jurisdictional limitations encompassed by the three basic business court models, the GSBC deviates from the North Carolina Model on one foundational element: the Georgia court is a voluntary forum.[36] This Note argues that the two-party consent rule in the GSBC's enabling statute—which limits the GSBC's ability to exercise its subject-area expertise to only those instances in which both parties agree to litigate in the GSBC, without any judicial input in that decision—frustrates the GSBC's purpose by leaving cases with complex contractual

---

[31] *GSBC History*, *supra* note 27; *see also* Press Release, Off. of the Governor, With Unanimous, Bipartisan Support, Davis Confirmed as Statewide Business Court Judge (Aug. 15, 2019), https://gov.georgia.gov/press-releases/2019-08-15/unanimous-bipartisan-support-davis-confirmed-statewide-business-court; *see also* Katheryn Hayes Tucker, *Jones Day Partner Confirmed for Ga. Business Court Judgeship*, DAILY REP. (Aug. 14, 2019, 6:32 PM), https://www.law.com/dailyreportonline/2019/08/14/jones-day-partner-confirmed-for-ga-business-court-judgeship/ ("Davis has been with Jones Day for 17 years and is administrative partner for the Atlanta office. He has handled complex business litigation focused on corporate governance, fiduciary duty, securities fraud and shareholders disputes.").

[32] *GSBC History*, *supra* note 27.

[33] *See* O.C.G.A. § 15-5A-1 to -16 (2021) (enumerating the GSBC's powers and responsibilities).

[34] *GSBC History*, *supra* note 27.

[35] GEORGIA COURT REFORM COUNCIL, *supra* note 21, at 23.

[36] *Compare* O.C.G.A. § 15-5A-4 (2021) (requiring both parties in a case to consent to litigation before the GSBC), *with* N.C. GEN. STAT. § 7A-45.4 (2021) (permitting sua sponte transfer of cases to the North Carolina Business Court if a case meets the court's subject matter requirements).

interpretation issues like those in *Turner* to whichever court one party fancies.

Part II of this Note reviews the rationale for adopting specialized business courts in state court systems generally, highlighting the unique challenges involved in complex commercial and corporate disputes. Part III provides an in-depth review of the history and current structure of the GSBC and explores different limitations that litigants will face if the court's current voluntary structure remains unchanged. Part IV analyzes both the judicial and business interests that a statutory amendment allowing courts to transfer cases to the GSBC's docket sua sponte, regardless of the parties' desires, would offer. Part IV also discusses how cases such as *Turner* are better resolved in specialized forums like the GSBC and the positive impact that this statutory amendment would have on business negotiations and investments in the state of Georgia. This Note concludes that the Georgia General Assembly should amend the GSBC's enabling statute to establish a more predictable business court that is able to use its expertise to the fullest, ultimately encouraging more businesses to choose Georgia as their home.

II. SPECIALIZED BUSINESS COURTS: A LEAGUE OF THEIR OWN

A. HOPPING ON THE DELAWARE BANDWAGON

Specialized courts have become an integral part of American legal practice,[37] both federally[38] and at the state level.[39] At the state level, specialized forums are customary; drug courts, gambling

---

[37] *See* Ad Hoc Comm. on Bus. Cts., *Business Courts: Towards a More Efficient Judiciary*, 52 BUS. LAW. 947, 948–60 (1997) (explaining the adoption of specialized courts, including business courts, in the American judicial system).

[38] *Id.* at 950 (listing examples of specialized courts in the United States); *see also Court Role and Structure*, U.S. CTS., https://www.uscourts.gov/about-federal-courts/court-role-and-structure (last visited Nov. 13, 2021) (same).

[39] *See, e.g.*, *Problem-Solving Courts*, FLA. CTS., https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts (last visited Nov. 13, 2021) (describing "problem-solving courts" in the state of Florida, which are divided into seven different groups: adult drug court, juvenile drug court, dependency drug court, DUI court, mental health court, veterans court, and early childhood court).

courts, domestic violence courts, and mental health courts, among others, provide each of these unique issues with the particular attention required.[40] While the concept of specialized commercial courts is fairly new—with the Delaware Court of Chancery as a notable exception[41]—business courts have quickly become commonplace in American state court systems over the last two decades.[42] The rationale for adopting a unique forum to solve corporate and commercial disputes lies in the reality that specialized knowledge of the underlying transactional process is imperative to truly understand the legal issues at play and to fairly and efficiently resolve disputes.[43] Judges of specialized courts who routinely hear particularized cases develop a subject matter expertise that results in quicker and more thoughtful decisions.[44] This element of legal efficiency is evident in the demand for, and the rapid increase of, business courts nationwide.[45]

---

[40] *See* Slights & Powers, *supra* note 18, at 1040 ("These problem-solving courts were intended to address the following binary issues: (i) a distinct population of the court's constituents that, because of particular needs, required the court's special attention to address those needs (e.g., criminal defendants with substance abuse or mental health issues) and (ii) resource-starved courts that needed to deploy resources creatively and efficiently to produce better outcomes in particularly challenging cases." (footnote omitted)).

[41] *See* William T. Quillen & Michael Hanrahan, *A Short History of the Delaware Court of Chancery*, *in* COURT OF CHANCERY OF THE STATE OF DELAWARE 1792–1992 21, 22–23 (Hist. Soc'y for the Ct. of Chancery of the State of Del. ed., 1992) (noting that the Delaware Court of Chancery was established in 1792 and that its "earliest roots . . . reach back to the King's Chapel in feudal England").

[42] *See* Ad Hoc Comm. on Bus. Cts., *supra* note 37, at 950 (describing business courts as an addition to the already established "common specialized 'courts,'" such as "criminal divisions, probate divisions, and family or juvenile divisions"); *see also* Slights & Powers, *supra* note 18, at 1044–45 (providing a list of at least twenty-four states that have established "[s]ome form of problem-solving business courts," including North Carolina and Georgia, among others).

[43] *See* Ad Hoc Comm. on Bus. Cts., *supra* note 37, at 951 (explaining that the intricate legal issues involved in complex business disputes justify the need for "jurists with specialized experience" and that judges who hear particularized cases in any field "develop expertise, experience, and knowledge" and can more effectively make decisions).

[44] *See id.* (arguing that judges assigned to specialized courts "are more efficient and the quality of their decisions is better").

[45] *See* Slights & Powers, *supra* note 18, at 1044 ("Some form of problem-solving business courts has now been established in twenty-four (24) states . . . .").

B. OFF AND RUNNING: SPECIALIZATION AT THE TRIAL COURT LEVEL

Commercial specialization at the trial court level is fundamental to achieving the goal of giving litigants the full court press—a predictable and efficient forum.[46] Judges who specialize in commercial and corporate disputes are able to manage caseloads more efficiently, in a manner that gets the ball rolling more quickly while still offering "decisions that intrude less upon litigants' substantive rights."[47] Depending on the scope and size of the transaction or entity involved, there can be any number of players in a given business dispute stretching beyond the parties directly involved in the case, including shareholders, suppliers, and consumers.[48] Therefore, litigants downstream and commercial partners may suffer the potential direct or residual consequences of a decision and, likewise, a delay thereof.[49] Specialized business courts at the trial court level provide stakeholders with speedy dispute resolution because business-related decisions do not face a delay of game caused by other matters that often take precedence in state courts of general jurisdiction, such as criminal and domestic disputes.[50] Not only do judges who specialize in business disputes manage the procedural components of a case more efficiently, but in hearing more particularized cases, business court judges also approach business cases with more attention and nuance, offering

---

[46] *See* Jeffrey W. Stempel, *Two Cheers for Specialization*, 61 BROOK. L. REV. 67, 112–13 (1995) (explaining that specialization will "have a significant impact" on "predictability and uniformity" at the trial level because "most adjudication in America takes place in pre-trial proceedings and at the trial court level").

[47] *Id.* at 113.

