

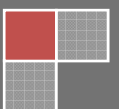
2012

# Business Court

## 2012 Annual Report



Fulton County Superior Court



# Governing Rules

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On June 3, 2005, the Supreme Court of Georgia promulgated Atlanta Judicial Circuit Rule 1004 governing the procedures of the Business Court, as amended on June 6, 2007, May 6, 2009, September 1, 2010, and October 11, 2012. The most recent amendment allows the Business Court the discretion to raise the transfer fee, if needed, subject to a maximum amount of \$2,500. This rule change gives the Court the flexibility to

respond quickly in the face of budget cuts that could threaten the existence of the program.



# Purpose

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Business Court provides just, accurate, timely, and efficient resolution of complex commercial and business cases, in addition to retaining legal business in Georgia and developing a robust body of business law in Georgia.

Approximately 500 businesses have chosen Business Court to resolve their cases because of the expert judicial attention given to complicated



business cases by experienced judges with specialized training in business law subjects. Litigants benefit from reduced resolution time through increased case management components, including:

- Comprehensive scheduling orders addressing all aspects of a case, including electronic discovery,
- Responsiveness to discovery disputes,
- Prompt scheduling of oral arguments and written rulings on all substantive motions,
- Mediation, and
- Cases are not scheduled behind a general docket of criminal and civil cases.

# Business Court Judges

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Three Senior Judges—Judge Long, Judge Bonner, and Judge Westmoreland—and one Active Judge—Judge Goger—serve the Business Court and receive case assignments on a rotating basis. The Chief Judge appoints the Business Court Bench for up to a two year term. With support staff, these Judges have



the experience and time necessary to administer complex civil cases. Senior Judges are readily available to address any discovery

disputes or other emergency that may arise during the course of a case. While the Active Judge still maintains a general docket, he devotes blocks of time to the exclusive



**Senior Judge  
Alice Bonner**



**Senior Judge  
Elizabeth Long**

administration of Business Court cases.

A panel of five Active Judges is designated to oversee the operations of the Business Court and to vet the eligibility of cases seeking transfer to Business Court by assessing the procedural and substantive complexity presented in the cases. Currently, the Business Court Committee is comprised of Chief Judge Wright, Judge Goger (Chief Business Case Division Judge), Judge Shoob (Vice-Chair of the Business Court

Committee), Judge Tusan, and Judge Lee. Upon a majority vote of the Business Court

Committee, cases can transfer to Business Court for assignment to a Business Court Judge.

The Business Case Division Judges and the staff attorney attend a series of monthly lectures coordinated with the assistance of the State Bar of Georgia. The lectures cover topics such as fiduciary duties, capitalization issues, corporate governance, derivative actions, mergers and acquisitions, among other business law topics.



**Senior Judge  
Melvin  
Westmoreland**

The Business Court utilizes early case management conferences (within 30 days of transfer), mediation, and ready availability to address discovery issues as they arise. Together, these features comprise a program that is dedicated

to the efficient, just, and timely resolution of complex commercial and business cases with an emphasis on providing superior service to litigants throughout the process.

## Business Court Impact Report

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One of the primary goals of the Business Court is to more efficiently administer complex civil cases. Court delays in the administration of civil and domestic cases are credited for negatively impacting Georgia's economy by between \$337 million and \$802 million each year.<sup>1</sup> In terms of job loss, the

civil and domestic backlog results in the loss of between 3,457 and 7,098 jobs throughout the State.<sup>2</sup> When the impact of court delays is quantified in economic terms, the Business Court's efforts take on critical significance.

In 2012, one of the major projects undertaken by the Business Court was to measure the

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<sup>1</sup> The Washington Economics Group, *The Economic Impacts on the Georgia Economy of Delays in Georgia's State Courts Due to Recent Reductions in*

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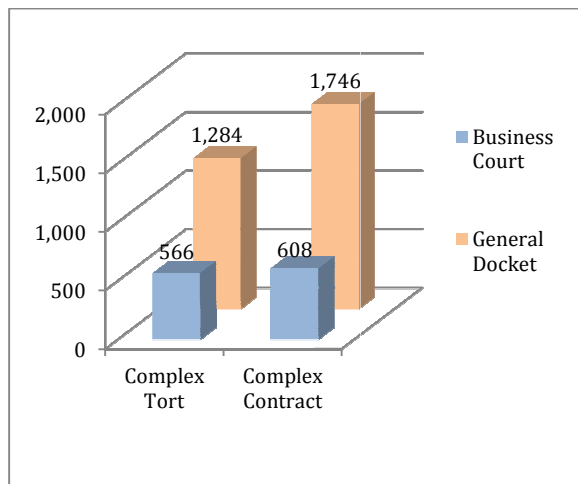
*Funding for the Judicial System* (updated January 24, 2011).

