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## The Texas Business Court: Year One

Jack B. DiSorbo

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# ARTICLE

## THE TEXAS BUSINESS COURT: YEAR ONE

**JACK BUCKLEY DiSORBO\***

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## I. INTRODUCTION

Last fall, the State of Texas introduced the Texas Business Court—a specialized judicial body designed to provide a more efficient forum for litigating high-stakes commercial disputes and attract more business (and business litigation) to the Lone Star State. The laws creating the new court were decades in the making, the result of long-running debates over whether there was enough demand for the court, and if so, how to design it.

As passed by the legislature two years ago, the basic contours of the Business Court are these. The court operates only in the five major metropolitan cities and their surrounding areas: Houston, Dallas, Fort Worth, Austin, and San Antonio.<sup>1</sup> The Court's judges, who must meet statutory requirements for experience with complex commercial litigation, are appointed by the Governor to serve a two-year term.<sup>2</sup> These judges are also directed by law to issue written opinions for most orders—a stark

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1. See Jack Buckley DiSorbo, *A Primer on the Texas Business Court*, 76 BAYLOR L. REV. 360, 366 (2024) (listing the metropolitan areas assigned to the active business court divisions).

2. *Id.* at 369.

departure from ordinary state-court trial practice.<sup>3</sup> Jurisdiction is limited to three core subjects: (1) disputes involving a “qualified transaction” exceeding \$10 million in controversy, (2) actions concerning a company’s corporate governance (or other similar business disputes) with more than \$5 million in controversy, and (3) corporate governance actions involving a publicly traded company.<sup>4</sup> Appeals from Business Court judgments are taken to the newly created Fifteenth Court of Appeals, whose jurisdiction is limited to Business Court cases and certain matters concerning state parties or challenges to state law.<sup>5</sup>

The business and legal communities heralded the new court with much excitement. They promoted the Business Court as “a key driver of attracting and retaining business in Texas” and promoted it as “one of the best developments in the Texas court system in the last 40 years.”<sup>6</sup> Often citing the Business Court as one of their motivations, prominent companies continue to immigrate to Texas—including Chevron (KFC, Taco Bell, and Pizza Hut parent), Yum! Brands, and Elon Musk’s triumvirate of Tesla, SpaceX, and X—with competitor Meta rumored to be considering reincorporation too.<sup>7</sup> A few commentators, including the Governor, have framed the onset of the Texas Business Court as a challenge to the Delaware Court of Chancery.<sup>8</sup>

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3. *Id.* at 377.

4. This Article uses “corporate governance actions” as a shorthand to mean all claims covered by TEX. GOV’T CODE ANN. § 25A.004(b). *See* TEX. GOV’T CODE ANN. § 25A.004(b) (including actions involving the corporate governance of a company, a derivative action, securities claims, and most business torts).

5. *See* DiSorbo, *supra* note 1, at 379 (providing a more detailed background on the statutory design of the Texas Business Court).

6. *See* H. Comm. on Judiciary & Civ. Juris. Pub. Cmt’s. on H.B. 40, 89th Leg., R.S. (Apr. 9, 2025), <https://capitol.texas.gov/tlodocs/89R/publiccomments/billhistory/HB00040H.pdf> [<https://perma.cc/L3A2-L7PJ>] (receiving almost unanimous support from business and the bar on the original bill during the 88th regular session); *see* DiSorbo, *supra* note 1, at 365, 387 (discussing the passage of H.B. 19).

7. *See* Jordan Hart, *Companies Moving to Texas Include Tesla and Chevron*, BUS. INSIDER (Feb. 27, 2025), <https://www.businessinsider.com/companies-moving-to-texas/> [<https://perma.cc/5FML-DLF7>] (discussing the recent migration of large corporations into Texas due largely in part to its business friendly climate); Antonio Pequeño IV, *Meta Eyeing Possible Reincorporation In Texas, Report Says*, FORBES (Jan. 31, 2025), <https://www.forbes.com/sites/antoniopequenoiv/2025/01/31/meta-eyeing-possible-reincorporation-in-texas-report-says/> [<https://perma.cc/XWB8-2WHG>] (reporting updates which point to Texas as being amongst the target locations for Meta’s reincorporation).

8. *See, e.g.*, Angela Shah, *Home Court Advantage*, TEX. L. MAG. (May 1, 2025, <https://law.utexas.edu/magazine/2025/05/01/home-court-advantage/> [<https://perma.cc/8389-625>]

But many questions loomed. Would industry trust the new court with their litigation? Would cases be resolved efficiently? Would the first slate of judges (highly touted by the political branches) live up to their billing? And not least of which: Would the court be deemed unconstitutional and derailed before it began?

In many respects, the inaugural year was a big success. Nearly 200 cases were filed in the first year, which is more than lawmakers expected and outpaces similarly situated business courts.<sup>9</sup> High-stakes litigants did not shy away from bringing their business to the new court, with the average amount in controversy for the first year being \$45.7 million.<sup>10</sup>

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K] (describing the Delaware court decision behind Elon Musk's move to reincorporate Tesla in Texas); Will Maddox, *Texas Is Coming for Delaware's Business Court Throne*, D MAG. (Feb. 10, 2025), <https://www.dmagazine.com/publications/d-ceo/2025/january-february/texas-is-coming-for-delawares-business-court-crown/> [https://perma.cc/5PDP-C4NS] (highlighting that the Texas Business Court is to "take a run at Delaware"); Shane Goodwin, *Texas Business Court Is a Bold Experiment in Corporate Governance*, DALL. MORNING NEWS (Dec. 2, 2024), <https://www.dallasnews.com/opinion/commentary/2024/12/02/texas-business-court-is-a-bold-experiment-in-corporate-governance> [https://perma.cc/8RET-P2VZ] (analyzing factors indicating Texas poised to compete with Delaware in the market); *see* Spencer Brewer, *Texas Could Be Next Delaware*, LAW360 (Sep. 5, 2024), <https://www.law360.com/articles/1873641/texas-could-be-next-delaware-attys-say-as-biz-court-opens> [https://perma.cc/F4SN-ETDR] (examining the response of legal practitioners to the establishment of the Texas Business Court); Greg Abbott, *Forget Wall Street—'Y'all Street' Is Open for Business*, WALL ST. J. (Mar. 5, 2025), <https://www.wsj.com/opinion/forget-delaware-yall-street-is-open-for-business-texas-corporate-law> [https://perma.cc/W9MR-YLQC] (discussing measures to be taken in order to address shortcomings exhibited in the past by the Delaware Chancery Court).

9. Business Court Judges Patrick Sweeten and Jerry Bullard testified before the Senate and House respectively, and cited statistics from other states' business courts to compare Texas's caseload from the court's first year. They pointed to North Carolina, which averaged approximately fifty-two cases during its business court's first year of operation, and to Georgia and Utah, both of which receive less than thirty business court cases a year. *See Hearing on Tex. S.B. 2883 Before the Tex. S. Comm. on Juris.*, 89th Leg., R.S., at 46:45–47:30 (May 7, 2025) (statement of Judge Patrick Sweeten) (digital recording available through <https://senate.texas.gov/videoplayer.php?vid=%2022069&lang=en>) [https://perma.cc/V5WZ-PW73] (comparing statistical caseload data amongst the states who have a business courts in place); *Hearing on Tex. H.B. 40 Before the Tex. H. Comm. on Judiciary & Civ. Juris.*, 89th Leg., R.S., at 5:04:20–5:04:40 (Apr. 9, 2025) (statement of Judge Jerry Bullard) (digital recording available through <https://house.texas.gov/videos/21687>) [https://perma.cc/MFS8-JM9R] (analyzing caseload metrics of the business courts in other jurisdictions in contrast to those in Texas). In the words of one witness, business court cases are "coming in at a higher rate than many observers thought." *Hearing on Tex. H.B. 40 Before the Tex. H. Comm. on Judiciary & Civ. Juris.*, 89th Leg., R.S., at 4:54:50 (Apr. 9, 2025) (statement of Mike Tankersly) (digital recording available through <https://house.texas.gov/videos/21687>) [https://perma.cc/MFS8-JM9R].

10. The following statistics were measured using data from public docket filings on Texas's state-court docket website. *See RE:SEARCHTX*, <https://research.txcourts.gov> [https://perma.cc/3ZG

The case metrics reveal other insights into the court's operation. For instance, over a third of all cases (78/181) were filed in the Houston Division.<sup>11</sup> Although oil and gas cases constituted a plurality of filed actions (29.8%), the docket was generally diverse, with no other industry commanding more than 12.2%.<sup>12</sup> And commercial transactions, rather than corporate governance disputes, accounted for the majority of the court's docket, with a "qualified transaction" as the alleged basis of jurisdiction in 59.1% of cases.<sup>13</sup> These and other statistics regarding the first year of the Business Court are addressed in Part II.

The Business Court was also successful as a publisher of case law. In their first year, Business Court judges issued thirty written opinions.<sup>14</sup> That may not sound like a lot compared to the Delaware Chancery's 233-year-old body of case law.<sup>15</sup> But considering that—until now—Texas trial judges hardly ever issue written opinions, it is a dramatic improvement towards making Texas business law more accessible and predictable. Section III.A analyzes the significant Business Court opinions to date.

Besides opinions, Business Court judges have also written several versions of local rules. There is a general set of local rules, applying to all Business Court cases.<sup>16</sup> Many judges or divisions have also implemented specific procedures on subjects ranging from scheduling orders, discovery disputes, and substantive briefing.<sup>17</sup> Section III.B offers an overview of the Business Court-specific rules.

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L-FVMY] (2025) (providing a database website to search for Texas court statistics). For each case, relevant fields were identified, including when and where the case was filed, whether the case was filed in the Business Court as an original action or removed from another state court, the general industry involved in the controversy, the type of claims asserted, the alleged amount in controversy, and the alleged basis for Business Court jurisdiction. Author data is available upon request.

11. *See* Figure 2 (representing the number of cases filed amongst the several business court divisions).

12. *See* Figure 6 (illustrating a breakdown of filed cases in the business courts by industry type).

13. *See* Figure 4 (demonstrating statistical data on the types of disputes heard by the business courts).

14. RE:SEARCHTX, *supra* note 10.

15. William T. Quillen & Michael Hanrahan, *A Short History of the Court of Chancery*, DEL. CTS. JUD. BRANCH (2025), <https://courts.delaware.gov/chancery/history.aspx#top> [<https://perma.cc/4S9J-8L9C>].

16. *See* LOCAL RULES OF THE TEXAS BUSINESS COURT (2025), <https://www.txcourts.gov/media/1459346/local-rules-of-the-business-court-of-texas.pdf> [<https://perma.cc/HWA2-R5AC>] (providing local rules for the Texas Business Court).

17. *See infra* Section III.B.

Finally, as with any experiment, there are some adjustments after the trial run. The legislature debated at length—and ultimately adopted—several non-partisan changes to the Business Court during the 2025 legislative session. The major changes include expanding the court's subject matter jurisdiction and allowing older-filed cases to be removed to the court upon agreement in certain circumstances.<sup>18</sup> Some proposals—such as adding more judges to the Houston and Dallas divisions—were shot down. Part III recounts the legislative debates and explains the amendments that were signed into law.

Overall, the Business Court exceeded expectations in its first year. It received a healthy number and variety of cases, disposing of cases at a capable rate.<sup>19</sup> The body of Business Court case law, though still in its infant stages, is beginning to grow. Incremental changes made by the legislature should further expand the court's operations. The court is undoubtedly a work in progress, but there is no doubt that progress is being made.