[48] *See* Carrie A. O'Brien, Note, *The North Carolina Business Court: North Carolina's Special Superior Court for Complex Business Cases*, 6 N.C. BANKING INST. 367, 370 (2002) ("For example, if a decision needs to be made before the next shareholder meeting, having a judge who can quickly hear the dispute begets a significant benefit on the parties. Thus, it is extremely valuable to businesses, and therefore the economy, to have these cases disposed of as efficiently as possible." (footnote omitted)).

[49] *Id.*

[50] *See* Andy Peters, *New Georgia Business Court's Tall Order: Get Both Parties to Show Up*, ATLANTA J.-CONST. (Aug. 7, 2020), https://www.ajc.com/news/georgia-news/new-georgia-business-courts-tall-order-get-both-parties-to-show-up/I2LPKPFJKVHL3NMWJIAOTQK7YY/ (arguing that "[c]orporate litigants should flock to [the GSBC] because cases won't get stuck behind the hundreds of criminal and domestic disputes that Superior Court and State Court judges hear").

litigants a forum that eliminates much of the uncertainty often associated with the litigation process.[51]

For example, the North Carolina Business Court model assigns each new case to one judge who makes a determination on all pre-trial issues.[52] This one-judge model offers a quicker pretrial process logistically because there is only one docket to manage and because commercial cases are not wedged between other matters with priority in trial courts of general jurisdiction, such as criminal trials.[53] The one-judge model, coupled with specialized expertise in commercial and corporate transactions, has resulted in what some have termed "the gold standard" of business courts.[54] Further, the one-judge model adds to the judicial efficiency already embedded in specialized business courts.[55]

C. THE REASONABLE CORPORATION STANDARD: ADDRESSING JURY-COMPETENCE CONCERNS

Most business court models, including North Carolina's and Georgia's, preserve the option of a jury trial for litigants.[56] Some

---

[51] *See* Ad Hoc Comm. on Bus. Cts., *supra* note 37, at 951 (highlighting the role of specialized judges in handling everything from "discovery to motion practice, to settlement conferences, to responding to in-court requests of counsel, to making the ultimate decision more rapidly, more confidently, and with much less use of resources"); *see also* Stempel, *supra* note 46, at 113 ("A trial judge with specialized experience would have more of an intrinsic 'feel' for performing these tasks correctly, and would need less fresh research and reflection than would a generalist. Consequently, a specialist judge might well preside over case processing that is faster, less costly (in both judicial and attorney time), and more frequently correct.").

[52] *See* O'Brien, *supra* note 48, at 371 (discussing the benefits of more efficient case management in the North Carolina Model when "only one judge hears the dispute").

[53] *See id.* ("In a trial court with general jurisdiction, criminal cases often preempt civil cases (including complex business litigation) because of the constitutional guarantee of a speedy trial in criminal matters.").

[54] *See* Nees, *supra* note 21, at 503–04 ("[T]he North Carolina Business Court contains every predictive feature for efficiency, quality, and due process, thus quantifying its status as the 'gold standard.'").

[55] *See* O'Brien, *supra* note 48, at 369 ("The American Bar Association has suggested that states form specialized business courts, in part to increase the efficiency of the judiciary.").

[56] *See* Benjamin F. Tennille, Lee Applebaum & Anne Tucker Nees, *Getting to Yes in Specialized Courts: The Unique Role of ADR in Business Court Cases*, 11 PEPP. DISP. RESOL. L.J. 35, 68 (2010) ("No business court, other than Delaware's traditional equity court, excludes the jury option from cases where a jury could otherwise be had under state law.").

may argue that the option of a jury trial increases the uncertainty and lack-of-expertise issues that litigants seek to eliminate when filing suit in a business court.[57] However, the role of business court judges in contextualizing complex matters through their subject matter expertise should alleviate jury-competence concerns that might otherwise be present in a state court of general jurisdiction.

Juries play a fundamental role in the American legal system but suffer criticism for their lack of particularized expertise in a society entrenched in specialization.[58] Some federal courts, such as the Third Circuit Court of Appeals, have even gone so far as to create a complexity exception to the Seventh Amendment for certain cases.[59] In *In re Japanese Electronic Products Antitrust Litigation*, the Third Circuit justified its complexity exception by hinging it on the U.S. Supreme Court's test enumerated in *Ross v. Bernhard*,[60] which concerned a stockholder derivative suit in which the plaintiffs demanded a jury trial.[61] Relying on *Ross*, the Third Circuit held that it would be a violation of the Due Process Clause of the Fifth Amendment to allow jurors to provide a verdict when they do not understand the evidence and legal standards at issue.[62] Likewise,

---

[57] *See id.* at 68–69 (discussing how a jury trial "increases the risks for a business litigant because of the less predictable jury outcome").

[58] *See* Valerie P. Hans, *The Jury's Response to Business and Corporate Wrongdoing*, 52 L. & CONTEMP. PROBS. 177, 186 (1989) (discussing criticisms of jury competence in corporate cases and explaining that a juror's "[k]nowledge of prevailing norms and standards of care in the business world could be essential to understanding and assessing whether companies were negligent in specific instances").

[59] *In re* Japanese Elec. Prods. Antitrust Litig., 631 F.2d 1069, 1088–89 (3d Cir. 1980) ("[A] court should deny jury trial on due process grounds only in exceptional cases when the court . . . determines that a jury would be unable to understand the case and decide it rationally."); *see also Developments in the Law: The Civil Jury*, 110 HARV. L. REV. 1408, 1496 n.40 (1997) ("The Third Circuit has enumerated three factors that can contribute to a jury's inability to comprehend a case: the size of the suit, as indicated by estimates of the trial length, the amount of evidence, and the number of individual issues . . . .").

[60] 396 U.S. 531 (1970).

[61] *In re* Japanese Elec. Prods. Antitrust Litig., 631 F.2d at 1079 ("As our cases indicate, the 'legal' nature of an issue is determined by considering, first, the pre-merger custom with reference to such questions; second, the remedy sought; and, third, the practical abilities and limitations of juries." (quoting *Ross*, 396 U.S. at 538 n.10)).

[62] *See id.* at 1088–89; *id.* at 1084–86 ("[W]hen the jury is unable to determine the normal application of the law to the facts of a case and reaches a verdict on the basis of nothing more than its own determination of community wisdom and values, its operation is indistinguishable from arbitrary and unprincipled decisionmaking.").

in *Markman v. Westview Instruments, Inc.*, the U.S. Supreme Court held that while the ultimate finding of patent infringement should be reserved for jury determination, the interpretation of patent claims should remain with judges.[63] While the legal issue in these cases focused on the technical posture of patent law, business and corporate cases face similar jury competence issues when jurors are asked to apply a "reasonable corporation standard."[64]

For issues involved in complex commercial disputes, "[k]nowledge of prevailing norms and standards of care in the business world could be essential to understanding and assessing" the appropriate outcome.[65] Following the trial and jury's acquittal of Ford Motor Company in *State v. Ford Motor Co.*, an Indiana case, commentators highlighted the complexity issues that the jurors encountered because of "the complications in trying to establish criminal intent and impose criminal liability on a corporate entity when those issues traditionally have focused on individuals."[66] A central feature of specialized courts is minimizing the knowledge gap that may result from a jury's lack of expertise in complex business matters, and for other technically oriented legal issues, like those in patent law.[67] In patent cases, the jury is provided "alternative formulations" for the jury verdict, or certain decisions are preserved as questions of law purely for the court to decide.[68]

---

[63] *See* Markman v. Westview Instruments, Inc., 517 U.S. 370, 372, 377 (1996) (finding that infringement cases "must be tried to a jury," but "the construction of a patent, including terms of art within its claim, is exclusively within the province of the court").

[64] *See* Hans, *supra* note 58, at 186 (stating that jurors may have difficulty applying a "reasonable corporation standard" due to a lack of knowledge of what that standard might be).