<sup>2</sup> *Id.*

Business Court's efficiency in comparison to the regular docket to ensure that the Business Court is meeting its stated goals. To generate this information, we gathered case data from a representative sample of civil cases pending between 2005 to mid-2012. The report measured both the amount of time a case was pending, as well as a case's complexity by highlighting the number of docket entries created in each case.

As can be seen from the chart to the right, the case disposition statistics show that the Business Court is achieving great success in moving complex civil cases. On average, the Business Court is able to administer a complex contract case in **608 days**, compared to an estimated **1,746 days** on the general docket—a **65% faster disposition time**. With respect to complex tort cases, the Business Court is able to move cases through resolution in **566 days** on average, compared to an estimated **1,284 days** on the general docket—a **56% faster disposition time**.

**Disposition of Complex Civil Cases in Days**



The Business Court is extremely grateful for the talents of Legal Assistant Specialist David Schwartz, Esq., whose valuable background in an actuarial department with an insurance company made this complex data analysis possible.

## 2012 Business Court Highlights

### *Business Court Trial Activity*

While it is common for the Business Court to hold hearings and issue rulings, there have been few jury trials, given the propensity of complex cases with significant amounts in controversy to settle. In June 2012 and September 2012, the Business Court held its fifth and sixth jury trials since the inception of the program.

### *Business Court – Bar Events and in the News*

The Business Court was invited to participate in several events with the local bar in 2012. Judge Bonner presented at a Young Lawyers Division event hosted by the Atlanta Bar Association in January, Megan Johnson spoke at a Corporate Counsel luncheon in May, Business Court staff distributed materials at the Business Law Institute in October, Judge Bonner presented at the Securities Law Institute in November, and Judge Long participated in a panel at a Corporate Counsel event in December.

Chief Judge Wright penned an article featuring the Business Court published in the Atlanta Business Chronicle on October 5.

The Business Court has also been active with local law schools. Students from Emory University, Georgia State University, John Marshall College of Law, and the University of Georgia externed with the Business Court in 2012.

### *Court-Wide E-Discovery Training*

In September, the Business Court hosted a training session on the nuts and bolts of E-Discovery. Allison Skinner, co-founder of the American College of E-Neutrals and frequent speaker on the topics of ADR and E-

Discovery, led the afternoon program and provided helpful feedback to the Superior Court Bench on methods courts can adopt to better streamline case administration in civil cases involving large volumes of E-discovery.

### *Rule Amendment*

This year, the State Bar Business Court Committee led a successful effort to amend the Business Court Rules to allow the Court to increase the transfer fee, currently set at \$1,000, up to a maximum amount of \$2,500. This rule change will allow the Court to respond quickly to any funding crisis that could threaten the program. The Supreme Court approved the amendment on October 11, 2012.

## Business Court Case Activity

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### *Business Court Case Eligibility*

Cases that implicate the Georgia Securities Act of 1973, UCC, Georgia Business Corporation Code, Uniform Partnership Act, Uniform Limited Partnership Act, Georgia Revised Uniform Limited Partnership Act, or Georgia Limited Liability Company Act are eligible to transfer to the Business Court. Additionally, any other action in which the amount in controversy exceeds \$1 million and warrants the attention of the Business Court, including

large contract and business tort cases and other complex commercial litigation may also be considered.

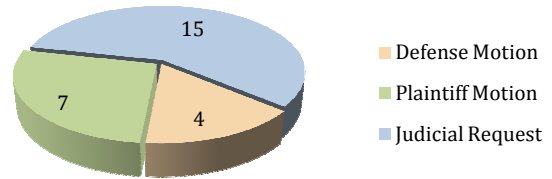
Cases involving personal injury, wrongful death, employment discrimination, or consumer claims in which each individual's claims are in the aggregate less than \$1 million are typically not eligible for transfer to Business Court. However, exclusions may be waived with consent of all parties.

## Cases Transferred to Business Court

Cases are identified for transfer to Business Court upon motion of one or more parties or by judicial request. The total number of transfers to Business Court since the inception of the program is 180.

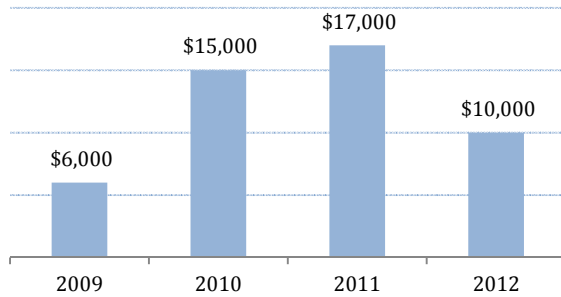
In 2012, the primary method of identification for cases transferred to Business Court was by judicial request. Four cases (all but one identified by judicial request) were denied transfer to Business Court in 2012.

**How Cases Transferred to Business Court in 2012**



## Collection of Transfer Fees

**Annual Transfer Fees**



Transfer fees are assessed against the moving party(ies) once a case is accepted for transfer to Business Court. These funds are used to continue

Business Court operations and to assist in funding for Senior Judges.