## II. STATISTICS

### A. Overview

The Business Court's first-year docket reflects excitement in the new court from a variety of commercial sectors.<sup>20</sup> To begin, initial data suggests cases are being resolved in a timely manner, though with most cases still

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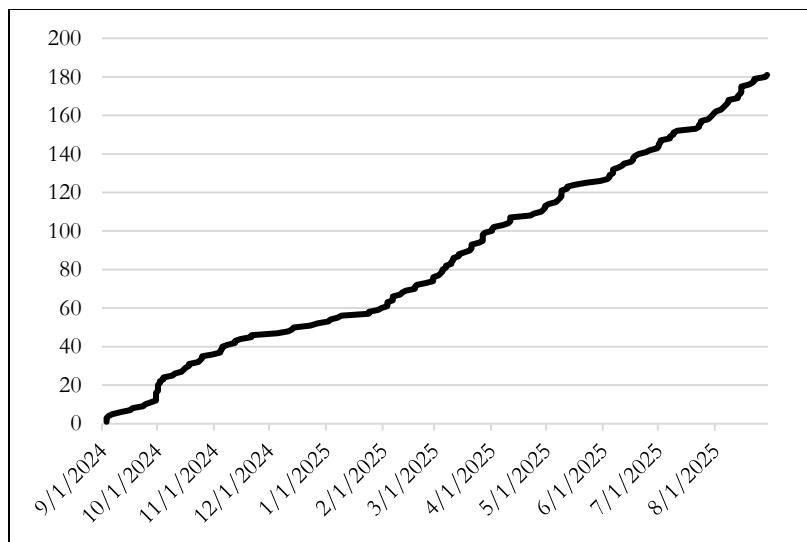
18. There has been discussion in the Texas legislature and Business Court about whether the rules for which cases the Business Court can hear are restrictions on the court's subject matter jurisdiction, or whether they are non-jurisdictional restrictions on the court's authority. The Business Court statute is written in terms of "jurisdiction." *See* TEX. GOV'T CODE ANN. § 25A.004 (covering "Jurisdiction and Powers"). *See id.* § 25A.004(d) ("The business court has civil jurisdiction concurrent with district courts in the following actions in which the amount in controversy exceeds \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs."). But the procedural rules adopted by the Supreme Court avoid using the word "jurisdiction," instead favoring "authority." *See* TEX. R. CIV. P. 354(a) ("For an action originally filed in the business court, an original pleading that sets forth a claim for relief . . . [must] plead facts to establish the business court's authority to hear the action."); TEX. R. CIV. P. 354(c)(2) ("A motion challenging the business court's authority to hear an action must be filed within 30 days of the movant's appearance."). This Article uses "subject-matter jurisdiction" when addressing issues relating to the scope of cases the Business Court may hear, but acknowledges the running discussion on the question, and the implications the answer may pose to the finality of the court's judgments.

19. *See* Figure 4–6 (demonstrating the volume and variety of cases heard by the business courts).

20. Figure 6.

pending, it is still too early to draw broader conclusions.<sup>21</sup> But even at this stage, it is clear that the overall number of cases filed in the Business Court was substantial. Initial estimates suggested the court might receive only several dozen cases during its first year.<sup>22</sup> However, the court far surpassed those predictions, with a grand total of 181 newly filed cases.<sup>23</sup> With the exception of the year-end holidays, the Business Court saw roughly seventeen cases filed per month.<sup>24</sup> The rate of filed cases is shown in Figure 1.

FIGURE 1. CASES FILED.



21. At least one publication estimated that cases are being decided in two months, but, as the article recognizes, that is due to the high percentage of cases dismissed on jurisdictional ground. *See* Thomas O'Brien et al., *Texas Business Court: What We Know So Far*, TEX. LAW. (Mar. 27, 2025), <https://www.law.com/texaslawyer/2025/03/27/texas-business-court-what-we-know-so-far/> [https://perma.cc/N8MP-Q2J8] ("The court continues to operate efficiently, with resolved cases averaging approximately just 67 days. While this is a fast pace suggesting commitment to case management, it likely also reflects that several cases have been dismissed early for jurisdictional reasons.").

22. *Hearing on Tex. H.B. 40 Before the Tex. H. Comm. on Judiciary & Cir. Juris.*, *supra* note 9, at 4:54:50 (statement of Mike Tankersly) (digital recording available through <https://house.texas.gov/videos/21687>) [https://perma.cc/MFS8-JM9R] (testifying on the rate at which the business courts are receiving new cases).

23. Michael Clark et al., *Open for Business: Texas Business Court Exceeds Early Expectations*, JD SUPRA (July 16, 2025), <https://www.jdsupra.com/legalnews/open-for-business-texas-business-court-9286582/> [https://perma.cc/FVM3-UDK6].

24. Figure 1.

As in federal court, cases can appear before the Business Court through one of two ways: (1) they can be filed there originally, or (2) they can be removed from another state court.<sup>25</sup> Over the first year, slightly more cases (58.6%) were initially filed in the Business Court than were removed.<sup>26</sup> That rate is low compared to federal court, where roughly 70–80% of civil commercial actions with federal subject matter jurisdiction are commenced rather than removed from state court.<sup>27</sup> This percentage may reflect a growing awareness of the Business Court and a desire to bring cases in that forum.

In addition, the relatively high rate of removal (41.4%) attests to litigants' attempts to probe the boundaries of the Business Court's jurisdiction.<sup>28</sup> Of the seventy-five cases removed to the Business Court, dozens have already been remanded back to their original court.<sup>29</sup> Many defendants removed their cases to the Business Court on the now-rejected ground that cases filed before September 1, 2024, were eligible to be heard by the court.<sup>30</sup> In many cases, claims have been remanded for other reasons, such as not falling within the court's subject-matter jurisdiction or the amount in controversy

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25. TEX. R. CIV. P. 355. The notice of removal must be filed within thirty days of when the removing party should have discovered facts establishing the Business Court's jurisdiction, or at any time if all parties agree. TEX. R. CIV. P. 355(c). The notice must also plausibly allege facts demonstrating that the action falls within the court's jurisdiction. TEX. R. CIV. P. 355(b). Unlike in federal court, the removing party's allegations of the court's subject-matter jurisdiction control at the pleading, unless they are shown to be wrong. *See* C Ten 31 LLC ex rel. SummerMoon Holdings LLC v. Tarbox, 708 S.W.3d 223, 237 (Tex. Bus. Ct. 2025) (applying the "pleadings burden" analysis in a dispute over whether the removing party pled the requisite amount-in-controversy). For additional analysis, *see* Section III.A.2.

26. RE:SEARCHTX, *supra* note 10.

27. Jill Curry & Matthew Ward, *Are Twombly & Iqbal Affecting Where Plaintiffs File? A Study Comparing Removal Rates by State*, 45 TEX. TECH L. REV. 827, 866, fig. 2 (2013); Kevin M. Clermont & Theodore Eisenberg, *Litigation Realities*, 88 CORNELL L. REV. 119, 123, fig. 1 (2002); William H. J. Hubbard, *An Empirical Study of the Effect of Shady Grove v. Allstate on Forum Shopping in the New York Courts*, 10 J.L. ECON. & POL'Y 151, 162–63 (2013).

28. Figure 1.

29. RE:SEARCHTX, *supra* note 10.

30. All Business Court divisions have held that the Business Court statute, as originally written, did not extend jurisdiction to cases filed before the statute took effect. The legislature, however, has since amended the statute to allow cases filed before September 1, 2024, to be removed in certain circumstances. *See infra* Section III.A.1.i.

did not exceed the required threshold.<sup>31</sup> The rate of failed removals should decrease over time as practitioners learn the standards for jurisdiction and removal. Regardless, it's clear that some parties perceive the Business Court as being favorable enough to their case to justify raising an uncertain jurisdictional argument.

#### B. *Venue*

The distribution of where Business Court cases were filed demonstrates high demand in the biggest urban centers and slightly less demand in the other divisions.<sup>32</sup> Together, the Houston and Dallas divisions account for 127 out of 181 filings, or 70.2%.<sup>33</sup> It should not come as a surprise that these two cities, the largest legal markets in the state, constitute a majority of the Business Court interest. For this reason, the legislature considered adding new judgeships to those divisions but ultimately opted not to do so.<sup>34</sup> The number of cases filed in each division is seen in Figure 2.

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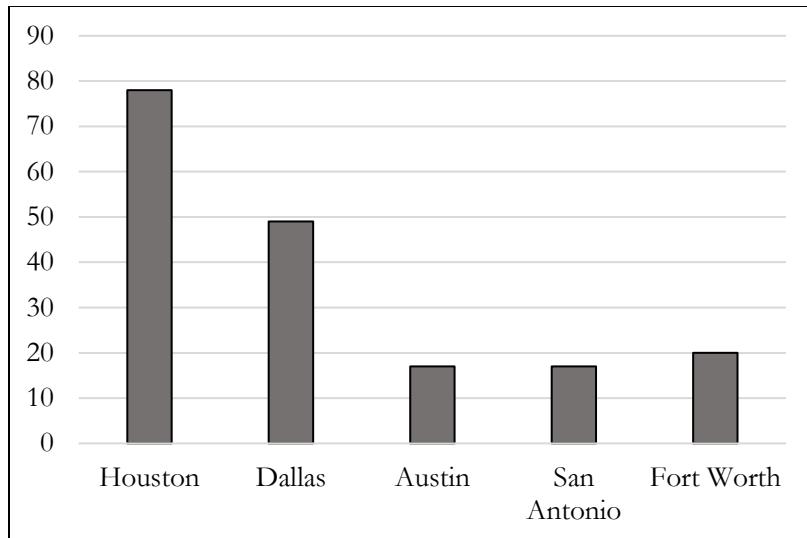
31. *See* Targa N. Del., LLC v. Franklin Mountain Energy 2, LLC, No. 24-BC01B-1, 2025 WL 952987, at \*6 (Tex. Bus. Ct. Mar. 28, 2025) (analyzing whether the dispute fell within the court's subject matter jurisdiction).

32. Figure 2.

33. *Id.*

34. *See* Tex. H.B. 40, 89th Leg., R.S., § 7(a)(2) (2025) (proposing legislation providing for the addition of judges to the First and Eleventh Divisions); Tex. S.B. 2883, 89th Leg., R.S. (2025); *see also* Hearing on Tex. S.B. 2883 Before the Tex. S. Comm. on Juris., *supra* note 9, at 40:24–50 (statement of Mike Tankersly) (“The Business Court is bringing in cases at a pretty good clip. The next time after this session ends that the legislature could add a new judge to the court would be the 2027 session which would make it January probably of 2028, and we believe between now and January 2028 that the increase of demand will require additional judges.”).

FIGURE 2. VENUE.



What is slightly surprising, though, is the great percentage of cases filed in Houston. Of the 181 cases filed during the court's first year, seventy-eight (43.1%) were filed in the Houston division.<sup>35</sup> In an apparent response to the bayou-heavy distribution, 22 out of 78 cases filed in Houston have been reassigned to Business Court judges whose divisions have lighter dockets.<sup>36</sup> In such cases, the action remains in the Houston division and

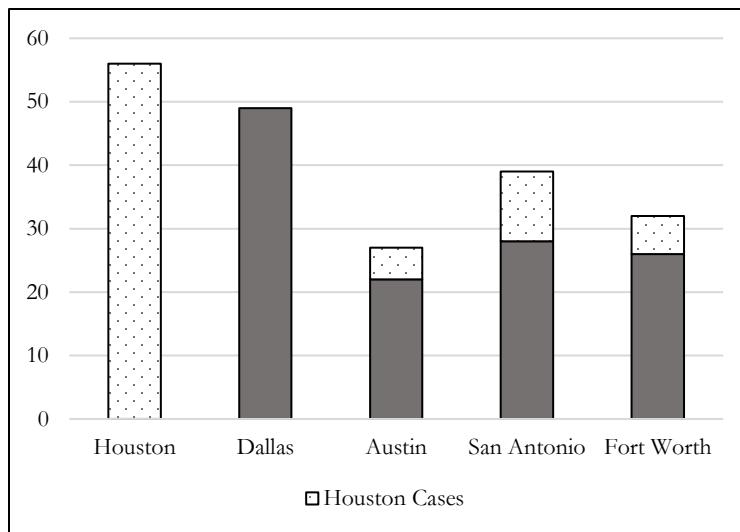
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35. Figure 2.

