Will Your Next Insurance Coverage Dispute Be Heard In Georgia's Business Court?

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In 2020, Georgia corporate policyholders may have a new court to hear insurance coverage disputes. The Georgia General Assembly passed House Bill 239 on Day 40 of the legislative session, outlining how Georgia's new statewide business court will operate.

The court will have jurisdiction over claims falling under Georgia's Uniform Commercial Code, Business Corporation Code, Trade Secrets Act, Uniform Securities Act, and—of particular relevance to policyholders—over contract claims "between businesses arising out of business transactions or relationships" and more. The amount in controversy must exceed $500,000, but the court will also have the powers of a court of equity and thus be able to hear declaratory judgment actions.

There will be one division and one judge, appointed by the governor, who will have at least 15 years of experience as a complex business litigator or judge. The court may be located in Atlanta or Macon, both large metropolitan areas.

A plaintiff can initiate an action in business court, or a case can be transferred to the business court with all parties' consent. If less than all parties consent, a party may move to transfer the case but must overcome the presumption of the case remaining in the original court. The filing fee is a hefty $3,000, which is paid by the plaintiff or allocated among the transferring parties.

However, the court has wide latitude in deciding which cases it wants to hear: the bill states that the court has the power to transfer any case filed in business court to the state or superior court and reject any petitions to transfer to the business court, even if such claims are within its jurisdiction. Additionally, a defendant may petition the court to move the case to the state or superior court, which compels the court to transfer the case unless the

contract at issue specifically states that disputes must be litigated in business court.

So, what does this mean for policyholders? It depends.

In some ways, this is a positive development in that it provides for streamlined litigation without the common issue of an overcrowded docket. The court will not have to split time presiding over criminal, domestic, or other non-business-related civil matters. And the judge will be a seasoned business litigator or judge, offering an expertise and familiarity with nuanced contract issues that not all judges have.

However, there are a few drawbacks that might outweigh the benefits of filing suit in business court. Given the court's considerable leeway over its docket, the policyholder has no guarantee that the case will remain in business court, and the unusually high filing fee makes this a bigger risk than normal. Without having seen this court in action, it is hard to imagine how many cases the single-judge court will agree to take on. A carrier's ability to compel a transfer in the absence of a policy provision prohibiting such an action also makes for less stability. It will be interesting to see how many cases filed in business court actually remain in business court.

Assuming the governor signs the bill, the court will begin taking cases on August 1, 2020. Of course, it goes without saying that this development is of interest beyond policyholder v. carrier disputes. Any entity that has a business-related dispute arise in Georgia should at least consider the merits of litigating in business court instead of traditional court. Whether litigating in business court makes sense will be a case-by-case inquiry.