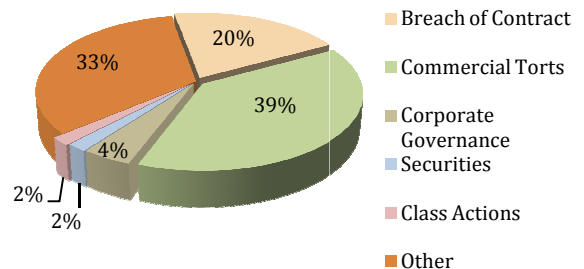
In an effort to preserve dedicated Business Court funds, cases identified by judicial request will not be funded through transfer fee collections or specific Business Court grants. Rather, senior judge time incurred on these cases will be covered through general state or county senior judge allocations.

## Docket by Types of Claim

Business Court accepts a variety of cases dealing with multiple areas of business law including shareholder derivative class actions, large contractual disputes, disputes over corporate governance, securities litigation and complex business tort cases.

In 2012, Business Court saw a marked decline in class action activity. In 2010, Business Court handled 17 class actions. In 2011, Business Court handled 15 class actions. This year, the Business Court handled a total of 6 class actions.

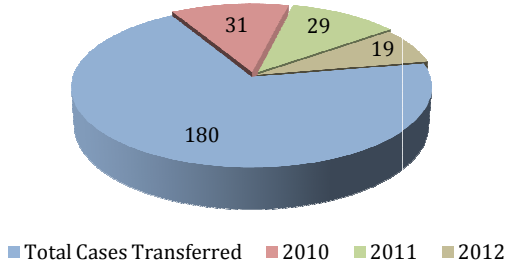
**Business Court Docket by Pending Claims**



## Caseload Activity

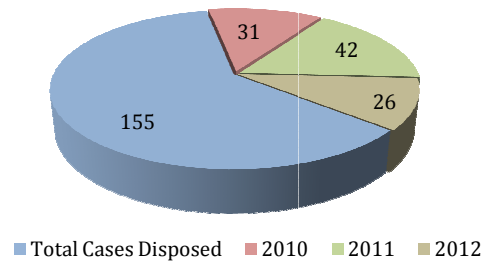
As shown below, in 2012 the Business Court added 19 new cases. Since its inception, a total of 180 cases have transferred to Business Court.

**Cases Transferred to Business Court 2005-2012**

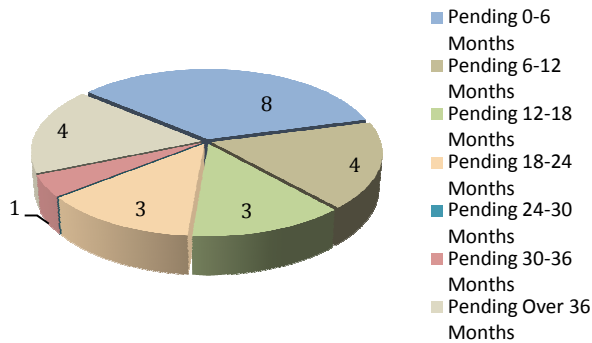


In 2012, the Business Court closed 26 cases, 2 through jury trial culminating in a verdict. The Business Court has handled a total of 155 cases through disposition since 2005.

**Cases Disposed in Business Court 2005-2012**



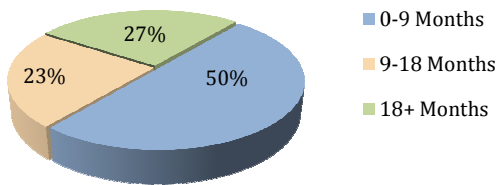
### Age of Business Court Docket



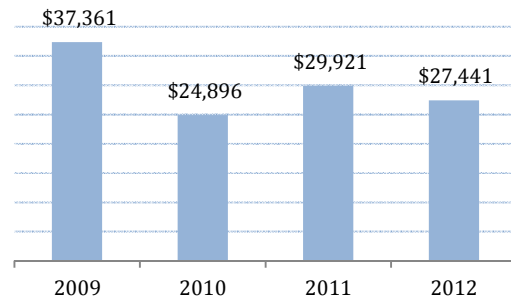
As evidenced by the chart to the left, 52% of Business Court cases have only been pending for a year or less since transfer to Business Court. Of the cases that have been pending for more than a year, all but one was, or is currently, stayed pending the outcome of appeal or a related action.

Of the cases closed in 2012, half of the matters were disposed of within 9 months of transfer to Business Court.

**Length of Case in Business Court (2012 Closed Cases)**



**Senior Judicial Expense (2009-2012)**



For more information about the Business Court, please contact Megan Johnson at 404-613-3690 or [megan.johnson@fultoncountyga.gov](mailto:megan.johnson@fultoncountyga.gov) or David Schwartz at 404-612-4570 or [david.schwartz@fultoncountyga.gov](mailto:david.schwartz@fultoncountyga.gov).