36. The Business Court statute and Business Court local rules allow judges to sit in different divisions according to the discretion of the administrative presiding judge. *See* TEX. GOV'T CODE ANN. § 25A.009(f) ("To promote the orderly and efficient administration of justice, the business court judges may exchange benches and sit and act for each other in any matter pending before the court."); *See* TEX. BUS. CT. L.R. 2 (same). Of the nineteen cases reassigned to other judges, nine have been assigned to San Antonio division judges, five to Austin division judges, and five to Fort Worth division judges. *See, e.g.*, Order of Assignment, Mesquite Energy, Inc. v. Sanchez Oil & Gas Corp., No. 24-BC11B-18 (Nov. 25, 2024) ("Pursuant to Texas Government Code Section 25A.009(f) and Rule 2 of the Local Rules of the Texas Business Court, to equalize dockets within the Texas Business Court and to promote the orderly and efficient administration of justice, the undersigned Presiding Judge assigns this case to Judge Marialyn Barnard of the Texas Business Court Fourth Division, to handle all proceedings including final trial of the case, absent further order of the Administrative Presiding Judge."). Aware of this trend, the legislature has directed the Office of Court Administration—the administrative arm of the state judiciary—to study Business Court case statistics and deliver a report with recommendations on whether further action is needed. *See* GOV'T § 25A.0171(e) (providing that the report must include "(1) a summary of the caseload of each business court judge in the preceding

any trial takes place in the original venue; the only difference is that a different judge presides.<sup>37</sup> The Business Court managed to make the caseload substantially more equal using this process. Accounting for cases reassigned to judges outside of Houston, the distribution of cases assigned to the five Business Court divisions is shown in Figure 3 below.

FIGURE 3. CASELOAD DISTRIBUTION.



The Austin, San Antonio, and Fort Worth divisions comprise a smaller percentage of filed cases. Together, they account for just 54 out of 181 filings, or 29.8%.<sup>38</sup> While that figure may increase as the Business Court becomes more prominent in the legal industry, it raises questions about the demand for divisions in smaller commercial centers.<sup>39</sup> As discussed below, the legislature is still considering whether to expand the Business Court to the other state divisions, including El Paso, Midland/Odessa, Amarillo, Tyler, Beaumont, and the Rio Grande Valley. The trend of cases in the

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year; (2) a summary of the extent to which business court judges have been assigned to hear cases in other divisions to equalize caseloads; (3) a projection of the expected caseloads of the business court judges for the following two years; and (4) recommendations regarding action by the legislature, the governor, the chief justice of the supreme court, or the business court to ensure the business court meets existing and projected demand for the business court's services in the following two years").

37. *Id.*

38. RE:SEARCHTX, *supra* note 10.

39. Figure 2.

Austin, San Antonio, and Fort Worth divisions may inform the viability of these other divisions.

*C. Basis of Jurisdiction*

Turning to Business Court jurisdiction, litigants were more disposed to bring large commercial disputes than corporate governance actions. In 107 out of 181 cases (59.1%), the party invoking the Business Court's jurisdiction did so on the basis that the action involved a "qualified transaction," in which the amount in controversy exceeds \$10 million.<sup>40</sup> In a sizeable but smaller percentage of cases (62 out of 181, or 34.3%), jurisdiction was based on a corporate governance action with more than \$5 million in controversy.<sup>41</sup> Only 6 out of 181 (3.3%) cases took advantage of the provision granting the Business Court jurisdiction over a corporate governance action brought by or against a publicly traded company.<sup>42</sup> The distribution of the grounds for jurisdiction asserted by the party invoking the court's jurisdiction is summarized below in Figure 4.

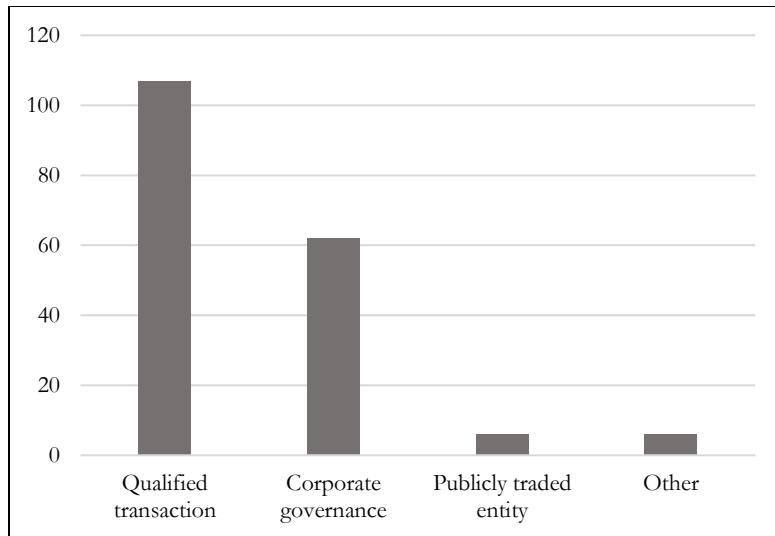
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40. Figure 4.

41. *Id.*

42. The remaining 6 out of 181 (3.3%) cases have been categorized as "other." This means either that the petition or notice of removal alleging jurisdiction was sealed or that the document alleged an invalid basis of jurisdiction.

FIGURE 4. JURISDICTION.



This high percentage of cases brought in the Business Court under qualified-transaction jurisdiction is likely due to the broad definition of that term, which covers most civil commercial claims that meet the amount-in-controversy threshold and are not excluded from the court's jurisdiction.<sup>43</sup> Many litigants also brought trade secret, arbitration, or other civil claims in the Business Court on the ground that such claims constitute a qualified transaction.<sup>44</sup> The legislature has since amended the Government Code to

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43. The term is defined as follows:

“Qualified transaction” means a transaction, other than a transaction involving a loan or an advance of money or credit by a bank, credit union, or savings and loan institution, under which a party: (A) pays or receives, or is obligated to pay or is entitled to receive, consideration with an aggregate value of at least \$10 million; or (B) lends, advances, borrows, receives, is obligated to lend or advance, or is entitled to borrow or receive money or credit with an aggregate value of at least \$10 million.

TEX. GOV’T CODE ANN. § 25A.001(14).

44. *See, e.g.*, Orig. Pet., CreateAI Holdings, Inc. v. BOT Auto TX Inc., No. 24-BC11A-0007, 2025 WL 1387931 (Tex. Bus. Ct. May 13, 2025, no pet. h.) (alleging a violation of the Texas Uniform Trade Secrets Act by defendants); *see also* Orig. Pet., G-Force & Assocs., Inc. v. Bloecker, 715 S.W.3d 778 (Tex. Bus. Ct. 2025) (No. 25-BC08A-0003) (alleging misappropriation of trade secrets and confidential information by former employees to benefit a competing company).

clarify that the Business Court has jurisdiction over most of those claims.<sup>45</sup> In any event, because of its flexibility, it seems likely that qualified-transaction jurisdiction will continue to be the dominant basis of subject-matter jurisdiction in future years—especially because, as discussed below, the legislature has now decreased the requirement from \$10 million to \$5 million.<sup>46</sup>

The average amount in controversy (\$45.7 million) is driven in large part by the cases asserting qualified-transaction jurisdiction.<sup>47</sup> In many cases, the party bringing the case in the Business Court alleged an amount in controversy exactly equal to the \$10 million or \$5 million threshold (thirty-five and thirty-three cases, respectively).<sup>48</sup> A plurality (forty-six cases) fall into the range of \$10–25 million.<sup>49</sup> But almost as many cases (forty-five cases) alleged an amount in controversy exceeding \$25 million, and 12 cases alleged greater than \$100 million.<sup>50</sup> As a whole, the data shows that the industry is confident enough to bring a considerable number of high-dollar disputes in the Business Court. We may expect the average amount in controversy to decrease with the lowered qualified-transaction requirement, and as more cases are filed where less than \$10 million is at issue. The distribution of the amount in controversy in Business Court cases is shown in Figure 5.

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45. *See* Tex. H.B. 19, 88th Leg., R.S. (2023) (establishing the Business Court and clarifying its jurisdiction over specified commercial disputes and qualified transactions).

46. *See* TEX. GOV'T CODE ANN. § 25A.001(14) (noting the lowered value of \$5 million satisfies the qualified transaction requirement); Figure 5.

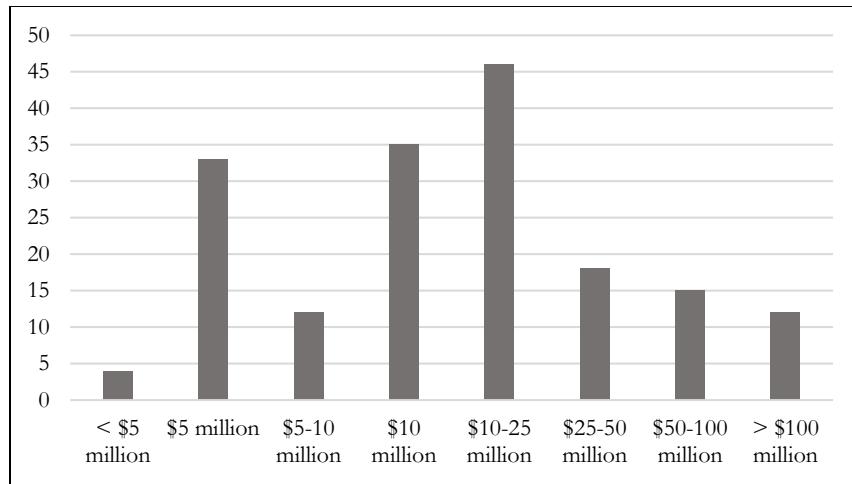
47. Figure 4.

48. Figure 5.

49. *Id.*

50. *Id.*

FIGURE 5. AMOUNT IN CONTROVERSY.



#### D. *Industry and Claims*

A diverse array of industries filed actions in the Business Court's first year. As expected, the greatest percentage of cases came from the oil and gas sector, which accounted for 54 out of 181 cases, or 29.8%.<sup>51</sup> But a supermajority of cases came from a business sector other than oil and gas: real estate. This industry commanded the second greatest share (twenty-two cases or 12.2%), and finance, tech, healthcare, and construction each contributed a significant portion (twelve cases (6.6%) for finance, nine (5.0%) for tech, and eight (4.4%) for both healthcare and construction).<sup>52</sup>

Perhaps most notable is that of the remaining fifty-seven cases (31.5%), no sector accounts for more than 4%.<sup>53</sup> Many of the mainstays of the Texas economy participated; for example, automobile (six cases), food (six cases), and agriculture/ranching (two cases).<sup>54</sup> But there were also many less prominent businesses, including Bitcoin (three cases), transportation (three cases), the lottery (two cases), probate (one case), and athletics (one case).<sup>55</sup> And so, while oil may always be king in Texas, the market for complex

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51. Figure 6.