[65] *Id.*

[66] Hans, *supra* note 58, at 186; *see also* Glenn A. Clark, Note, *Corporate Homicide: A New Assault on Corporate Decision-making*, 54 NOTRE DAME L. REV. 911, 911 (1979) (noting that the charges for three counts of reckless homicide in *State v. Ford Motor Co.*, which originated from a traffic accident involving a Ford Pinto automobile, were "found to involve such a substantial deviation from the conduct required of an automobile manufacturer as to warrant a prosecution for reckless homicide," as opposed to a civil products liability claim).

[67] *See* Wesley A. Demory, *Patent Claim Obviousness in Jury Trials: Where's the Analysis?*, 6 J. BUS. & TECH. L. 449, 479 (2011) (arguing that a patent court system should follow the specialized state business court model because of the issues facing judges and juries in resolving complex technical issues involved patent law).

[68] The U.S. Circuit Courts of Appeals are divided on the issue of who ultimately should decide the question of "obviousness" in patent cases, with the Ninth Circuit adopting the

Similarly, a judge specialized in complex commercial and corporate matters "can provide a more informed context, and thus create circumstances where the jury is more likely to reach an informed result because of the judge's case management, jury instructions, pre-trial rulings, and rulings during trial."[69] A specialized business court offers the predictability that businesses need to resolve risk-driven fears regarding mistrust of uninformed juries when doing business in a particular jurisdiction.[70]

III. OVERVIEW OF THE GEORGIA STATE-WIDE BUSINESS COURT

A. THE TIP-OFF: EARLY GOALS OF CERTAINTY & PREDICTABILITY

Multiple contributors deserve credit for the creation of the GSBC, including Governor Nathan Deal, the Georgia Court Reform Council, the Georgia General Assembly, and, ultimately, the citizens of Georgia.[71] In 2017, then-Governor Nathan "Deal signed an Executive Order establishing the Court Reform Council to 'review current practices and procedures within the judicial court system and the administrative law hearing system and make recommendations to improve efficiencies and achieve best practices for the administration of justice.'"[72] As a result, the Statewide Business Court Subcommittee (GSBC Subcommittee) analyzed whether such a court would succeed in Georgia, with

---

position of allowing the jury to provide the judge "an advisory decision" but allowing the judge to decide as a matter of law whether the obviousness threshold is met, Sarkisian v. Winn-Proof Corp., 688 F.2d 647 (9th Cir. 1982), and the Federal Circuit, on the other hand, limiting the use of an advisory jury to only those "actions not triable by a right of jury." Perkins-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 895 n.5 (Fed. Cir. 1984). *See also* Demory, *supra* note 67, at 473 n.199.

[69] Tennille et al., *supra* note 56, at 68 n.119.

[70] *Cf.* CHRISTOPHER M. BRUNER, RE-IMAGINING OFFSHORE FINANCE: MARKET-DOMINANT SMALL JURISDICTIONS IN A GLOBALIZING FINANCIAL WORLD 177 (2016) (noting the collaboration between leaders within the Delaware government and "professional communities to ensure that Delaware law remains cutting edge *and that the marketplace knows it*" (emphasis added)).

[71] *See GSBC History*, *supra* note 27 (describing the GSBC's development).

[72] GEORGIA COURT REFORM COUNCIL REPORT, *supra* note 21, at 2.

Governor Deal's economic development platform at the forefront of their minds.[73]

Georgia has long touted its status as the "top state for doing business," and the GSBC Subcommittee did not ignore the benefits that a statewide business court would offer.[74] The GSBC Subcommittee noted "[c]ertainty and predictability of outcome" from "judicial expertise giv[ing] business interests the security that their complex business issues will be heard in front of a judge who has substantial familiarity with complex business issues like fiduciary duties, disclosure issues, and duty of care" as the first of many advantages that business courts offer.[75] In its report, the GSBC Subcommittee surveyed many different factors, including the success of the Metro Atlanta Business Case Division in terms of efficiency, case load management, and satisfaction of litigants.[76] In addition to general commentary on the utility of a statewide business court, the GSBC Subcommittee considered many constitutional issues, most of which the GSBC Subcommittee highlighted through specific proposed amendments for the legislature to address.[77] Among these proposed amendments was the GSBC Subcommittee's recommendation that "cases could be filed in the superior or state court of any judicial circuit but would

---

[73] *Id.* at 19 ("The creation of a statewide business court in Georgia would promote all these advantages and make Georgia a more attractive and competitive venue for business."); *see also Nathan Deal*, GA., https://www.georgia.org/nathan-deal-0 ("Under Former Gov. Nathan Deal's leadership, Georgia has risen to become the No. 1 place in the nation in which to do business, a goal achieved by creating the Competitiveness Initiative, reforming our tax code, shaping our educational system to support our workforce needs and recruiting businesses to relocate here.").

[74] *See* Press Release, Off. of the Governor, Georgia Named 'Top State for Doing Business' for 7th Consecutive Year (Sept. 2, 2020), https://gov.georgia.gov/press-releases/2020-09-02/georgia-named-top-state-doing-business-7th-consecutive-year (announcing Georgia as "the 'Top State for Doing Business' for the seventh year in a row by Area Development").

[75] GEORGIA COURT REFORM COUNCIL REPORT, *supra* note 21, at 19.

[76] *See id.* at 20 (highlighting that, "[i]n 2015 and 2016, the average time for disposition of motions" for cases in the Metro Atlanta Business Case Division was sixteen days and that cases assigned to that court are "resolved between 50-60% faster than similar, complex cases on the regular docket"); *see also id.* (citing attorney Rocco Testani's testimony to the committee that "surveys of practitioners in the business case division reflect high levels of satisfaction by over 80% of those surveyed").

[77] *Id.* at 21–23 (explaining the necessary state constitutional amendments to allow for a statewide business court to be established).

be transferred and removed to the [GSBC]" upon the filing of a petition by litigants seeking to do so *and the GSBC judge's ruling* on whether the issue was of "proper subject matter" for the GSBC's jurisdiction.[78]

By the 2019 legislative session, Georgians had approved the creation of a statewide business court through a legislatively referred constitutional amendment, and the Georgia General Assembly began committee deliberations to draft the GSBC's enabling statute.[79] Notably, the judiciary committees of each chamber disagreed about whether one party or all parties must consent to warrant litigation in the GSBC.[80] The House version of the bill specified that one party's desire to litigate in the GSBC would suffice;[81] the Senate substitute required all parties to agree to GSBC jurisdiction and provided for a sixty-day period in which a party could unilaterally remove or transfer the case out of the GSBC.[82] Two paths diverged in the bill, and the chambers appointed a Conference Committee charged with finding a compromise.[83] The Conference Committee's substitute incorporated a series of agreements between the two chambers including: (1) the GSBC's seat could be "either" in Atlanta or Macon; (2) a sixty-day objection window, but no single-party opt-out provision; (3) a $500,000

---

[78] *Id.* at 22.

[79] *See Constitutional Amendment #2 Creates a State-Wide Business Court to Lower Costs, Enhance Efficiency, and Promote Predictable Judicial Outcomes*, GA. SEC'Y STATE (Nov. 17, 2018, 4:27 PM), https://results.enr.clarityelections.com/GA/91639/Web02-state.221451/#/cid/902000 (reporting that 69.01% of Georgia voters supported the constitutional amendment creating the GSBC).

[80] *Compare* H.B. 239, 155th Gen. Assemb., H. Comm. Sess. § 15-5A-4(a)(1), (3) (Ga. 2019) (including a thirty-day objection period in the House's proposed bill), *with* H.B. 239, 155th Gen. Assemb., S. Comm. Sess. § 15-5A-4(a)(1)–(2) (Ga. 2019) (including a sixty-day objection period and a two-party consent rule in the Senate's proposal).

