



Will Atlanta Be The Next Major International Arbitration Venue?

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A broad-based coalition comprised of law firms, U.S.-based arbitration institutions, law schools, the State Bar of Georgia, the Metro Atlanta Chamber of Commerce, and in-house counsel seeks to promote Atlanta as a seat of international commercial arbitration.

International arbitration is not an exotic pastime. It stands as the leading method for resolving cross-border business disputes, in part because companies naturally fear litigating in a foreign court. Arbitration allows the parties to resolve their dispute in a neutral forum before arbitrators of their choosing. An international treaty also makes it easier to enforce an arbitration award across borders than a court judgment. While the United States has no treaties with any other country for the enforcement of our court judgments, over 140 countries, including the U.S., are parties to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Worldwide, the success rate in enforcing foreign arbitration awards is approximately 90 percent, although experience varies by country.

The vast majority of international arbitrations take place in just a handful of cities. London, New York, Geneva, Paris, Hong Kong, and Stockholm are among the traditional leaders. But new centers have emerged as dispute resolution, consistent with the flow of trade and investment, migrates from those traditional venues to cities closer to the locus of the disputes. For instance, Singapore, Dubai, and Miami have become leading venues for international arbitration in the past decade, and the island nation of Mauritius recently launched an initiative to become a center for Africa-related arbitrations.

Why Atlanta?

So what can Atlanta offer compared to these other venues?

First, surveys of corporate counsel indicate that the most important factor in picking an arbitral venue is the legal infrastructure, including the jurisdiction's arbitration law and track record in upholding agreements to arbitrate and arbitral

awards. Georgia showcases exceptionally well on that front. The U.S. Court of Appeals for the Eleventh Circuit is the most international arbitration-friendly court in the U.S. For instance, the 11th Circuit is one of only a few Circuits that preclude challenges to arbitration awards on the basis of "manifest disregard for the law." This eliminates a concern expressed by some non-U.S. lawyers with respect to conducting international arbitrations in the U.S. The 11th Circuit has also taken the national lead in taking a no-nonsense approach to sanctioning parties who make frivolous challenges to arbitration agreements and awards.

Moreover, thanks to some forward thinking by two Georgia law professors, **Doug Yarn** (Georgia State University) and the late **Gabe Wilner** (University of Georgia), Georgia enacted an international arbitration-friendly state statute in 1988. The bill's sponsor was then-state-senator **Nathan Deal**, now Georgia's Governor. Among other provisions, the law guarantees that arbitrators may be of any nationality and that "[s]election of this state as the place of arbitration shall not in itself constitute selection of the procedural or substantive law of that place as the law governing the arbitration."

Second, subject to minor restrictions, Georgia allows parties to be represented by counsel of their choice in international arbitration proceedings, including attorneys not licensed in any U.S. jurisdiction. This is critical to parties selecting an arbitral venue. If the parties' dispute is governed by, say, German law, the parties will naturally want German lawyers involved in the case. Unlike Georgia, the vast majority of states, including most notably California, have failed to adopt a progressive bar rule in that regard, thereby effectively disqualifying them as major international arbitral venues.

Third, Atlanta is one of the easiest places in the world to access. In Hartsfield-Jackson, we have the busiest passenger airport in the world. No other city in the world can make that claim. The airport serves non-stop flights to 151 U.S. destinations and more than 90 international destinations in 55 countries.

Fourth, Atlanta is home to some of the world's largest corporations and boasts a sophisticated legal community accustomed to handling the most complex transactions and disputes. Atlanta can also bank on its reputation as an outward-looking, internationally-oriented city: The '96 Olympics, the Martin Luther King and Andrew Young legacies, the Carter Center, the "city too busy to hate," CARE, and CNN are all part of Atlanta's cosmopolitan global brand. It is no surprise that 76 countries are represented in Atlanta by a consulate, trade office, or bi-national chamber of commerce. Another positive intangible is Atlanta's reputation for "Southern hospitality," a theme that played well in its bid to host the Olympics.