52. *Id.*

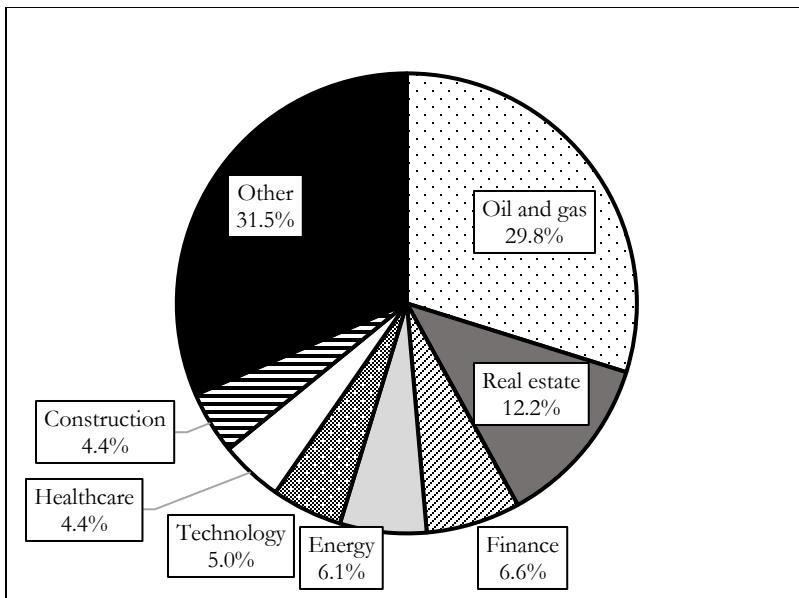
53. *Id.*

54. *Id.*

55. *Id.*

commercial litigation was much more diversified in the court's first year. The division of cases filed by industry is shown in Figure 6 below.

FIGURE 6. CASE INDUSTRY.



The types of claims asserted in Business Court actions show a clear archetype: high-dollar contract-based claims. Of the 181 cases filed last year, a breach of contract claim was asserted in 125 of them (69.1%).<sup>56</sup> The next largest categories of causes of action were fraud (fifty-one instances or 37.7% of cases) and breach of fiduciary duty (forty-six instances or 34.1%).<sup>57</sup> Trade secrets claims were asserted in eleven cases, and general corporate governance claims were raised in ten cases.<sup>58</sup> A smattering of miscellaneous claims—e.g., securities (three cases), winding up (two cases), and antitrust (one case)—make up the remaining twelve.<sup>59</sup> This data reinforces the trend seen in the jurisdictional data: litigants primarily used the Business Court to resolve high-dollar contractual claims. The current proportion of claims asserted is shown in Figure 7.

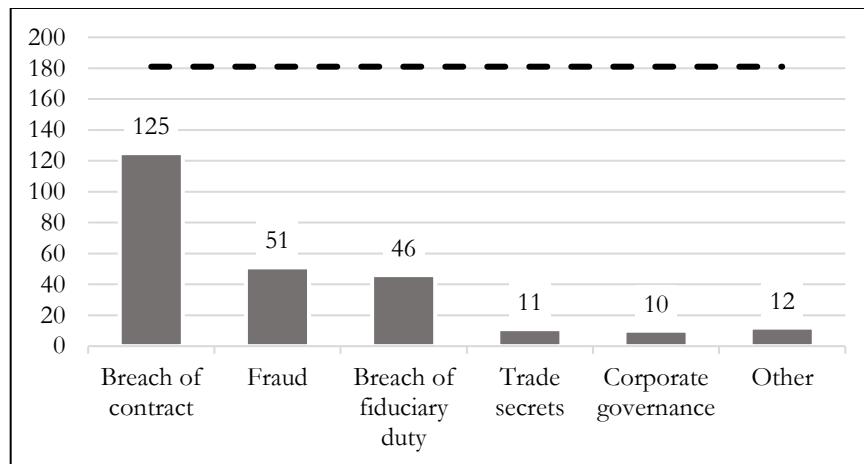
56. Figure 7.

57. *Id.*

58. *Id.*

59. *Id.*

FIGURE 7. CLAIMS ASSERTED.



In summary, data from the first year reveals excitement in the new court. High-dollar, complex disputes were filed in the Business Court in greater numbers than anticipated by lawmakers and analysts—and from a variety of industries. There was particular demand for the court's services in Houston and Dallas, but distinctly less demand in the three other divisions. And if litigants utilized the court's jurisdiction over breach of contract actions, they took somewhat less advantage of the provisions authorizing corporate-governance actions. There is plenty of room for the court to grow, but by the numbers, the first year of the Business Court can only be described as successful.

### III. PRACTICE

The data in Part II helps to tell the industry's perspective on whether and to what extent businesses would trust the Business Court with their litigation. But if cases are really going to be decided more quickly and reliably, the perspective of the bench is just as critical. In their first year, the Business Court judges wrote dozens of opinions that began to outline the court's powers.<sup>60</sup> The court also issued both court-wide and division-specific procedures to streamline operations. Although the body of Texas

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60. RE:SEARCHTX, *supra* note 10.

corporate law has a long way to go to catch up with longer-tenured business courts, as discussed, the court has made significant progress.

#### A. *Business Court Opinions*

##### 1. Jurisdiction and Authority

Whenever a new court is created, lawyers instinctively test the bounds of its authority. It is therefore natural that many of the Business Court's most important decisions from the first year concern its jurisdiction. Generally, the court exercised its authority with caution. It interpreted the business court statute with a careful textualist approach, avoiding overreaching its authority.

###### i. Removal of Older Cases

The original business court bill provided that the “changes in law made by this Act apply to civil actions commenced on or after September 1, 2024.”<sup>61</sup> Although this measure appears to rule out a broad swath of complex cases initiated before September 2024, litigants immediately set out to probe the statute for a way of removing a case predating the Business Court.

The first case to address the issue—and indeed, the first Business Court opinion—was *Energy Transfer LP v. Culberson Midstream LLC*.<sup>62</sup> The case stems from a breach of contract action initiated by Energy Transfer in 2022 relating to a natural gas gathering and processing agreement.<sup>63</sup> From 2022 to 2024, the case proceeded in Dallas County district court.<sup>64</sup> But after the business court bill was passed, Energy Transfer removed.<sup>65</sup> It argued that the language seen in § 8 of H.B. 19 confirms that the Business Court has jurisdiction over actions filed after September 1, 2024, but does not intend to limit the court’s jurisdiction to “only” those cases.<sup>66</sup>

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61. Tex. H.B. 19, 88th Leg., R.S. (2023).

62. *See Energy Transfer LP v. Culberson Midstream LLC*, 705 S.W.3d 218 (Tex. Bus. Ct. 2024, no pet.) (concluding the Business Court could not exercise jurisdiction over a 2022 case removed after its creation and reasoning that H.B. 19’s plain text limits the court’s authority to cases commenced on or after September 1, 2024).

63. *Id.* at 218.

64. *Id.*

65. *Id.*

66. *Id.* at 220.

The court rejected the argument.<sup>67</sup> It reasoned that the plain language of § 8 restricted the Business Court's authority to cases filed after September 1, 2024—and the failure of the legislature to specify that the authority included “only” such cases did not imply that the court also had authority over earlier-filed cases.<sup>68</sup> In the Business Court's first several months of operation, every judge was presented with the same issue, and every judge reached the same result.<sup>69</sup>

The Fifteenth Court of Appeals affirmed that approach in *In re ETC Field Services*.<sup>70</sup> Focusing on H.B. 19's use of “commenced,” the court explained that to commence “means to ‘begin’ or ‘start,’ and is used primarily in ‘more formal associations with law and procedure.’”<sup>71</sup> That term does not describe the removal process: “[R]emoval’ to the Business Court . . . [did] not commence a new civil action but transfers an existing one . . . .”<sup>72</sup> And the legislature's nonuse of the word “only” does not change the conclusion because “[t]he fundamental problem here is that if the Act were to apply to civil actions commenced *both before and after* the effective date, the effective date itself would be meaningless.”<sup>73</sup> ETC Field Services (the petitioner) did not seek review from the Texas Supreme Court.<sup>74</sup>

These failures have not dampened the spirit of the parties trying to get older cases into the Business Court. Pursuing new arguments, litigants have asserted that the Business Court has jurisdiction over a case filed before

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67. *Id.* at 221.

68. *Id.*

69. *See, e.g.*, Synergy Glob. Outsourcing, LLC. v. Hinduja Glob. Sols., Inc., 705 S.W.3d 221, 226 (Tex. Bus. Ct. 2024) (stating § 8 of H.B. 19's plain text does not permit removal). A string of other cases reached a similar holding in analyzing the scope of H.B. 19. TEMA Oil & Gas Co. v. ETC Field Servs., LLC, 705 S.W.3d 226, 235 (Tex. Bus. Ct. 2024); Winans v. Berry, 705 S.W.3d 236, 238 (Tex. Bus. Ct. 2024); Jorrie v. Charles, 705 S.W.3d 787, 792 (Tex. Bus. Ct. 2024); XTO Energy, Inc. v. Houston Pipeline Co., LP., 705 S.W.3d 239, 243 (Tex. Bus. Ct. 2024); Seter v. Westdale Asset Mgmt., Ltd., No. 24-BC01A-0006, 2024 WL 5337346, at \*1 (Tex. Bus. Ct., Dec. 16, 2024); Bestway Oilfield, Inc. v. Cox, No. 24-BC11A-0016, 2025 WL 251338, at \*6 (Tex. Bus. Ct., Jan. 17, 2025).

70. *In re ETC Field Servs.*, LLC, 707 S.W.3d 924 (Tex. App.—Austin [15th Dist.] 2025, pet. denied).

71. *Id.* at 926.

72. *Id.* at 927.

73. *Id.* at 927–28.

74. *In re ETC Field Services* came to the Fifteenth Court of Appeals as a mandamus petition. But ETC simultaneously filed a direct appeal of the same issue. The Fifteenth Court of Appeals dismissed the appeal, holding it lacked jurisdiction over an interlocutory appeal of an order remanding a case from the Business Court to the originating district or county court. ETC Field Servs., LLC v. TEMA Oil & Gas Co., 710 S.W.3d 379, 381 (Tex. App.—Austin [15th Dist.] 2025).

September 1, 2024, if, after that date, the parties assert amended claims or counterclaims, a third party files a petition in intervention, or a plaintiff joins a publicly-traded defendant to the lawsuit.<sup>75</sup> Drawing on the reasoning in *Energy Transfer* and *In re ETC Field Services*, the Business Court rejected those arguments too.<sup>76</sup> Counterclaims and new parties do not create a new action, the court has held, and there is only authority to hear an action commenced before September 1, 2024.<sup>77</sup>

A closer question is whether a plaintiff may nonsuit its claims after the effective date and refile those claims in the Business Court with the consent of all parties. The Fifteenth Court of Appeals recognized as much in *In re ETC Field Services*.<sup>78</sup> The Business Court faced a similar issue, but with significant differences. Rather than nonsuit, the parties entered into a Rule 11 agreement whereby both sides “agreed” that the Business Court had authority to hear the case, even though it was commenced before September 1, 2024, and jointly removed the action.<sup>79</sup> The parties also argued that the effective date in § 8 of H.B. 19 is not a restriction on the court’s jurisdiction and can therefore be waived.<sup>80</sup>

The Business Court disagreed.<sup>81</sup> It reasoned that § 8 was a jurisdictional limit and did not permit the court to hear any actions filed before the effective date.<sup>82</sup> Even if the court could hear a newly filed action following a nonsuit, the nonsuit process is distinctly different from a Rule 11

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75. *See* *Yadav v. Agrawal*, 708 S.W.3d 246, 265 (Tex. Bus. Ct. 2025, no pet. h.) (holding later-filed counterclaims, interventions, and third-party petitions did not commence new “actions” under § 8 of H.B. 19 and were subject to remand with the original pre-September 1, 2024 case); *Cypress Towne Center, Ltd. v. Kimco Realty Servs., Inc.*, 708 S.W.3d 265, 272–73 (Tex. Bus. Ct. 2025, no pet. h.) (rejecting the argument that the addition of a publicly traded defendant after September 1, 2024 created new jurisdiction); *In re J.W.B. Tr. of 2007*, 712 S.W.3d 627, 630 (Tex. Bus. Ct. 2025, pet. denied) (holding an amended petition adding a corporate defendant after September 1, 2024 did not commence a new action).