[81] H.B. 239, 155th Gen. Assemb., H. Comm. Sess. § 15-5A-4(a)(1), (3) (Ga. 2019) (describing the requirements for removal to the GSBC under the House's proposal).

[82] H.B. 239, 155th Gen. Assemb., S. Comm. Sess. § 15-5A-4(a)(1)–(2) (Ga. 2019) (describing the requirements for removal to the GSBC under the Senate's proposal).

[83] *See Legislative Priorities: 2019: SB 110 Statewide Business Court Enabling Legislation*, GA. CHAMBER, http://gachamberscore.com/vote/2019-sb-110-courts-state-wide-business-court-pursuant-to-the-constitution-of-this-state-establish/ (last visited Dec. 22, 2021) (explaining that the House and Senate appointed a Conference Committee composed of state representatives Efstration, Fleming, and Oliver and state senators Stone, Dugan, and Kennedy).

amount-in-controversy requirement; and (4) a $3,000 filing fee.[84] On the last day of the 2019 legislative session, the House adopted the Conference Report, but the Senate, in what has been characterized as an "unprecedented move," did not bring the Report up for a vote at all, "effectively killing the business community's preferred model for a business court that has proven successful in Fulton and Gwinnett counties."[85]

Instead, the Senate passed the Senate Judiciary Committee substitute of the original House bill, which included, most notably, the two-party consent provision.[86] In a seemingly last-ditch effort to get the GSBC's enabling statute across the finish line, the House agreed to the two-party consent requirement included in the Senate's substitute but reduced the sixty-day objection period proposed by the Senate to thirty days.[87] The Senate agreed and, thus, the GSBC's enabling legislation officially passed both chambers and later took effect upon Governor Brian Kemp's signature on May 7, 2019.[88] Governor Kemp subsequently appointed Judge Davis as the first judge of the GSBC because of his business reputation and expertise.[89] On Monday, August 3, 2020, the GSBC officially opened its doors and was off to the races.[90]

---

[84] S.B. 110 (CCS), 155th Gen. Assemb., Comms. of Conf. (Ga. 2019).

[85] *Legislative Priorities*, *supra* note 83.

[86] *Id.*; H.B. 239, 155th Gen. Assemb., S. Comm. Sess. § 15-5A-4(a) (Ga. 2019).

[87] *See* H.B. 239, 155th Gen. Assemb., Reg. Sess. § 15-5A-4(a)(2)–(3), (b) (Ga. 2019) (including the Senate committee substitute and the two-party consent rule in the final version that passed both houses).

[88] *See* HB 239, GA. GEN. ASSEMBLY, https://www.legis.ga.gov/legislation/54805 (last visited Nov. 14, 2021) (indicating the statute's entry into law as Act 271 on May 7, 2019, effective with the governor's signature).

[89] *See Jones Day Partner Confirmed for Ga. Business Court Judgeship*, *supra* note 31 (prior to his appointment, Judge Davis led the Securities and SEC Enforcement practice in the Atlanta office of Jones Day, focusing on a variety of issues including complex business litigation, corporate governance matters, securities fraud, and shareholder disputes).

[90] *GSBC History*, *supra* note 27.

B. A LONG SHOT: ACHIEVING JOINT CONSENT & OVERCOMING JURISDICTIONAL LIMITATIONS

The GSBC began accepting cases on August 1, 2020, in the midst of the COVID-19 pandemic.[91] Even before the pandemic, the GSBC was designed to accommodate both virtual and in-person court proceedings.[92] The GSBC's digital posture thus ensured that its cases were not stayed during social distancing orders and other public health precautions, unlike a significant number of cases stayed in other Georgia state courts as a result of the pandemic.[93] According to the GSBC's website, Georgia's one judge, sometimes digital, business court has "equity and at-law jurisdiction . . . over claims arising under 17 subject matter areas, in addition to supplemental jurisdiction over claims falling outside these specific categories," including breach of contract, trade secret, and shareholder disputes, among others.[94]

As contemplated by the Court Reform Council and the General Assembly, the GSBC's enabling statute also restricts its jurisdiction with explicit exceptions for claims involving foreclosures, personal injury, residential landlord-tenant disputes, and individual consumer claims, among others.[95] The monetary prerequisites also serve as limiting principles on the court's jurisdiction, with the

---

[91] *Id.*; *see also* Dr. Tedros Adhanom Ghebreyesus, Dir.-Gen., World Health Org., Opening Remarks at the Media Briefing on COVID-19 (Mar. 11, 2020), https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 (announcing the World Health Organization's "assessment that COVID-19 can be characterized as a pandemic").

[92] *See* Rosie Manins, *Georgia Business Court to Bring Timely Relief in Pandemic*, LAW360 (July 31, 2020, 6:02 PM), https://www.law360.com/articles/1297410/georgia-business-court-to-bring-timely-relief-in-pandemic (highlighting that the GSBC's "state-of-the-art remote technology and clear docket are expected to help ease the strain of pandemic-era litigation").

[93] *See* James Salzer, *Georgia Courts Predict Avalanche of Cases While State Cuts Budgets*, ATLANTA J.-CONST., (June 1, 2020), https://www.ajc.com/news/state--regional-govt--politics/georgia-courts-predict-avalanche-cases-while-state-cuts-budgets/aWZuUAY42FUTz675Rug7IO/ (noting the "huge backlog of cases built up by the coronavirus shutdown").

[94] *See GSBC History*, *supra* note 27 (explaining the GSBC's jurisdiction); *see also* O.C.G.A. § 15-5A-3 (2021) (specifying the specific subject matters falling within the GSBC's jurisdiction, explaining its supplemental jurisdiction, and outlining certain exclusions).

[95] *See* O.C.G.A. § 15-5A-3(b) (listing nine categorical subject matter exclusions from the GSBC's jurisdiction).

amount in controversy requirement of $500,000 for all claims, a $1 million minimum for commercial real property claims, and a $3,000 filing fee.[96]

Since its inception, the GSBC has taken on cases addressing a wide variety of issues, providing litigants quick and efficient resolution of complex legal questions and resolving an array of pre-trial disputes.[97] In its first two months in operation, the GSBC granted a plaintiff's motion for a temporary restraining order in *Martin v. Hauser, Inc.*, when the court found that the plaintiff made a sufficient showing that he "may suffer irreparable harm" because the defendant filed suit against the plaintiff regarding the same disputed contract in another court in Ohio and that the harm facing the plaintiff, the "serious risk" of losing customer relationships and business opportunities, outweighed the same for the defendant.[98] Later in its tenure, the GSBC issued two orders within a matter of two weeks on a variety of issues in *Savannah Green I Owner, LLC v. Arco Design/Build, LLC*: First, the GSBC granted the plaintiff's motion for declaratory judgment involving an affidavit of nonpayment and a lien asserted thereunder for a warehouse construction and granted summary judgment in favor of the plaintiff on the defendant's counterclaim for breach of contract in an ongoing construction contract dispute amounting to $668,912.17.[99] Second, the GSBC granted the defendant's motion to

---

[96] *See* O.C.G.A. § 15-5A-3(a)(1)(B) (amount in controversy requirements); O.C.G.A. § 15-5A-5 (2021) (provision on court fees, including $3,000 filing fee).

[97] *See, e.g.*, Martin v. Hauser, Inc., No. 20-GSBC-0008, 2020 WL 8918287, at *1 (Ga. Bus. Ct. Oct. 30, 2020) (granting plaintiff's motion for a temporary restraining order); Engram v. Roberts, No. 20-GSBC-0004, 2021 WL 2766588, at *1 (Ga. Bus. Ct. May 24, 2021) (granting plaintiff's motion to compel the production of defendant's financial documents); Savannah Green I Owner, LLC v. Arco Design/Build, LLC, No. 20-GSBC-0017, 2021 WL 2836700, at *1 (Ga. Bus. Ct. June 16, 2021) (granting plaintiff's motion for partial summary judgment and granting summary judgment in favor of the plaintiff on defendant's counterclaim). For an example of typical issues in these complex cases, see Plaintiff's Motion for Sanctions Pursuant to O.C.G.A. § 9-11-37(b)(2)(C) & Incorporated Memorandum of Law, Engram v. Roberts, No. 20-GSBC-0004, 2021 WL 4260512 (Ga. Bus. Ct. Aug. 31, 2021), a motion in an ongoing shareholder dispute between minority and majority shareholders involving claims of breach of fiduciary duty and misappropriation, among other claims.