Fifth, Atlanta has the necessary infrastructure for an arbitration center. The offices of the American Arbitration Association, Henning Mediation and Arbitration Service, and JAMS offer hearing rooms equipped with the latest videoconferencing technology. Local hotels and state-of-the-art conference facilities provide endless other possibilities at affordable rates. According to the 2010 Hotel Price Index, the average rate for a hotel in Atlanta was only 47% of the average rate in New York City. And Atlanta compares favorably to other major non-U.S. arbitral centers, with corresponding figures of 41% with respect to Geneva, 51% for Paris, 52% for London, 58% for Singapore, 60% for Stockholm, 63% for Dubai, and 74% for Hong Kong.

Finally, a common element in the rise of all successful arbitral venues is an active collective effort by the local legal community to market and brand the city as an international arbitral seat. This plays to one of Atlanta's strengths, as we have a strong tradition of marshaling business, civic, and political coalitions in effectively selling the city to the world. This is reflected in the board of directors of the recently established Atlanta International Arbitration Society (AtIAS), which includes the following individuals: **Philip "Whit" Engle**, *Ecova, Inc.* (Executive Vice-President); **Brian White**, *King & Spalding LLP* (Vice President); **Steve Clay**, *Kilpatrick Townsend & Stockton LLP* (Vice President); **Valerie Sanders**, *Sutherland Asbill & Brennan LLP* (Treasurer); **Joan Grafstein**, *JAMS* (Secretary); **Thomas Asselin**, *Smith Gambrell & Russell, LLP*; **Dorothy Toth Beasley**, *Henning Mediation & Arbitration Service, Inc.*; **Linda Beyea**, *American Arbitration Association*; **William F. Brogdon**; **Charles H. "Chip" Brower II**, *University of Mississippi School of Law*; **Jorge Fernandez**, *Metro Atlanta Chamber of Commerce*; **John Fleming**, *Sutherland Asbill & Brennan LLP*; **Shelby Grubbs**, *Miller & Martin PLLC*; **Hunter Hughes III**, *Rogers & Hardin, LLP*; **Matthew Richardson**, *Alston + Bird LLP*; **Peter "Bo" Rutledge**, *University of Georgia School of Law*; **Christof Siefarth**, *GÖRG* (Cologne, Germany); **Richard Sheinis**, *Hall Booth Smith & Slover, PC*; **John Sherrill**,

Seyfarth Shaw LLP; **George "Tony" Smith**, *Weinberg, Wheeler, Hudgins, Gunn & Dial*; **John L. Watkins**, *Barnes & Thornburg LLP*; **Kirk Watkins**, *Womble Carlyle Sandridge & Rice PLLC*; **Chris Soffe**, *Gleeds*; and **Douglas Yarn**, *Georgia State University College of Law*.

What is the Plan to Realize Atlanta's Full Potential as an Arbitral Center?

Several steps are being taken to ensure the success of this initiative:

Updating the Georgia International Arbitration Act. A lot has happened since Georgia's international arbitration statute was enacted in 1988. There are also a few holes in the 1988 statute. For instance, under what circumstances should a court intervene in a pending arbitration to issue emergency relief? We also need to de-link the international and domestic chapters of the Georgia Arbitration Code. **Doug Yarn** of GSU has taken the lead in drafting new legislation, with input from other AtIAS members. The legislation, which is based on a model law prepared by the United Nations Commission on International Trade Law (UNCITRAL), will be introduced this legislative session with the support of the State Bar of Georgia and the Metro Atlanta Chamber of Commerce.

Further liberalizing the Bar Rule with regard to foreign lawyers handling international arbitrations in Georgia. This involves some tweaks to the commentary to Georgia Bar 5.5(e)(3). The State Bar's Board of Governors has already approved the revisions, which now await only the approval of the Georgia Supreme Court. The revisions would apply only to *international* arbitrations. **Ben Greer** of *Alston + Bird* (retired), **Bill Smith** of the State Bar, and **Bryan Cavan** of *Miller & Martin* have been the key players in moving this forward.