76. *Energy Transfer LP v. Culberson Midstream LLC*, 705 S.W.3d 218 (Tex. Bus. Ct. 2024, no pet.); *In re ETC Field Servs., LLC*, 707 S.W.3d at 926.

77. *See, e.g., Yadav*, 708 S.W.3d at 265 (rejecting these arguments as inconsistent with H.B. 19).

78. *In re ETC Field Servs., LLC*, 707 S.W.3d at 927 (“A different case would be presented if a civil action filed in a district court were nonsuited (an ‘unqualified and absolute’ right under Texas law), and a new civil action commenced in the business court.” (footnote omitted) (quoting *Morath v. Lewis*, 601 S.W.3d 785, 787 (Tex. 2020)).

79. *Id.* at 925.

80. *Id.* at 927.

81. *Id.* at 928.

82. *Id.* at 926.

agreement and joint removal.<sup>83</sup> The court permitted an interlocutory appeal from its decision, and the appeal is currently pending before the Fifteenth Court of Appeals.<sup>84</sup>

Amendments to the business court statute have somewhat mooted this hotly contested jurisdictional issue. As explained below, the business court amendment statute directs the Supreme Court to adopt rules allowing for the transfer of older-filed cases if all parties and the Business Court agree.<sup>85</sup> But the decisions addressed here are still significant for cases in which not all parties agree to the transfer.

## ii. Qualified Transaction Jurisdiction

Another frequently litigated subject during the court's first year is the meaning and scope of a qualified transaction. In *Atlas IDF, LP v. Nexpoint Real Est. Partners, LLC*, the court held that contractual interest (but not pre- or post-judgment litigation interest in litigation) may be included in the calculation of the amount in controversy.<sup>86</sup> In other words, if a contract entitles a party to \$7 million in cash plus \$4 million in interest, the contract is considered a qualified transaction for the purposes of the Government Code; i.e., that party may bring an action related to that contract in the Business Court.<sup>87</sup>

In *G-Force & Associates, Inc. v. Bloecker*,<sup>88</sup> the court ruled that a potential—but not consummated—transaction does not invoke the court's

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83. *Id.* at 927.

84. *Id.* at 925–28.

85. There is a question of whether the amendments apply retroactively. *See infra* Section IV.B. Tex. H.B. 40 appears to provide that the changes apply to currently pending actions, stating: “the changes in law made by this Act apply to civil actions commenced on or after September 1, 2024.” Tex. H.B. 40, 89th Leg., R.S. (2025) (codified at TEX. GOV’T CODE ANN. § 25A.021). It is not entirely certain whether this text is clear enough to override the presumption against retroactivity. *See, e.g.*, *Robinson v. Crown Cork & Seal Co., Inc.*, 335 S.W.3d 126, 138 (Tex. 2010) (explaining the federal and state presumption against retroactivity).

86. *Atlas IDF, LP v. Nexpoint Real Est. Partners, LLC*, No. 25-BC01B-0004, 2025 WL 1381574, at \*5–6 (Tex. Bus. Ct. May 13, 2025). Litigation interest is expressly excluded from the calculation. *See* TEX. GOV’T CODE ANN. § 25A.004(d) (providing that the business court has jurisdiction over an action arising out of a qualified transaction “in which the amount in controversy exceeds \$10 million, *excluding interest*, statutory damages, exemplary damages, penalties, attorney’s fees, and court costs” (emphasis added)).

87. *Atlas IDF, LP*, 2025 WL 1381574, at \*2–4.

88. *G-Force & Assocs., Inc., v. Bloecker*, No. 25-BC08A-00003, 2025 WL 1397069, at \*5 (Tex. Bus. Ct. May 14, 2025, no pet. h.).

jurisdiction.<sup>89</sup> In that case, the plaintiff alleged that former employees stole its trade secrets and used that information to submit competing bids for industrial electrical work.<sup>90</sup> Even though the bids exceeded \$10 million, the court held it did not constitute a qualified “transaction” because the bids were not binding, and therefore did not entitle the bidder to receive “consideration with an aggregate value of at least \$10 million” as required by the business court statute.<sup>91</sup>

In another decision testing the limits of qualified-transaction jurisdiction, the court held that a breach of contract claim does not always include future damages.<sup>92</sup> In *Black Mountain SWD, LP v. NGL Water Solutions Permian, LLC*,<sup>93</sup> an oil and gas operator (NGL) was alleged to have stopped paying royalties to one of its working interest holders (Black Mountain).<sup>94</sup> All agreed that the amount in arrears plus interest under the royalty contract was \$4.5 million—not enough to invoke the court’s qualified-transaction jurisdiction.<sup>95</sup> But Black Mountain argued in favor of jurisdiction based on the notion that NGL would owe more than \$10 million if it failed to pay royalties for the remainder of the contract.<sup>96</sup> The Business Court rejected this as a basis of jurisdiction and explained that where a plaintiff sues for past damages, and where the defendant hasn’t repudiated the contract entirely, the amount in controversy includes only past damages.<sup>97</sup>

The court has also held that, in determining whether a transaction meets the amount-in-controversy threshold, it should accept reasonable allegations about the value of the consideration at issue.<sup>98</sup> In *Slant Operating*,

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89. See *id.* at \*5 (explaining the statutory term “qualified transaction” refers to a consummated agreement supported by mutual consideration, not a potential transaction).

90. *Id.* at \*2.

91. *Id.* at \*5–6.

92. See *Black Mountain SWD, LP v. NGL Water Sols. Permian, LLC*, No. 25-BC08A-0004, 2025 WL 1826122, at \*7 (Tex. Bus. Ct. June 30, 2025) (holding a breach of contract claim for past-due royalties does not place future payments in controversy, and the amount in controversy is limited to damages sought).

93. *Black Mountain SWD, LP v. NGL Water Sols. Permian, LLC*, No. 25-BC08A-0004, 2025 WL 1826122 (Tex. Bus. Ct. June 30, 2025).

94. *Id.* at \*2.

95. *Id.* at \*1.

96. *Id.* at \*2.

97. *Id.* at \*7.

98. *Slant Operating, LLC v. Octane Energy Operating, LLC*, No. 24-BC08A-0002, 2025 WL 1483466, at \*6 (Tex. Bus. Ct. May 23, 2025).

*LLC v. Octane Energy Operating, LLC*,<sup>99</sup> without specifying any monetary consideration, two oil and gas producers agreed not to object if the other party applied for a permit from the Texas Railroad Commission to drill a well that began on the other's land.<sup>100</sup> Slant thereafter applied for a permit to drill a well originating on Octane's land, but Octane objected and the Railroad Commission denied the permit application.<sup>101</sup> Slant sued in the Business Court, alleging that the value of the minerals it could have produced would have exceeded \$10 million had it received the permit.<sup>102</sup> Octane filed a plea to the jurisdiction, arguing that the agreement was not a qualified transaction because it did not specify the value of consideration, and because the assets at issue were not in fact worth more than \$10 million.<sup>103</sup>

The court denied the plea.<sup>104</sup> It explained that the Business Court should accept allegations made by the party invoking the court's jurisdiction unless they "negate" jurisdiction.<sup>105</sup> By alleging that the value of the assets Slant would have accessed—if it had been granted the permit—exceeded \$10 million, Slant had plausibly alleged facts demonstrating jurisdiction.<sup>106</sup> Suppose a party challenges the existence of jurisdictional facts. In that case, the party bringing the action in Business Court needs only "present more than a scintilla of evidence" to create a fact issue regarding jurisdiction, which Slant did by offering expert declarations relating to the value of the assets.<sup>107</sup> As time goes on, practitioners should expect the court to continue refining the definition of a qualified transaction and what type of evidence is required to allege or prove one in order to invoke the Business Court's jurisdiction.<sup>108</sup>

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99. *Slant Operating, LLC v. Octane Energy Operating, LLC*, No. 24-BC08A-0002, 2025 WL 1483466 (Tex. Bus. Ct. May 23, 2025).

100. *Id.* at \*1.

101. *Id.* at \*2.

102. *Id.* at \*2.

103. *Id.* at \*5.

104. *Id.* at \*11.

105. *Id.* at \*3.

106. *Id.* at \*5.

107. *Id.* at \*10. The standard of review for a jurisdictional or motion to remand relating to the Business Court's authority is also treated at length in *C Ten 31 LLC ex rel. SummerMoon Holdings LLC v. Tarbox*, 708 S.W.3d 223 (Tex. Bus. Ct. 2025). *See supra* Section III.A.2.

108. *Slant Operating, LLC*, 2025 WL 1483466, at \*5–6.

### iii. Corporate Governance Jurisdiction

The Business Court also has jurisdiction over “an action regarding the governance, governing documents, or internal affairs of an organization” where the amount in controversy exceeds \$5 million.<sup>109</sup> The court considered the scope of this definition in detail in *Reed v. Rook TX, LP*.<sup>110</sup> The case arises out of the 2023 Texas lottery scandal, where a group of individuals and companies purchased virtually all of the lottery combinations for an April 2023 draw, effectively guaranteeing themselves the \$95 million jackpot.<sup>111</sup> The plaintiff, Jerry Reed, is a man who won the lottery one month after the scandal; Reed won \$7.5 million but argues that he would have won an additional \$95 million if the entity that won the April 2023 draw, Rook TX, had not manipulated the lottery system.<sup>112</sup> He brought an equitable claim for money he received against Rook, as well as for conspiracy and other derivative theories of recovery.<sup>113</sup> Rook removed to the Business Court, alleging that the case concerned Rook’s “governing documents” and “internal affairs” because Reed accused Rook of making

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109. TEX. GOV'T CODE ANN. § 25A.004(b)(2).

110. *Reed v. Rook TX, LP*, No. 25-BC03A-0007, 2025 WL 1713358 (Tex. Bus. Ct. June 18, 2025).

111. The lottery fiasco has become one of the most sensational news events in Texas over the last several years, prompting an investigation by the Attorney General and Rangers, hearings in both houses of the legislature, the resignation of the executive director of the Texas Lottery Commission, and severe reforms to the lottery system. *See generally* Eric Dexheimer, *How the Texas Lottery Commission Helped Rich Investors Win a \$95 Million Jackpot*, HOUS. CHRON. (July 1, 2024), <https://www.houstonchronicle.com/news/investigations/article/texas-lottery-commission-helped-rich-investors-19519082.php> [https://perma.cc/4YCB-MBBX] (discussing how the Texas Lottery Commission “helped orchestrate a sure-thing win in a state-sponsored game of chance”); Eric Dexheimer, *Confidential Investigation Reveals Lottery Commission's Role in April 2023 Jackpot Scheme*, HOUS. CHRON. (May 15, 2025, at 8:52 CST), <https://www.houstonchronicle.com/news/investigations/article/texas-lottery-probe-details-lapses-helped-20324683.php> [https://perma.cc/NNQ6-VUYG]; Ayden Runnels, *Texas Lottery Commission to be Disbanded As State Game Gets New Restrictions*, TEX. TRIB. (June 25, 2025, at 5:00 CST), <https://www.texastribune.org/2025/06/25/texas-lottery-commission-abolished-couriers-restrictions/> [https://perma.cc/V6E4-Q79E] (reporting Senate Bill 3070, signed by Governor Abbott, extended the Texas Lottery through 2029 while abolishing the Texas Lottery Commission and prohibiting online ticket sales); J. David Goodman, *Texas Lottery Director Resigns Amid Scrutiny of Rigged 2023 Draw*, N.Y. TIMES (Apr. 22, 2025), <https://www.nytimes.com/2025/04/22/us/texas-lottery.html> [https://perma.cc/W3VX-AG7L] (reporting the resignation of the Texas Lottery director amid scrutiny of a 2023 draw and criticism of lottery oversight).

