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Texas Creates New Business Court

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Texas is known for its business-friendly environment, with low taxes and minimal government regulation. But the state has faced criticism for years about its legal system being slow, unpredictable, and costly, hindering economic growth and development. While nearly thirty other states have created specialized business courts, Texas has not updated its judicial system since the late 1960s. Consequently, elected judges who may never have been exposed to large-scale commercial litigation are called upon to preside over such complex cases alongside run-of-the-mill family law disputes and personal injury claims. And, unlike their federal colleagues, they usually do so without the benefit of full-time clerks to work through what can be mountains of paper.

The predictable result of this combination of bet-the-company cases with small-dollar disputes is that state trial judges' dockets can become overwhelmed when faced with a complex, large-scale mergers-and-acquisitions or securities issue. These cases often require in-depth research by the judge, lengthy judicial consideration of complex motions, and extremely detailed parsing of complex commercial agreements, all of which are time-consuming and resource-intensive, taking time from their regular dockets. Consequently, these cases can be subject to significant processing delays at the state trial court level. Similarly, the lack of a requirement for written opinions in all cases and the comparatively rare nature of complex commercial cases in state trial courts—for many state trial court judges the first of these massive cases heard in their courtroom may also be the last—has led to a lack of certainty and stability around these types of cases in Texas business law.

Thus, despite its world-class economy, Texas's judicial system has sometimes led corporations and other business entities to incorporate and litigate in other states, such as Delaware or New York, which have specialized business courts where the timeline for dispute resolution is more certain.

However, following the recently concluded legislative session, specialized business courts are coming to Texas. Last month, Texas enacted House Bill 19 (HB 19), which will create a specialized business trial court: the Texas Business Court (TBC)[1].

The TBC's stated primary objective is to provide a faster, more efficient, and more cost-effective dispute resolution mechanism for businesses. It will be a specialized trial court designed to handle complex commercial disputes and streamline the litigation process. In this way, the new court will change the procedures for commercial litigation in Texas, with significant implications for businesses and individuals.

Supporters argue that the TBC will provide a more specialized and tailored approach to handling commercial disputes. The new court will also have the power to hear cases from other jurisdictions, potentially making Texas more attractive for businesses seeking a more predictable and efficient legal system.

Specialization

The TBC will oversee cases concerning corporate governance disputes, certain contract and commercial transactions, and actions seeking declaratory or injunctive relief. The TBC will have jurisdiction over matters in which the amount in controversy exceeds $5 million in some cases and $10 million in others, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs.

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The specialized nature of the court is intended to streamline the litigation process, reducing the time and cost associated with resolving disputes. Currently, businesses must navigate a court system that may not have the same level of specialization in commercial litigation, resulting in additional costs and delays.

As the enacting legislation is currently written, the court will start with only five divisions that oversee major metropolitan areas. The governor would appoint judges to the business court for a two-year term, and judges can be re-appointed multiple times. As time goes on, additional divisions will come online until the TBC covers all 11 existing judicial administrative regions.

Judges

Like probate or criminal courts, the TBC will be a specialized court and have specialized judges with expertise in business law and commercial litigation. Instead of being elected like other Texas district judges, business court judges will be appointed by the governor. And instead of being open to any attorney who meets the minimum legal requirement to stand for election—just four years of legal practice—business court judges appointed to the TBC by the governor must meet a set of requirements designed to ensure they have the knowledge, skills, and ability to handle complex commercial cases smoothly and efficiently. As currently written, business court judges must have ten years of experience practicing complex civil business litigation, practicing business transaction law, or serving as a judge of a Texas state court with civil jurisdiction (or any combination thereof). These requirements are designed to ensure a baseline level of business law experience and expertise for complex commercial cases being adjudicated in the new TBC.

Importantly, judges on the TBC will have access to more resources and information, allowing them to make more informed decisions on cases. For example, they may have access to technical experts or business consultants who can provide specialized knowledge on a particular issue. This can speed up the decision-making process and ensure that the court's rulings are accurate and informed.