[98] Martin v. Hauser, Inc., No. 20-GSBC-0008, 2020 WL 8918287, at *1–2 (Ga. Bus. Ct. Oct. 30, 2020) (granting plaintiff's motion for a temporary restraining order).

[99] Savannah Green I Owner, LLC v. Arco Design/Build, LLC, No. 20-GSBC-0017, 2021 WL 2836700, at *1–3, 10 (Ga. Bus. Ct. June 16, 2021).

dismiss the plaintiff's defective design claims with prejudice but left the plaintiff's construction and installation claims, books and records claims, and billing claims open and pending.[100]

The issues involved in another case, *Walkup v. Steuer*, make it the quintessential dispute that Georgia voters intended for the GSBC to address.[101] In *Walkup*, petitioner Raymond R. Walkup, M.D. brought a petition for declaratory judgment against respondents Christopher R. Tomaras, M.D., Max. R. Steuer, M.D., and Polaris Spine and Neurosurgery, P.C. (Polaris).[102] Walkup sought a declaration that he possessed voting rights in Polaris, the company for which he, the petitioner, and the respondent-doctors "serve[d] as the only directors and shareholders."[103] In examining whether Walkup was a "holder of Class A voting common stock" in Polaris,[104] the GSBC analyzed the terms of Polaris's articles of incorporation and by-laws, including the original documents from 1979 and multiple amendments of each document through the year 2015, the joint unanimous written consent providing for the sale and transfer of shares between the four doctors, multiple joint written consents outlining shares per shareholder executed in lieu of formal meetings for the elections of officers and directors of Polaris throughout the years, a stock option agreement providing Walkup the option to purchase class B voting common stock, and multiple shareholder agreements.[105] The evidence the GSBC parsed through in *Walkup*, on its own, is representative of the complexity that a single commercial dispute can encapsulate and is representative of the rationale for adopting specialized courts like the GSBC to address these cases efficiently.[106]

Despite the GSBC's ability to showcase successes in *Walkup* and other cases, one particular flaw keeps the GSBC behind the eight

---

[100] Savannah Green I Owner, LLC v. Arco Design/Build, LLC, No. 20-GSBC-0017, 2021 WL 2836702, at *1, 9 (Ga. Bus. Ct. June 30, 2021).

[101] Walkup v. Steuer, No. 20-GSBC-0011, 2021 WL 1034790, at *1 (Ga. Bus. Ct. Feb. 12, 2021).

[102] *Id.*

[103] *Id.*

[104] *Id.* at *9.

[105] *See id.* at *1–5 (describing the evidence before the GSBC).

[106] *See supra* note 51.

ball: the GSBC is a purely voluntary forum.[107] Ultimately, a plaintiff in any case may choose—and many would likely prefer—to file suit in state or superior courts of general jurisdiction, or a federal district court if possible, rather than in a specialized business court.[108] This choice does not bind a defendant immediately, though.[109] Under the GSBC statute, a defendant can still transfer a case to the GSBC, but the plaintiff may object to the GSBC's jurisdiction and petition to send the case to a state or superior court of general jurisdiction.[110] Thus, the GSBC's Achilles' heel is that it relies entirely on the parties' will.[111]

The GSBC's voluntary status diverges significantly from the North Carolina Model.[112] The North Carolina Model requires a party seeking to be heard by the North Carolina Business Court to file a Notice of Designation to the Chief Business Court Judge, stating that the case at issue meets the statutory requirements for a "mandatory complex business case."[113] North Carolina law also permits superior courts of general jurisdiction to decide sua sponte whether to stay a case that requires designation as a mandatory complex business case until the necessary party files a Notice of Designation.[114] Although most business designations are voluntary in North Carolina, superior courts are required to stay certain "mandatory" cases until they are designated by a party for review by the business court, ensuring that cases embodying the complex issues inherent in corporate and commercial disputes are heard by

---

[107] *See* O.C.G.A. § 15-5A-4 (2021) (enumerating the terms of two-party consent required for the GSBC to hear a case).

[108] *See, e.g.*, Peters, *supra* note 50 (noting that "Statesboro attorney Daniel Snipes, past president of the [Georgia Trial Lawyers Association], said small businesses would be at a disadvantage at the new court because they would need to hire 'Atlanta lawyers' who are experienced in complex cases and who would be expensive").

[109] *See* GA. BUS. CT. R. 2-4, https://www.georgiabusinesscourt.com/wp-content/uploads/2021/06/2021.08.01-Georgia-State-wide-Business-Court-Rules_as-issued.pdf (enumerating the processes for direct filing, removal, transfer, objection to jurisdiction, return of filing fee, and related orders).

[110] O.C.G.A. § 15-5A-4.

[111] *Id.*

[112] *Compare* O.C.G.A. § 15-5A-4 (including a two-party consent rule), *with* N.C. GEN. STAT. § 7A-45.4(g) (2021) (allowing sua sponte transfer regardless of the parties' preferences).

[113] N.C. GEN. STAT. § 7A-45.4.

[114] N.C. GEN. STAT. § 7A-45.4(g).

the specialized division, as the legislature intended.[115] By contrast, the GSBC's two-party consent rule inhibits its ability to address inherently complex business disputes when one party does not consent to litigating in the GSBC by immediately transferring those cases back to the courts of general jurisdiction.[116] Thus, contrary to courts purely following the North Carolina Model, the GSBC is not yet, and may never be, the default forum for complex business disputes in Georgia absent a legislative fix.

IV. ENSURING THE ENABLING STATUTE DOES NOT FRUSTRATE THE GEORGIA STATE-WIDE BUSINESS COURT'S PURPOSE

A. A FAILURE OF CONTRACTUAL PLAY-CALLING: *TURNER BROADCASTING SYSTEM, INC. V. MCDAVID*

Turner Broadcasting System, Inc. v. McDavid epitomizes the type of complex corporate disputes that the General Assembly contemplated in drafting the GSBC's enabling statute.[117] Many commentators have summed up *Turner* as merely an issue of mutual assent: did the parties intend to be bound?[118] Facially, *Turner* could surely be taught in a first-year contracts class to demonstrate foundational contract concepts.[119] A deeper dive into the procedural and legal nuances of *Turner*, however, reveals that

---

[115] *See* N.C. GEN. STAT. § 7A-45.4(b) (describing the types of cases that are mandatory complex business cases subject to review by the business court).

[116] *See* O.C.G.A. § 15-5A-4 (enumerating the transfer and removal procedure).

[117] *See* Turner Broad. Sys., Inc. v. McDavid, 693 S.E.2d 873, 887 n.24, 888 (Ga. Ct. App. 2010) (resolving a contract dispute involving an offer of over $215 million for assets with an estimated total fair market value of $498.1 million).

[118] *See* 1 WILLISTON ON CONTRACTS § 3:4 (4th ed.), Westlaw (database updated May 2021) (citing *Turner* for the basic test that courts undertake in determining whether there was the requisite mutual assent to form a valid contract); *see also* 17A AM. JUR. 2D *Contracts* § 167, Westlaw (database updated Aug. 2021) (citing *Turner* for the rule that an oral contract is "no less binding than one reduced to writing").