112. *Reed*, 2025 WL 1713358, at \*1.

113. *Id.*

misrepresentations in its corporate filings with the Texas Secretary of State that allowed it to conceal its scheme.<sup>114</sup>

The court denied Reed's motion to remand.<sup>115</sup> It understood the provision granting jurisdiction over corporate governance actions to be "expansive" and extend to any claim related to "the management and direction of an organization's affairs ('governance'), the documents adopted to govern its formation and internal affairs ('governing documents'), its ownership or membership interests ('internal affairs'), or the rights, powers, and duties of its governing persons, officers, owners, or members ('internal affairs')."<sup>116</sup> The court concluded that Reed's lawsuit fell squarely within that definition, even though, in Reed's view, the asserted causes of action didn't necessarily relate to Rook's corporate governance:

Reed's action concerns the date of Rook's formation and whether Rook was formed for improper purposes and in furtherance of the alleged conspiracy to enable Rook to fraudulently claim the April 2023 lottery winnings. The action necessarily concerns Rook's governance, governing documents, or internal affairs, and therefore falls within this Court's jurisdiction under Section 25A.004(b)(2).<sup>117</sup>

The court's decision in *Reed* reflects a broad understanding of its jurisdiction over corporate governance-related actions.<sup>118</sup> The court will no doubt continue to consider and refine the scope of this authority, but for the present, litigants may try to take advantage of *Reed*'s "expansive" interpretation of the court's jurisdiction.

## 2. Removal

If Business Court jurisdiction was the most litigated issue of the court's first year, removal, its cousin, came a close second. So far, the court has issued opinions on the type of allegations or evidence needed to invoke its jurisdiction, its standard of proof, and the timing of removal.

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114. *Id.* at \*1–2.

115. *Id.* at \*1.

116. *Id.* at \*3–4.

117. *Id.* at \*5.

118. *See id.* (holding the Business Court's jurisdiction covers actions requiring review of an entity's formation and internal affairs to determine alleged misrepresentations about its creation).

The first case to tackle removal at length was *C Ten 31 LLC v. Tarbox*.<sup>119</sup> In that case, the manager of a coffee shop franchise (C Ten) sought to remove two of its co-managers (collectively, Tarbox).<sup>120</sup> After C Ten brought an action in district court to confirm the effectiveness of the replacement, Tarbox removed to Business Court.<sup>121</sup> It argued that the court could hear C Ten's corporate governance claims because the case was about the control of the parent company (Summer Moon), and the value of the right to control Summer Moon exceeded \$5 million.<sup>122</sup> C Ten moved to remand, arguing that Tarbox hadn't satisfied the amount in controversy requirement.<sup>123</sup>

In resolving the motion, the court detailed the standard of review for a motion to remand.<sup>124</sup> The removing party bears the burden to "plead facts that affirmatively show the jurisdiction of the court in which the action is brought, including that the relief sought is within the court's amount-in-controversy limits."<sup>125</sup> But in doing so, the removing party "need not attach evidence of the amount in controversy," and "the pleadings control" unless they are shown to be fraudulent or are conclusively disproved by evidence.<sup>126</sup> If the party seeking remand challenges the existence of the jurisdictional facts, the issue follows one of two paths. The movant can offer its own evidence, in which case it bears "the initial burden of putting forth evidence refuting jurisdiction."<sup>127</sup> If the movant succeeds, the burden shifts to the nonmoving party "to put forth evidence that at least raises a fact issue on jurisdiction."<sup>128</sup> Alternatively, the movant can raise a no-evidence jurisdiction argument, in which case the removing party "need only put forward enough evidence to raise a fact issue as to the challenged jurisdictional facts—i.e., 'more than a scintilla.'"<sup>129</sup> Applying those

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119. *C Ten 31 LLC ex rel. SummerMoon Holdings LLC v. Tarbox*, 708 S.W.3d 223 (Tex. Bus. Ct. 2025).

120. *Id.* at 228.

121. *Id.*

122. *Id.* at 238.

123. *Id.* at 229.

124. *Id.* at 228.

125. *Id.* at 237.

126. *Id.* at 239, 242.

127. *Id.* at 241.

128. *Id.*

129. *Id.* (quoting *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 552 (Tex. 2019)). The court distinguished this framework from the standard of review for jurisdictional challenges in federal court.

standards, the court concluded that Tarbox plausibly alleged facts showing that Summer Moon had a value of more than \$5 million, and that C Ten hadn't negated jurisdiction, either by its pleadings or by evidence.<sup>130</sup>

Subsequent decisions built on the standards set out in *C Ten*.<sup>131</sup> The court has held that the act of nonsuiting a district court lawsuit and refiling in the Business Court, while alleging a different (and more specific) amount in controversy, does not constitute a sham pleading.<sup>132</sup> The pleadings control absent affirmative evidence from the party resisting the court's jurisdiction that the allegations are false.<sup>133</sup> The court has also reiterated *C Ten*'s holding that an action can satisfy the amount-in-controversy threshold even if the plaintiff doesn't seek money damages: "As both the Texas Supreme Court and this Court have recognized, 'the phrase amount in controversy, in the jurisdictional context, means "the sum of money or the value of the thing originally sued for.'""<sup>134</sup>

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Under federal law, when jurisdictional pleadings are challenged, the party asserting jurisdiction bears the burden of proving it by a preponderance of the evidence—regardless of whether that is the plaintiff in a suit initiated in federal court or the removing party in a suit removed to federal court.

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Federal courts require parties facing a jurisdictional challenge at the outset of the case to meet the same evidentiary burden (preponderance of the evidence) they would have to satisfy at trial, but the Texas Supreme Court has repeatedly held that a party should not have to marshal its evidence or prove its claims to survive early jurisdictional challenges.

*Id.* at 241, 244.

130. *Id.* at 243. Although the court appeared to hold that Tarbox established jurisdiction for purposes of C Ten's motion to remand, it deferred ruling on the motion to allow C Ten the opportunity to take jurisdictional discovery and supplement the record. *Id.* at 244–45.

131. See, e.g., ET Gathering & Proc. LLC v. Tellurian Prod. LLC, 709 S.W.3d 1 (Tex. Bus. Ct. 2025) (applying the standard set out by CTen).

132. *Id.* at 4–5.

133. *Id.* at 5.

134. SafeLease Ins. Servs. LLC v. Storable, Inc., 707 S.W.3d 130, 134 (Tex. Bus. Ct. 2025) (internal quotation marks and emphasis omitted) (first quoting *Tune v. Tex. Dep't of Pub. Safety*, 23 S.W.3d 358, 361–62 (Tex. 2000); and then citing *Tarbox*, 708 S.W.3d at 243). In *SafeLease*, the court also rejected the argument that the thirty-day period to remove an action to the Business Court runs from the time the removing party discovers or should discover facts supporting Business Court jurisdiction—regardless of whether a lawsuit has been filed. On the contrary, the court held the clock only begins to run once a plaintiff has filed claims against the removing party. *Id.* at 132–33.

The Business Court has also considered and rejected several attempts to remove only part of a case.<sup>135</sup> In these cases, the defendant purports to remove some claims that fall within the Business Court's jurisdiction, but not those that would prevent the Business Court from hearing the case—because those claims predate September 1, 2024, concern a subject matter excluded from the court's jurisdiction, or for some other reason.<sup>136</sup> In both cases, the court rejected the argument, interpreting the statute to allow removal only of whole “actions,” not individual claims.<sup>137</sup>

### 3. Venue

There has also been one opinion addressing Business Court venue. At issue in *NGL Water Solutions Permian, LLC v. Lime Rock Resources V-A, LP*<sup>138</sup> was an interaction between mandatory Texas venue rules and the provision of the business court statute permitting filing in the Business Court based on a forum-selection clause.<sup>139</sup> Pecos Valley alleged that NGL damaged its oil and gas wells by improperly injecting wastewater into its assets.<sup>140</sup> But according to NGL, a shut-in agreement between NGL and Lime Rock (an affiliate of Pecos Valley) waived any liability for improper disposal of produced water.<sup>141</sup> NGL filed a declaratory action in the Houston Division of the Business Court, arguing that the venue-selection provision in the shut-in agreement required the action to be brought in Harris County.<sup>142</sup>

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135. *See Osmose Util. Servs., Inc. v. Navarro Cnty. Elec. Coop.*, 707 S.W.3d 117, 123 (Tex. Bus. Ct. 2025) (holding partial removal of lawsuit is barred under Texas law); *Sebastian v. Durant*, 707 S.W.3d 124, 129 (Tex. Bus. Ct. 2025) (refusing to sever and remove only the claims within the court's jurisdiction). The court has rejected similar arguments framed as an improper-joinder issue. *See, e.g., Kassam v. Dosani*, No. 24-BC11A-21, 2025 WL 1826637, at \*2 (Tex. Bus. Ct. June 30, 2025) (denying the defendants' jurisdictional plea over the plaintiff's claims, holding that the defendants easily met the standard for proper joinder, and explaining that the claims against the defendants at issue were “logically related and hinge on common material questions of law and fact”).

136. *See Osmose Util. Servs., Inc.*, 707 S.W.3d at 119, 123 (arguing that claims filed prior to September 1, 2024, are separate “actions”); *Sebastian*, 707 S.W.3d at 127 (arguing divorce proceedings should be severed because they are unrelated to the claims movants seek to remove).

137. *Id.*

138. *NGL Water Sols. Permian, LLC v. Lime Rock Res. V-A, LP*, No. 25-BC11B-5, 2025 WL 1445867, at \*2–5 (Tex. Bus. Ct. 2025).

139. *Id.* at \*2; *see TEX. GOVT CODE ANN. § 25A.006(a)* (dictating that venue may be established as provided by law or, if a written contract specifies a county as venue for the action, as provided by the contract”).

140. *NGL Water Sols. Permian, LLC*, 2025 WL 1445867, at \*1.

141. *Id.*

142. *See id.* at \*2 (quoting *TEX. CIV. PRAC. & REM. CODE ANN. § 15.011*).

Pecos Valley and Lime Rock moved to transfer, arguing that the action must be heard in Loving County, the county where the assets are located, because of the mandatory venue rule “for recovery of damages to real property.”<sup>143</sup>

The court granted the motion to transfer.<sup>144</sup> Examining the “essence” of the case, the court found that the mandatory-venue rule applied because the action was really one “for recovery of damages to real property,” even though NGL brought a declaratory action based on the shut-in agreement.<sup>145</sup> Assuming the venue-selection clause was enforceable, the court explained that the business court venue statute is permissive, providing only that venue “‘*may* be established’ by the venue-selection clause in the contract.”<sup>146</sup> And as a matter of Texas law, a mandatory venue rule overrides a permissive venue rule.<sup>147</sup> Venue was therefore required in Loving County.<sup>148</sup>

#### 4. Corporate Law

Many of the Business Court opinions so far have dealt with procedural issues, but one has grappled with substantive corporate law. *Primexx Energy Opportunity Fund, LP v. Primexx Energy Corp.*<sup>149</sup> involved a forced sale of an energy investment partnership (Primexx).<sup>150</sup> HoldCo, a Blackstone affiliate,

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143. See TEX. CIV. PRAC. & REM. CODE ANN. § 15.011 (“Actions for recovery of real property or an estate or interest in real property, for partition of real property, to remove encumbrances from the title to real property, for recovery of damages to real property, or to quiet title to real property shall be brought in the county in which all or a part of the property is located.”). In case this oil and gas dispute didn’t already have strong enough Texas overtones. The water-disposal well at issue is named “NGL Colt McCoy Saltwater Disposal Well No. 3,” after the celebrated University of Texas quarterback. *NGL Water Sols. Permian, LLC*, 2025 WL 1445867, at \*1.