TBC judges will also be required to issue written opinions in their cases. This requirement should go far towards building up a stable and predictable body of precedent for Texas business law and put businesses on notice as to how Texas judges actually apply that precedent.

Efficiency

The TBC will aim to provide a more efficient dispute resolution mechanism, which is critical for businesses looking to resolve disputes quickly and cost-effectively. The TBC will also allow for more streamlined discovery, which is a process of gathering evidence before trial. Currently, discovery in commercial cases can be extensive and costly, taking up valuable time and resources. This is especially true when there are no prior written opinions from the judges outlining their approach to discovery in large-scale, complex cases. The TBC will limit discovery to only what is necessary, reducing the time and cost of the litigation process.

Removal and Transfer

Under HB 19, businesses will have the opportunity to remove cases to the TBC within 30 days of receiving the initial notice of summons that named the party in state court. Removing the case to the TBC will not waive a defect in venue or constitute an appearance to determine personal jurisdiction. Similarly, a transfer provision in HB 19 allows for the judge of a court in which an action was initially filed to request the transfer of the case to the business court if it was within the business court's jurisdiction.

These provisions will help prevent businesses from being hauled into state court for disputes which fall under the more specialized jurisdiction of the business court and will

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ensure fair and equal access to the TBC for all businesses and disputes which fall under its specialized jurisdiction.

Appeals

HB 19 also provides that the new statewide 15th Court of Appeals, created by additional legislation from the Texas Legislature last session, will have exclusive jurisdiction over all appeals from an order or judgment of the business court, or an original proceeding related to an action or order of the business court. The 15th Court of Appeals will be composed of judges elected in statewide elections. The creation of this new appellate court, in conjunction with the creation of the TBC, means that Texas business law will have consistent precedents generated at both the district and appellate levels.

Predictions

It is difficult to predict exactly what will happen to the number of lawsuits filed after the TBC is enacted, as there are several factors that could influence those numbers. However, it is likely that the TBC's creation will increase the filings of commercial and business suits in Texas as business grow more confident in the revamped Texas judicial system.

First, it is likely that the establishment of the TBC will lead to more businesses choosing Texas as the preferred jurisdiction for their commercial disputes due to the TBC's specialization, efficiency, and predictability. Such a result will naturally attract more lawsuits to Texas. Based on anecdotal evidence, it appears that many Texas companies will adopt mandatory venue clauses that will place their commercial lawsuits in the TBC. This could lead to an increase in the number of lawsuits filed in Texas, particularly from businesses based outside of the state.

Second, it is likely that the TBC's specialization in business disputes could lead to a virtuous cycle of an ever-increasing number of disputes being resolved through the TBC. If businesses have confidence in the TBC's ability to handle complex commercial disputes and see a body of strong precedent and caselaw being built up by the TBC and the 15th Court of Appeals, they may be more willing to initiate disputes in the TBC, or remove existing disputes to the TBC. As time goes on, this may lead to an increase in the number of lawsuits filed in Texas.

Third, the certainty offered by the TBC for business law issues moving forward will, over time, likely result in more businesses choosing to incorporate in Texas and more individuals choosing to start businesses in Texas. It is an unfortunate reality that some of these businesses eventually will become embroiled in litigation, and when they do they will likely take their cases to the TBC. This too probably will lead to an increase in the number of lawsuits filed in Texas.

Overall, the impact of the TBC on the number of lawsuits filed in Texas will depend on a variety of factors, including the court's effectiveness in handling commercial disputes, the degree to which businesses trust the TBC, and the willingness of litigants to pursue lawsuits in a court with strict timelines and streamlined procedures. But the establishment of the TBC is a major change in Texas law that will affect businesses and litigants for decades to come.

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[1] Please see the enacted bill and Texas House Research Organization analysis for additional details.

The following Gibson Dunn attorneys assisted in preparing this client update: Trey Cox and John Daniel Rimann.

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