[119] At least one popular first-year Contracts casebook uses *Turner* in its discussion of "'The Benefit of the Bargain' at Common Law." *See* BRIAN A. BLUM & AMY C. BUSHAW, CONTRACTS: CASES, DISCUSSION, AND PROBLEMS 823, 832–37 (4th ed. 2017).

the case contains the precise complex issues that the GSBC aims to remove from the superior court system.[120]

In hindsight, *Turner* involved one too many poor play calls by both the parties and the court. The facts of the case read like a typical asset purchase negotiation gone wrong.[121] But soon after the decision, *Turner* became the sideline play card[122] of the world of mergers and acquisitions, emphasizing the particularity of words at every step of a deal, especially in formal letters of intent (LOI).[123] *Turner* involved negotiations for the purchase of the Atlanta Hawks (an NBA team) and the Atlanta Thrashers (a former NHL team), as well as specific operating rights to Philips Arena in Atlanta, Georgia.[124] For months, TBS negotiated with McDavid, the original bidder, on material terms such as the purchase price, but the TBS directors opposed the consideration that McDavid offered for the assets at stake.[125] In the final weeks of negotiations with McDavid, but before committing to a formal asset purchase agreement, TBS signed a deal with another buyer.[126] This new buyer had personal and business connections to TBS and offered a higher purchase price than McDavid did.[127]

---

[120] GEORGIA COURT REFORM COUNCIL REPORT, *supra* note 21, at 19 (noting that an advantage of business courts is the specialized expertise of "a judge who has substantial familiarity with complex business issues like fiduciary duties, disclosure issues, and duty of care").

[121] *See Turner*, 693 S.E.2d at 876–79 (describing the negotiations for the purchase of two major league sports teams and an arena).

[122] In college football, sideline play cards are large signs depicting symbols, pictures, or words that are held up on the sideline to indicate play calls to players on the field. For a description of the origins of sideline play cards, see Cliff Brunt, *Funny Photo Boards Used to Call Signals from Sideline*, ASSOCIATED PRESS (Oct. 10, 2015), https://apnews.com/article/4acdd0b2125e42a7a745d16ebdb52a50.

[123] *See* 1 CORPORATE COUNSEL'S GUIDE TO ACQUISITIONS & DIVESTITURES § 9:9.25, Westlaw (database updated Oct. 2021) [hereinafter CORPORATE COUNSEL'S GUIDE] (analyzing the legal arguments in *Turner* while explaining the nuances of LOIs in corporate transactions).

[124] *Turner*, 693 S.E.2d at 875.

[125] *Id.* at 877; *see also* HOWARD O. HUNTER, MODERN LAW OF CONTRACTS § 13:6, Westlaw (database updated Mar. 2021) (discussing the TBS directors' dissent to selling the company for "consideration below market value").

[126] *See* HUNTER, *supra* note 125, § 13:6 ("[O]ther buyers (with some personal and business relationships to the dissenters) appeared with a higher offer which is what led to the failure of the contract and the subsequent litigation.").

[127] *Id.*

McDavid then filed suit against TBS for breach of contract.[128] The question before the trial court was whether the parties intended to be orally bound by their continued negotiations after the expiration of the LOI.[129] Under Georgia law, courts decide as a matter of law whether the facts of a case meet the requirements to constitute an enforceable contract.[130] Both TBS and McDavid only expressed their intent to be bound in writing in the signed LOI, which stated that "[n]o such binding agreement shall exist or arise unless and until the parties have negotiated, executed and delivered to each other Definitive Agreements."[131] Notwithstanding the explicit language in the LOI and McDavid's agreement with the dissenting TBS directors that the purchase price offered by the eventual purchaser was much higher—and, accordingly, more representative of the assets' market value than his offer—the trial court sent the issue to the jury.[132] The trial court charged the jury "to find the difference in value between the contract price and the fair market value of the assets at the time the contract should have been performed."[133] The jury returned a "substantial premium" to McDavid in the form of a favorable verdict and $281 million in damages on a $215 million contract that no one ever committed to writing or signed.[134]

---

[128] *See Turner*, 693 S.E.2d at 877 ("McDavid filed suit against Turner, alleging claims of breach of an oral contract to sell the assets, promissory estoppel, fraud, and breach of a confidentiality agreement.").

[129] *See* McDavid v. Turner Broad. Sys., Inc., No. 2005CV101902, 2008 WL 4771243 (Ga. Super. Ct. Aug. 21, 2008) ("Plaintiffs assert that after June 14, 2003 the parties intended to be bound by their oral agreements and in fact reached a binding agreement that was breached by Defendants.").

[130] *See* Cox Broad. Corp. v. Nat'l Collegiate Athletic Ass'n, 297 S.E.2d 733, 737 (Ga. 1982) ("It is well settled that an agreement between two parties will occur only when the minds of the parties meet at the same time, upon the same subject-matter, and in the same sense." (first citing Fonda Corp. v. S. Sprinkler Co., 241 S.E.2d 256 (Ga. Ct. App. 1977); and then citing Jack V. Heard Contractors v. A. L. Adams Constr. Co., 271 S.E.2d 222, 225 (Ga. Ct. App. 1980), *overruled by* Se. Ceramics, Inc. v. Klem, 275 S.E.2d 723 (Ga. Ct. App. 1980))).

[131] *Turner*, 693 S.E.2d. at 879 (alteration in original).

[132] *See* HUNTER, *supra* note 125, § 13:6 (referring to McDavid's expert testimony that revealed that the true market value of the assets was "higher than the contract price by a substantial margin," implying that McDavid "essentially agreed with the dissenters").

[133] *Id.* (citing *Turner*, 693 S.E.2d at 873).

[134] *Id.*; *see also Turner*, 693 S.E.2d at 877.

On appeal, *Turner* was analyzed through the deferential "any evidence" standard.[135] In *Turner*, that meant that McDavid was guaranteed to prevail because the standard, as applied, showed that "[t]he parties' failure to communicate an intent to be bound only in writing following the expiration of the [LOI] provided *some evidence* that an oral agreement was not precluded."[136] The *Turner* court highlighted a lead TBS negotiator's statement, "[W]e have a deal," when discounting the parties' LOI despite the fact that the LOI had expired at the time the statement was made.[137] The trial court ignored a core principle of contract interpretation—that the parties intended to be bound only by a written, signed purchase agreement, as explicitly stated in their written and agreed upon LOI—and instead proposed to the jury questions of assent and market value for a quintessential complex commercial dispute.[138] And the limited question on appeal—whether there was "any evidence" to support the trial court's finding[139]—sealed the deal in McDavid's favor, thus declaring TBS's attempted buzzer-beater deal null and void.

---

[135] *See Turner*, 693 S.E.2d at 876 ("If a jury has returned a verdict, which has been approved by the trial judge, then the same must be affirmed on appeal if there is *any evidence* to support it as the jurors are the sole and exclusive judges of the weight and credit given the evidence." (emphasis added) (quoting City of Atlanta v. WH Smith Airport Servs., Inc., 659 S.E.2d 426, 426 (Ga. Ct. App. 2008))).

[136] *Id.* at 880 (emphasis added); *see also* CORPORATE COUNSEL'S GUIDE, *supra* note 123, § 9:9.25 (analyzing the arguments presented in *Turner* regarding the LOI's validity).

[137] *Id.* at 876 ("When McDavid inquired about extending the [LOI], Turner's principal negotiator told him, 'Don't worry about it. We're very, very close to a deal. You're our guy.' . . . On July 30, 2003, . . . Turner's CEO . . . announced, 'we have a deal.'").

[138] *See id.* at 886 ("The jury was instructed that the proper measure of damages . . . was 'the difference between the contract price and the fair market value . . . .' The trial court further defined fair market value as 'the price that [the asset] will bring when it is offered for sale . . . .'" (second alteration in original)); *see also id.* at 878 (explaining that "the determination of whether an oral contract existed, notwithstanding the parties' failure to sign a written agreement, was a question of fact for the jury to decide").