144. *Id.* at \*4.

145. *Id.* at \*3.

146. *Id.* at \*4 (quoting TEX. GOV’T CODE ANN. § 25A.006(a)). The court pretermitted the issue of whether the shut-in agreement was a “major transaction,” which is a precondition for enforcing a venue selection clause under state law. *Id.* (first citing TEX. CIV. PRAC. & REM. CODE ANN. § 15.020(a); and then citing *Hiles v. Arnie & Co., P.C.*, 402 S.W.3d 820, 828 (Tex. App.—Houston [14th Dist.] 2013, pet. denied)).

147. *Id.* at \*2.

148. *Id.* at \*4–5. In the event that venue does not lie in an operating division of the Business Court, the business court statute gives the plaintiff the option to select a district or county court of proper venue for the action to be transferred. GOV’T § 25A.006(b)–(c). But the plaintiff in *NGL Water Solutions* failed to make this election, so the court dismissed the action without prejudice even though it “granted” the motion to transfer. *NGL Water Sols. Permian, LLC*, 2025 WL 1445867, at \*5.

149. *Primexx Energy Opportunity Fund, LP v. Primexx Energy Corp.*, 709 S.W.3d 619 (Tex. Bus. Ct. 2025).

150. *Id.* at 628.

became Primexx's majority interest holder under a partnership agreement that limited Blackstone's duties of loyalty and care to the maximum extent allowed under Texas law, and conferred "customary drag-along rights" regarding a future sale of the partnership shares.<sup>151</sup> At a high level, Blackstone forced the minority interest holders to acquiesce to the sale of Primexx at a price and on terms with which they sharply disagreed—all over one weekend.<sup>152</sup> The minority interest holders brought various derivative claims against Primexx, alleging defects in the sale and sale process.<sup>153</sup> Primexx moved for summary judgment on all claims.<sup>154</sup>

The court granted in part and denied in part, but it granted summary judgment on what is probably the most important issue.<sup>155</sup> Interpreting the Texas Business Organizations Code, the court explained that Blackstone lawfully limited the scope of its duties of care and loyalty.<sup>156</sup> The court then concluded that neither the short timeline nor the terms of the sale violated any of Blackstone's duties of care or loyalty.<sup>157</sup> It also expressly rejected the argument that Blackstone was required to negotiate with the purpose of securing "a fair price for the partnership as a whole," rather than negotiating a sale that favored Blackstone's interest.<sup>158</sup> The court denied summary judgment on some of the minority interest holders' other claims, such as a claim that Blackstone had not properly distributed the sale proceeds in accordance with the purchase agreement.<sup>159</sup> However, as a whole, the *Primexx* decision is favorable to the business community as it permits contracting around common-law duties of care and loyalty.<sup>160</sup>

## 5. Appellate Issues

Beyond the trial court, there were several appellate decisions during the last year that have important implications for the Business Court. Foremost is the Supreme Court's decision in *In re Dallas County*,<sup>161</sup> which upheld the

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151. *Id.* at 630.

152. *Id.* at 632.

153. *Id.* at 620.

154. *Id.* at 628.

155. *Id.* at 658.

156. *Id.* at 652–54.

157. *Id.*

158. *Id.* at 653.

159. *Id.* at 658.

160. *Id.* at 655.

161. See *In re Dallas County*, 697 S.W.3d 142 (Tex. 2024) (orig. proceeding).

constitutionality of the Fifteenth Court of Appeals.<sup>162</sup> During the legislative debates in the last session, opponents of the Fifteenth Court of Appeals raised concerns that the court's design as a statewide intermediate court of appeals violated the Texas Constitution.<sup>163</sup> In a case decided shortly after the new court of appeals went into effect, the Supreme Court rejected the constitutional challenge, holding that the Fifteenth Court of Appeals is consistent with the "elastic" authority conferred on the legislature to create new courts.<sup>164</sup> And so, the Business Court's appellate forum was preserved.

For a time, however, it seemed that the Fifteenth Court of Appeals might have jurisdiction over *all* civil appeals, not just Business Court and state-agency cases.<sup>165</sup> In two procedurally identical cases, the defendant appealed a final judgment from a district court to the Fifteenth Court of Appeals, rather than to the applicable regional court of appeals.<sup>166</sup> According to the defendants, the Fifteenth Court of Appeals had jurisdiction over all civil appeals (concurrent with the regional court of appeals) because the Constitution confers jurisdiction on each court of appeals that is "co-extensive with the limits of [its] . . . district[ ]"—and the Fifteenth Court's judicial "district" is defined to be "composed of all counties in this state."<sup>167</sup> Under this logic, the losing party in any civil action would have the option to notice its appeal with the Fifteenth Court or the relevant regional court of appeals.

In a 2-1 decision, the Fifteenth Court of Appeals agreed with the defendants and denied the plaintiffs' motions to transfer the cases to the regional court of appeals.<sup>168</sup> But under the transfer rules established after

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162. *See id.* at 165 (exemplifying an appellate decision having substantial implications on the Texas Business Court).

163. DiSorbo, *supra* note 1, at 393–95 (discussing an argument raised by the opposition that extending an appellate court's jurisdiction across the entire state is unconstitutional).

164. *See In re Dallas County*, 697 S.W.3d at 159 (holding the Fifteenth Court of Appeals is consistent with the "elastic" authority conferred on the legislature to create new courts).

165. *Kelley v. Homminga*, 706 S.W.3d 829, 830 (Tex. 2025).

166. *Id.*

167. *Id.* at 831(first quoting TEX. CONST. art. V, § 6(a); and then quoting TEX. GOV'T CODE ANN. § 22.201(p)).

168. *See* Letter from Christopher A. Prine, Clerk of Court for the Fifteenth Court of Appeals, to Deborah Young, Clerk of Court for the First and Fourteenth Court of Appeals, on *Kelley v. Homminga* (Dec. 4, 2024) (informing the parties of the court's ruling and inviting the views of the First and Fourteenth Courts); Letter from Christopher A. Prine, Clerk of Court for the Fifteenth Court of Appeals, to Blake A. Hawthorne, Clerk of Court for the Supreme Court of Texas, on *Kelley v. Homminga* (Jan. 6, 2025) (transmitting the Fifteenth, First, and Fourteenth Court's views to the

last year's legislative session, the Fifteenth Court invited the views of the transferee court. In each case, the transferee court disagreed with the Fifteenth Court and would have allowed the transfer.<sup>169</sup> By rule, the issues were then "forwarded" to the Texas Supreme Court for resolution.<sup>170</sup>

The Texas Supreme Court departed from the Fifteenth Court of Appeals' decision and granted the motions to transfer.<sup>171</sup> Drawing on the transfer provisions in S.B. 1045, the Court reasoned that if "improperly filed" appeals must be transferred out and "properly filed" appeals must be retained, as there must be a limited scope of "properly filed" cases.<sup>172</sup> And those "properly filed" cases are the ones over which the court was given exclusive jurisdiction.<sup>173</sup> This means that the Fifteenth Court's attention will

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Supreme Court and expanding on the Fifteenth Court's ruling); Letter from Christopher A. Prine, Clerk of Court for the Fifteenth Court of Appeals, to Kathy Mills, Clerk of Court for the Thirteenth Court of Appeals, on Devon Energy Prod. Co. v. Oliver (Dec. 6, 2024) (informing the parties of the court's ruling and inviting the views of the Thirteenth Court); Letter from Christopher A. Prine, Clerk of Court for the Fifteenth Court of Appeals, to Blake A. Hawthorne, Clerk of Court for the Supreme Court of Texas, on Devon Energy Prod. Co. v. Oliver (Jan. 13, 2025) (transmitting the Fifteenth and Thirteenth Court's views to the Supreme Court and expanding on the Fifteenth Court's ruling).

169. TEX. R. APP. P. 27a(c)(1)(C). In *Kelley*, the appeal ordinarily would have gone to the Houston courts of appeals, so both the First and Fourteenth Courts of Appeals were required to weigh in. The First Court agreed with the Fifteenth Court and would have declined the transfer, but the Fourteenth Court took the opposite view. *See* Letter from Christopher A. Prine, Clerk of Court for the Fifteenth Court of Appeals, to Deborah Young, Clerk of Court for the First and Fourteenth Court of Appeals, on *Kelley v. Homminga* (Dec. 4, 2024) (explaining the Fourteenth Court's view that transfer should be granted); Letter from the Honorable Terry Adams, Chief Justice for the First Court of Appeals, to Christopher A. Prine, Clerk of Court for the Fifteenth Court of Appeals, on *Kelley v. Homminga* (Dec. 23, 2024) (highlighting the First Court's view that transfer should be denied). The Thirteenth Court of Appeals also would have granted the transfer in *Devon Energy*. *See* Letter from the Honorable Dori Contreras, Chief Justice for the Thirteenth Court of Appeals, to Christopher A. Prine, Clerk of Court for the Fifteenth Court of Appeals, on *Devon Energy Prod. Co. v. Oliver* (Dec. 23, 2024) (noting the Thirteenth Court's view that transfer should be granted).

170. *See* TEX. R. APP. P. 27a(d) (providing for transfer of issues to the Texas Supreme Court for determination).

171. *Kelley*, 706 S.W.3d at 834.

172. *Id.*

173. *Id.* at 832–34. The Court also recognized in passing that to hold otherwise would be to frustrate the entire purpose of the Fifteenth Court.

[I]f the majority's interpretation of S.B. 1045 were to prevail, the Legislature's design for all fifteen courts of appeals would collapse. Almost 5,000 civil appeals are filed in the courts of appeals each year. Under the majority's approach, each one of these appeals could be taken to the Fifteenth Court—designed to have only three or five justices—and this Court would be powerless to transfer a single one of these cases to another court of appeals. Burdened with thousands of

be reserved for a small subset of cases, including Business Court appeals, rather than being divided among thousands of miscellaneous civil actions.

## 6. Constitutionality

Finally, a new case has raised the issue of the constitutionality of the Business Court. During the 87th Legislative Session, some opponents of the bill raised the issue of whether the Business Court was a de facto district court and violated requirements for constitutional district courts under Article V, Section 7 of the Texas Constitution.<sup>174</sup> The Legislature gave the Supreme Court original exclusive jurisdiction over any action challenging the constitutionality of the court, but for the court's first year, no such challenge materialized.<sup>175</sup> But at the end of 2025, a plaintiff in a case removed to the Business Court challenged the court's constitutionality in a motion to remand.<sup>176</sup> As of the publishing of this article, the proceedings in *Unico* are still ongoing. However, it seems, at last, that we will have a final answer from the Supreme Court in the near future on whether the Business Court will continue in existence.

## B. Local Rules and Procedures

In an effort to standardize litigation procedure, the Business Court has adopted court-wide local rules.<sup>177</sup> The salient features of the most common rules are as follows:

*Supplemental Jurisdiction.* The business court statute provides that a claim falling within the court's supplemental jurisdiction "may proceed in the business court only on the agreement of all parties to the claim and a judge of the division of the court before which the action is pending."<sup>178</sup> Business Court Local Rule 2 creates a deadline to object to the court's supplemental

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civil cases of every stripe, the Fifteenth Court justices would be unable to give special attention to those cases the Legislature has defined as critical to the State's interests.

*Id.* at 833–34 (footnote omitted).