Getting the word out. AtIAS has developed a website (www.arbitrateatlanta.org) and brochures in a number of languages extolling the city's virtues as an arbitral venue, as well as a focused mailing list consisting of several thousand addresses. Among other things, AtIAS seeks to promote an Atlanta arbitral seat to companies throughout the Southeast. A company headquartered in, say, Memphis, Charlotte or Nashville might be able to persuade the party on the other side of the deal that Atlanta is a sufficiently "neutral" site to resolve future disputes. One of the objectives behind the liberalized bar rule commentary is getting lawyers in neighboring states to view a thriving international arbitration platform in Atlanta as a business opportunity, not a threat. While not the primary thrust of the initiative, there is also the opportunity to market Atlanta the venue of choice for Africa-related arbitrations. The amounts at stake in these cases

international relations

tend to be considerable, as these cases typically arise from infrastructure and natural resources disputes. The initiative is not limited by geography, however. AtIAS is seeking to promote Atlanta to the entire world.

Presenting an annual signature conference on international arbitration. Hosting conferences to attract the international arbitration community to their cities has been a key factor in the recent emergence of Miami and Singapore as major arbitral centers. Likewise, AtIAS has organized a world-class international arbitration conference to take place on April 15-17, 2012 in the Loews™ Atlanta Hotel, with a reception and dinner at the High Museum. The title is *"The Role of the United States in the International Arbitration System of the 21st Century: Trendsetter, Outlier or One in a Crowd?"* The planners include **Brian White** (*King & Spalding*), **Valerie Sanders** (*Sutherland*), **Shelby Grubbs** (*Miller & Martin*), **Bo Rutledge** (*UGA*), **Whit Engle** (*Ecova, Inc.*), **Chip Brower** (*University of Mississippi*), **Joan Grafstein** (*JAMS*), and **Steve Clay** (*Kilpatrick Townsend & Stockton*), among others.

An all-star cast of speakers from five continents will include **Chief Justice Carol Hunstein** of the Georgia Supreme Court, **Mayor Kasim Reed**, Metro Atlanta Chamber President **Sam Williams**, the presidents of the American Arbitration Association (AAA), Chartered Institute of Arbitrators (CIArb) and London Court of International Arbitration (LCIA); the secretaries-general of the China International Economic and Trade Arbitration Commission (CIETAC) and International Centre for Settlement of Investment Disputes (ICSID); the chairs of the International Chamber of Commerce (ICC) Court of International Arbitration and the international arbitration committees of the International Bar Association (IBA) and American Bar Association (ABA); all four reporters for the ALI's Restatement project on the U.S. Law of International Commercial Arbitration; and leading practitioners, neutrals and in-house counsel from Atlanta and well beyond.

Notwithstanding the lofty title of the conference, the focus of the sessions will be on the practical. The event offers a tremendous opportunity to learn more about the Atlanta international arbitration initiative and recent developments in international arbitration and to network with local and international leaders in the field. You can register online through the AtIAS website – <http://arbitrateatlanta.org/events>.

What's in this for Georgia Lawyers?

Increasing the number of international arbitration proceedings with a Georgia venue would expand the work available for Georgia lawyers, even if non-Georgia lawyers also benefit. By way of illustration, I recently served as an arbitrator in a case seated in Miami in which one of the lawyers was from

Argentina and another one of the arbitrators from Spain. This might raise the question of how giving work to lawyers from Georgia, Argentina, and Spain helps Florida lawyers. The answer is that the dispute had no connection with Florida (it involved the Dominican Republic), and while one party was represented by a non-Florida firm, the other party was represented by Florida lawyers and the chair of the arbitration panel was from Florida. But for Florida's international arbitration-friendly legal regime, the case would have been heard elsewhere. While ceding a small piece of the pie to non-Florida lawyers, Florida lawyers are reaping the benefit of a much larger pie.

London exemplifies the potential upside. Over 85 percent of all arbitrations administered by the LCIA have no connection to England. That creates a lot of work for English lawyers and other service providers and of course business for the local hospitality industry. In a speech to Parliament last year, the Chancellor of the Exchequer described international arbitration as one of the "unsung success stories" of the U.K. economy.

Conclusion

The aim of AtIAS is to claim a much larger share of the burgeoning field of international arbitration for Atlanta lawyers. AtIAS meets monthly, with the noon meetings rotating monthly between law firms, local arbitration institutions and the Metro Atlanta Chamber of Commerce. This is a "big tent" initiative, and anyone is most welcome to attend, regardless of whether they are formal members of the AtIAS organization. The meeting schedule appears on the AtIAS website. We hope to see you at an upcoming meeting and at the conference on April 15-17! ■

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