[139] *Id.* at 876 ("If a jury has returned a verdict, which has been approved by the trial judge, then the same must be affirmed on appeal if there is any evidence to support it as the jurors are the sole and exclusive judges of the weight and credit given the evidence." (quoting City of Atlanta v. WH Smith Airport Servs., Inc., 659 S.E.2d 426, 426 (Ga. Ct. App. 2008))).

B. ELIMINATING THE MONDAY MORNING QUARTERBACK: THE SUA SPONTE SOLUTION

The decision in *Turner* makes Georgia an outlier on these basic contractual issues at play, deterring risk-averse businesses from investing in Georgia due to the resulting unpredictable legal business environment.[140] The Metro Atlanta Chamber's amicus brief in support of TBS foreshadowed the consequences of the *Turner* decision:

> If a jury question routinely arises in Georgia from the mere combination of: (1) negotiations concerning a complex, high-value transaction; and (2) a conflicting account of an oral communication, businesses in other states will be loathe to negotiate such transactions with Georgia businesses. Under such a regime, a statement to the effect of "we have a deal" from a Georgian on a telephone call with an out-of-state business would routinely (perhaps invariably) create a jury question about whether the final act necessary for contract formation had occurred. To state the obvious, interstate commerce with Georgians will necessarily suffer if this is the legal environment our State provides to those who do business here.[141]

---

[140] *See id.* at 878–80 (acknowledging that "[u]ndoubtedly, the express terms of the [LOI] reflect an intent that the parties would not be bound absent written signed agreements," but then holding that Georgia's Statute of Frauds did not require the complex asset deal at issue to be restricted to writing and that because the LOI had expired and did not include a survival provision outside of the confidentiality terms, the intent of the parties was unclear). *Compare* 17A AM. JUR. 2D *Contracts* § 167, Westlaw (database updated Aug. 2021) (using *Turner* to demonstrate the binding nature of oral contracts), *with* Alan Schwartz & Robert E. Scott, *Precontractual Liability and Preliminary Agreements*, 120 HARV. L. REV. 661, 662, 664 n.4 (2007) (describing the lack of clarity in analyzing the binding effect of preliminary negotiations but noting that "[i]n the absence of sufficient evidence that the parties intended to be legally bound in some way, courts generally conclude that the parties have engaged merely in preliminary negotiations and do not impose liability for inducing reliance absent misrepresentation, express promise, or similar inducement").

[141] Brief for the Metro Atlanta Chamber as Amicus Curiae Supporting Appellant at 5, *Turner*, 693 S.E.2d 873 (No. A09A2314), 2009 WL 10666220, at *5.

Turner exemplifies the risks of not having a specialized business court because the trial court tasked the jury with determining whether there was a contract when there was already a written understanding between the parties that deliberations were not final until cemented into a formal agreement,[142] a common procedure in complex corporate transactions.[143] Opening the door for every oral contract dispute to be sent to a jury despite objective evidence of the parties' intent can create an unpredictable legal environment[144] and deter outside businesses from engaging with Georgians and Georgia businesses, thus reducing Georgia's stature as a desirable business market.[145]

While some commentators defend the central role of juries in the justice system,[146] others criticize juries as incapable of processing complex matters.[147] The right of either party to request a jury trial

---

[142] *See Turner*, 693 S.E.2d. at 877, 879 (explaining that "the issue of contract formation was highly controverted and presented genuine issues of fact for the jury's resolution" despite conceding that "[u]ndoubtedly" the LOI clearly expressed the intent of the parties to be bound only in writing).

[143] *See* Johnston, *supra* note 14, at 388 (describing the fluidity of corporate negotiations); *see also* E. Allan Farnsworth, *Precontractual Liability and Preliminary Agreements: Fair Dealing and Failed Negotiations*, 87 COLUM. L. REV. 217, 279 (1987) (explaining that "parallel negotiations," in which a party to an agreement negotiates with other third parties and has the potential to withdraw upon receiving a better offer, are "so common in practice and so important to competition that it is hard to see how there can be such a requirement in the absence of an undertaking that negotiations will be exclusive").

[144] *See* Hans, *supra* note 58, at 186 (explaining that different factors including "quantity and the complexity of scientific and economic data" and "biases and preconceptions about businesses and corporations" can impact each individual juror's decision-making in an unpredictable manner, which creates risks for businesses in litigation).

[145] *See* Brief for the Metro Atlanta Chamber as Amicus Curiae Supporting Appellant, *supra* note 141, at 1–2 (warning that "Georgia w[ould] cease to be a suitable location to consummate, negotiate, or even discuss high-value, complex transactions" if the court found in favor of McDavid and, "[a]s a result, Atlanta business w[ould] suffer and the Metro Atlanta Chamber w[ould] lose members to cities located in states that remain in the mainstream of contract law").

[146] *See, e.g.*, Hans, *supra* note 58, at 189–90 (explaining that studies of complex trials show that "respondents who acknowledged the existence of difficult issues in their jury trials also mentioned explicitly that the jury had made the correct decision or that the jury had no difficulty applying the legal standards to the facts" (quoting GORDON BERMANT, JOE S. CECIL, ALAN J. CHASET, E. ALLAN LIND & PATRICIA A. LOMBARD, PROTRACTED CIVIL TRIALS: VIEWS FROM THE BENCH AND THE BAR 26 (1981))).

[147] *See* Michael B. Metzger, *The Parol Evidence Rule: Promissory Estoppel's Next Conquest?*, 36 VAND. L. REV. 1383, 1387–88 (1983) ("Left to their own devices, jurors may favor underdogs

in the GSBC, however, must remain in place because—in most cases—deciding otherwise would contravene constitutional privileges.[148] Nevertheless, given the many details that can influence jury decision-making in complex matters,[149] the Georgia General Assembly should amend the GSBC's enabling statute to allow courts to decide sua sponte (regardless of the parties' preferences) whether a case should be heard by the GSBC; this change would enable the GSBC, as a specialized business forum, to address the legal issues at hand before more ill-advised comments result in binding multimillion dollar jury verdicts.

The GSBC model provides litigants with a specialized forum and a judge who is an expert in corporate and commercial business transactions.[150] Because it is the judge's responsibility to provide the jury with adequate instructions to decide the issues of fact involved in each case, it follows naturally that a judge specialized in complex business issues, like Judge Davis, will better equip a jury for its evaluation of the facts presented.[151]

---

by relying upon alleged oral terms, thereby deciding the case in a manner calculated to avoid a perceived injustice. Jurors also may lack the sophistication needed to deal effectively with complex commercial transactions involving numerous alleged oral and written contract terms." (footnotes omitted)); *see also In re* Japanese Elec. Prods. Antitrust Litig., 631 F.2d 1069, 1079 (3d Cir. 1980) ("A suit might be excessively complex as a result of any set of circumstances which singly or in combination render a jury unable to decide in the foregoing rational manner. Examples of such circumstances are an exceptionally long trial period and conceptually difficult factual issues.").

[148] *See* Laura A. Shoop & L. Whitney Woodard, *HB 239 – Business Courts*, 39 GA. ST. U. L. REV. 1, 12 (2019) (explaining that in drafting the GSBC's enabling statute "some legislators were concerned that the language of the bill could be construed to force an unwilling party to submit to a bench trial and deny that party its constitutional right to a jury trial"); *see also* GA. CONST. art. I, § I, ¶ XI (stating the general rule that "[t]he right to trial by jury shall remain inviolate").

[149] *See, e.g.*, Hans, *supra* note 58, at 186 (listing the "reasonable corporation standard," "group responsibility for a harm," "nature of the evidence," "scientific and economic data," and "biases and preconceptions about businesses" as some factors influencing jury decisions in complex cases).

[150] *See GSBC History*, *supra* note 27 ("The [GSBC] would provide specialized expertise for the adjudication of complex cases, ultimately enhancing litigation of complex matters by providing judicial resources specifically tailored to such cases."); *see also* O.C.G.A. § 15-5A-3 (2021) (specifying the subject matters falling within the court's jurisdiction).

[151] *See* Stempel, *supra* note 46, at 114 (explaining that specialized judges "would be better equipped to efficiently give jury instructions, rule on recurring matters, and write expeditious

Not only are judges like Judge Davis better prepared to address these complex issues pre-trial and in bench trials, they are also able to provide more confident and expert-informed jury instructions, should a party request a jury trial.[152] A typical corporate case like *Turner* usually involves multiple questions of law that concern contract interpretation or a comparison of permitted damages with high values at stake.[153] Additionally, these cases involve extensive discovery and analysis of corporate governance documents, often complicated expert testimony, and opinions on complex market valuations.[154]

The GSBC is designed to provide efficient and quick resolution of issues to the benefit of all parties before the court, through both its limited jurisdiction and expert judges—as well as through the practical benefits of its high-tech courtroom features plus local rules and a standing order that specifically set forth case management, discovery, and briefing requirements aimed at empowering litigants to quickly and efficiently navigate the litigation process.[155] The faster and more accurately that an injunction can be ordered or that a restrictive covenant can be struck down, the further the threat of increased litigation costs is alleviated.[156] And the GSBC is designed to do just that. Ensuring that complex corporate and commercial

---

findings of fact and conclusions of law or opinions on motions, to address common issues in the specialized court").

[152] *Id.*

[153] *See supra* note 51 and accompanying text.

[154] *See* Slights & Powers, *supra* note 18, at 1055–57 (explaining that "[c]ommercial cases often require experts due to the complexity of the issues involved" and that business court judges are better equipped to prepare for and manage the overwhelming electronic discovery in complex cases through the promulgation of management orders and rules relating to the potential issues that may arise in a given case); *see also* Turner Broad. Sys., Inc. v. McDavid, 693 S.E.2d 873, 886–88 (Ga. Ct. App. 2010) (explaining the jury's role in determining the market value of the assets in dispute).

[155] *See Courtroom & Technology*, GA. STATE-WIDE BUS. CT., https://www.georgiabusinesscourt.com/courtroom/ (last visited Oct. 25, 2021) (showing photos of the courtroom equipped with digital monitors at each party's table and the attorney conference rooms that provide a space for parties to work outside the courtroom, two unique and modern features of the GSBC); *Rules, Orders & Forms*, GA. STATE-WIDE BUS. CT. https://www.georgiabusinesscourt.com/rules-orders-forms/ (last visited Dec. 10, 2021).

[156] *Cf.* Martin v. Hauser, No. 20-GSBC-0008, 2020 WL 8918287, at *2 (Ga. Bus. Ct. Oct. 30, 2020) (granting Plaintiff's motion for temporary restraining order within three weeks of the hearing).

issues are sent to a specialized court with time, resources, and expertise designed for and devoted to analyzing these specific issues stabilizes Georgia's commercial law and likewise creates a predictable legal environment for businesses.[157]

C. THE GSBC AS A BENCH, NOT A BENCHWARMER

The ball is in the General Assembly's court to ensure that the GSBC does not sit on the sideline waiting desperately for its chance to play. As it stands, filing in the GSBC is purely voluntary.[158] Because of this limitation, if one party opposes the GSBC's jurisdiction, when done properly and after the non-movant has a chance to respond, the GSBC must enter an order transferring the case to a superior or state court with proper jurisdiction.[159] This "fatal flaw"[160] has impeded the GSBC's primary purpose for much of its first two years in operation.[161] The single-party veto power, left unchanged, will continue to "stymie [the GSBC's] intended ability

---

[157] *See* Stempel, *supra* note 46, at 112–13 (discussing the increased "predictability and uniformity" that result from an increased number of specialized trial courts).

[158] *See* O.C.G.A. § 15-5A-4 (2021) (requiring both parties to consent to the GSBC's jurisdiction, which can only be gained through specific pleadings).

[159] *See id.* (describing the filing procedure and transferring of cases between the GSBC and other state courts); *see also* Rosie Manins, *New Georgia Biz Court Faces Challenge over Consent Rule*, LAW360 (Dec. 4, 2020, 7:39 PM), https://www.law360.com/articles/1334604/new-georgia-biz-court-faces-challenge-over-consent-rule ("'What we're seeing now, sort of immediately, is how few of the cases are garnering the consent from both sides that is required for a case to be in the business court,' said Alexandra S. Peurach of Troutman Pepper Hamilton Sanders LLP, who was part of a team that helped guide the formation of the business court.").

[160] *See New Statewide Business Court Faces 'Fatal' Flaw*, DAILY REP. (Nov. 5, 2020), https://plus.lexis.com/api/permalink/766f016c-3dba-4dec-9a0a-34eacbf6ce8c/?context=1530671 ("Unlike other courts in Georgia and everywhere, the business court can't hear a case unless both parties agree to file there, based upon the wording of the enabling legislation."); *see also* Overlook Gardens Props., LLC, v. Orix USA, L.P., No. 20-GSBC-0002, 2020 WL 8881733, at *1 (Ga. Bus. Ct. Oct. 27, 2020) ("Objection is *fatal* to the transfer under the language of the governing statute." (emphasis added)), *vacated on reconsideration*, No. 20-GSBC-0002, 2021 WL 1435183 (Ga. Bus. Ct. Mar. 25, 2021). *But see Overlook Gardens*, 2021 WL 1435183, at *1 (reconsidering the case and granting a joint motion to transfer the case back to the GSBC).

[161] *See* Manins, *supra* note 159 (explaining that by December 2020, in the GSBC's fifth month of existence, the GSBC received sixteen cases, six of which it was forced to deny "solely because" one party in each of those cases opposed the GSBC's venue).

to relieve backlogged state courts of high-stakes corporate litigation."[162]

Parties should be able to move for transfer, but courts should also have the authority to evaluate and assign appropriate cases to the GSBC sua sponte, regardless of the parties' desires. This improvement would not only ensure that businesses are still held accountable for their actions but also would create a fair framework to handle corporate disputes managed by experts who have the time and resources to address these matters. For plaintiffs and defendants alike to receive fair outcomes, business disputes need to proceed on a fair and objective playing field. If a plaintiff in a GSBC case requests a jury trial, it should receive one after the GSBC judge reviews the legal issues involved—including evaluation of the strength of evidence and testimony presented—but without having to wait months for a decision like it would in a court of general jurisdiction. A well-funded, specialized business court where complex cases must be decided serves to normalize the commercial law in the state, ultimately making Georgia a slam dunk forum for businesses. If the state courts cannot refer appropriate cases to the GSBC regardless of the parties' objections, the GSBC will not fulfill its primary constitutional purpose of efficient dispute resolution, contrary to the will of the Georgia voters who supported the creation of this impressive forum.

V. CONCLUSION

The GSBC is a leap in the direction of fairness, efficiency, and predictability for Georgia courts. This specialized court understands the intricacies and complexities that parties face in complex business disputes.[163] When faced with the difficulties that accompany these corporate and commercial issues, there is no court better equipped to evaluate the questions of law at hand, nor to provide the appropriate context for the questions of fact to be presented to a jury based on requisite expertise and knowledge.

Ultimately, businesses and litigators alike crave a predictable legal environment with limited risk. The North Carolina Business

---

[162] *Id.*

[163] *See supra* notes 93–105 and accompanying text.

Court has been successful in its endeavor to create this environment by ensuring that there is a fair legal evaluation of whether a case falls into the complex commercial and corporate context.[164] In order for Georgia to secure its spot as the "number one" state for business, the Georgia General Assembly should make a statutory amendment to provide the GSBC with the proper resources and authority to achieve that same end. If the GSBC remains a voluntary forum, rather than a specialized court where complex cases regularly reside, it will constantly pin businesses in the backcourt, hoping for a Vince Carter shot with no assurance that they will ever make a game winning three-pointer.[165]

[164] *See supra* notes 106–109 and accompanying text.

[165] *Hawks Buzzer Beater*, *supra* note 1.