174. DiSorbo, *supra* note 1, at 385, 391–93.

175. Tex. S.B. 2858 § 10 ("The Texas Supreme Court has exclusive and original jurisdiction over a challenge to the constitutionality of this Act or any part of this Act and may issue injunctive or declaratory relief in connection with the challenge.").

176. See Mot. Challenging Constitutionality of Business Court, *Unico Commodities, LLC v. Castleton Commodities LLC*, No. 25-BC11B-59 (Tex. Bus. Ct. Oct. 18, 2025).

177. See generally TEX. BUS. CT. L.R. (establishing court-wide local rules governing procedure in the Texas Business Court).

178. TEX. GOV'T CODE ANN. § 25A.004(f).

jurisdiction, explaining that “[a] party is deemed to agree to this Court’s supplemental jurisdiction of any claim” unless it objects within thirty days of appearing in the case.<sup>179</sup> So a party wishing to avoid litigating a related claim in Business Court should be prepared to raise that objection early on in the case.

*Discovery Disputes.* Local Rule 4(d) establishes a process for raising discovery disputes.<sup>180</sup> Before filing a full motion, the party raising the issue must file a letter brief not exceeding 1,000 words summarizing its objection.<sup>181</sup> The opposing party has one week to file a response, with the same word limit.<sup>182</sup> At that point, the court may hold a hearing, invite further briefing, or resolve the issue on the initial submissions. The process mirrors those seen in an increasing number of federal courts and is designed to streamline often-cumbersome discovery fights.<sup>183</sup>

*Motion Practice.* Local Rule 5 prescribes the rules for the form and content of motions.<sup>184</sup> Discovery motions (when permitted under the process described above) are limited to 3,000 words, and all other motions are allowed 7,500.<sup>185</sup> Exhibits or appendices are to be combined with the motion and paginated consecutively.<sup>186</sup> And certificates of conference are required for all matters except dispositive motions.<sup>187</sup>

*Mediation.* Local Rule 6 addresses mediation.<sup>188</sup> Like in most cases, the parties may agree on a mediator. But if the parties cannot agree, the court will select a mediator from a “mediation wheel” maintained by the Business Court Clerk.<sup>189</sup> The “wheel” is a list of prequalified mediators who must

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179. TEX. BUS. CT. L.R. 2.

180. *Id.* L.R. 4(d).

181. *Id.* L.R. 4(d)(1).

182. *Id.* L.R. 4(d)(2).

183. *Id.* L.R. 4(d)(1)–(4).

184. *Id.* L.R. 5.

185. *Id.* L.R. 5(a).

186. *Id.* L.R. 5(d).

187. *Id.* L.R. 5(f). For motions seeking emergency relief, Local Rule 7 further specifies that, either at the same time as filing the motion or within two hours, the movant must file a certificate giving specific grounds for ex parte relief or detailing “the date, time, and manner of notice to opposing parties.” *Id.* L.R. 7(c). At present, the rules also allow for *in camera* submissions of trade secret or other confidential information. *Id.* L.R. 9. But this rule may become moot in light of the newly enacted H.B. 1019, which establishes new and easier procedures for sealed filing of trade secret information. *See* Tex. H.B. 1019, 89th Leg., R.S., § 180.011 (2025) (requiring political subdivisions to participate in the federal electronic employment verification program).

188. TEX. BUS. CT. L.R. 6.

189. *Id.* L.R. 6(a).

apply and be approved by the court on an annual basis.<sup>190</sup> Although the rule provides that a mediator will be selected from the wheel on a “rotating” basis, it also allows the parties to agree to any mediator listed on the wheel if they cannot agree on their initial suggestions.<sup>191</sup>

On top of the local rules, many of the business court divisions or judges have issued their own procedures.<sup>192</sup> These rules continue the local rules’ objective of streamlining litigation, with most rules addressing scheduling, discovery, and pre-trial procedure. For example, several of these procedures provide for regular status conferences,<sup>193</sup> require early submission of organizational materials like the ESI protocol or jury charge,<sup>194</sup> or caution that continuances are rarely granted.<sup>195</sup>

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190. *Id.*

191. *Id.*

192. *See Judge Bouressa’s Court Procedures*, TEX. JUD. BRANCH, <https://www.txcourts.gov/media/1459389/texas-business-court-division-1a-court-procedures.pdf> [<https://perma.cc/7NWW-GBAK>] (providing procedures and rules for the courtroom); *Judge Whitebill’s Guidelines*, TEX. JUD. BRANCH, <https://www.txcourts.gov/media/1459381/texas-business-court-division-1b-guidelines.pdf> [<https://perma.cc/Y9UH-EC2M>] (guiding rules and procedure in the courtroom); *Third Division Court Procedures*, TEX. JUD. BRANCH, <https://www.txcourts.gov/media/1459352/business-court-third-division-court-procedures.pdf> [<https://perma.cc/LG5V-HRHW>] (explaining courtroom procedure and decorum); *Judge-Specific Procedures for Judge Bullard*, TEX. JUD. BRANCH, <https://www.txcourts.gov/media/1459383/texas-business-court-division-8a-procedures.pdf> [<https://perma.cc/8JJQ-BMW4>] (warning the usage of continuances); *Judge-Specific Procedures for Judge Stagner*, TEX. JUD. BRANCH, <https://www.txcourts.gov/media/1459382/texas-business-court-division-8b-requirements.pdf> [<https://perma.cc/WS3Z-EUSG>] (outlining division and judge-specific procedures supplementing the local rules).

193. *See Judge Whitebill’s Guidelines*, *supra* note 192, at 4 (expounding on procedure and supplementation of local rules and customs in the courtroom); *see Judge-Specific Procedures for Judge Bullard*, *supra* note 192, at § 1.C (issuing specific procedures and rules for the courtroom); *Judge-Specific Procedures for Judge Stagner*, *supra* note 192, at § 2 (providing differing procedures regarding status conferences across judges).

194. *See Judge Bouressa’s Court Procedures*, *supra* note 192, at § II.B (advancing the desired rules and procedures in the courtroom); *Third Division Court Procedures*, *supra* note 192, at § III(C) (stating parties must make serious and reasonable efforts to agree on an electronically stored information protocol); *Judge-Specific Procedures for Judge Stagner*, *supra* note 192, at § 3(C) (addressing the unique and specific rules of the courtroom); *Judge Whitebill’s Guidelines*, *supra* note 192, at 3 (requiring early submission of organizational materials such as the ESI protocol and proposed jury charge).

195. *See Judge Bouressa’s Court Procedures*, *supra* note 192, at § I.C (detailing continuances are disfavored); *Judge-Specific Procedures for Judge Bullard*, *supra* note 192, at § II.H.2 (limiting any request of a trial date modification be in writing); *Judge-Specific Procedures for Judge Stagner*, *supra* note 192, at § 10.A (cautioning that continuances are highly unfavored and require good cause).

## IV. LEGISLATIVE DEVELOPMENTS

On June 21, 2025, the Governor signed into law modest but significant reforms of the nascent Business Court.<sup>196</sup> The sponsors of H.B. 40 promoted the bill “mostly as a cleanup measure,” designed to tweak the business court statute in response to observations from the first year of practice.<sup>197</sup> The legislative proceedings were largely non-partisan and supported by large majorities of lawmakers.<sup>198</sup> Unlike with H.B. 19 from the previous session (which created the Business Court), there were no major points of controversy—to the point that not a single witness testified in opposition to the bill.<sup>199</sup> But if most of the amendments are minor, some of them are not.<sup>200</sup> On the contrary, several of the changes made to the business court statute expand the court’s jurisdiction and may result in a substantial increase in caseload.<sup>201</sup>

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196. H.J. of Tex., 89th Leg., R.S. 7610 (2025).

197. *Hearing on Tex. H.B. 40 Before the Tex. H. Comm. on Judiciary and Civ. Juris.*, *supra* note 9, at 4:43:40 (statement of Rep. Brooks Landgraf).

198. As with the original business court bill during the last legislative session, the final votes in the House and Senate garnered strong support from both sides of the political aisle. The bill then passed the House 99-40, with eighty-one Republicans and eighteen Democrats voting in favor, and the Senate passed the bill 24-7, with twenty Republicans and four Democrats voting in favor. H.J. of Tex., 89th Leg., R.S. 4096 (2025); S.J. of Tex., 89th Leg., R.S. 3134 (2025). On the vote count for the prior bill, *see* DiSorbo, *supra* note 1, at 387 n. 154.

199. The witnesses testifying in the House and Senate committees consisted solely of members of the business community promoting H.B. 40 (or S.B. 2883 before it was merged with H.B. 40) or members of the judiciary and its administrative staff serving as resource witnesses. The industry groups offering testimony or registering in support of the bill include the National Federation of Independent Business, the Texas Business Law Foundation, the Texas Association of Business, the Texas Oil and Gas Association, and Texans for Lawsuit Reform. H. Comm. on Judiciary & Civ. Juris. Witness List, 89th Leg., R.S. (Apr. 9, 2025), <https://capitol.texas.gov/tlodocs/89R/witlistmtg/html/C3302025040908001.html> [<https://perma.cc/GUH2-XSAT>]; S. Comm. on Juris. Witness List, 89th Leg., R.S. (May 7, 2025), <https://capitol.texas.gov/tlodocs/89R/witlistmtg/pdf/C5502025050709001.pdf> [<https://perma.cc/E8VE-UNQ3>]. Several individuals registered in opposition to H.B. 40 for the House committee hearing but did not testify. H. Comm. on Judiciary & Civ. Juris. Witness List, 89th Leg., R.S. (Apr. 9, 2025).

200. *See* Tex. H.B. 40, 89th Leg., R.S. (2025) (codified at TEX. GOV'T CODE ANN. § 25A.001(14)) (authorizing expansion of the business court’s jurisdiction).

201. The legislature also passed a law during the second special session that made one minor change to the Business Court, as discussed below. Tex. H.B. 16, 89th Leg., 2d C.S. (2025).

### A. *Jurisdiction*

#### 1. Scope of Jurisdiction

H.B. 40's most significant amendment is to lower the amount-in-controversy threshold for qualified-transaction cases from \$10 million to \$5 million.<sup>202</sup> The bill also clarifies that a qualified transaction includes a "series of related transactions," which is partially a response to Business Court opinions addressing and limiting the definition.<sup>203</sup> These changes were promoted both as a means to "expand the access to the Business Court," and as an effort to bring the court's jurisdiction in line with other state business courts.<sup>204</sup> Witnesses before the House committee reiterated that no state business court has an amount-in-controversy threshold higher than \$5 million—and the prerequisite in most courts is far less.<sup>205</sup> Two members in the House expressed concerns that amending the jurisdiction requirement would risk a deluge of new cases, to which witnesses estimated that the proposed change would result in a 20–30% increase in cases.<sup>206</sup>

Although those concerns didn't ultimately defeat the measure, it seems highly likely that next year's caseload will grow considerably. As shown above, qualified-transaction jurisdiction was by far the most common grounds for bringing a case in the Business Court.<sup>207</sup> Naturally, there will be more cases with \$5–10 million at issue than with more than \$10 million—and it stands to reason that many (if not most) of the litigants in the former category will want the Business Court to hear their disputes.<sup>208</sup> This, combined with the confirmation of the court's subject-matter jurisdiction

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202. TEX. GOV'T CODE ANN. § 25A.001(14)'.

203. *Id.*; *see supra* Section III.A.

204. *Hearing on Tex. H.B. 40 Before the Tex. H. Comm. on Judiciary & Civ. Juris.*, *supra* note 9, at 4:44:40 (statement of Rep. Brooks Landgraf).

205. *Id.* at 4:49:47 (statement of Mike Tankersly). Most states, even those with large economies like Florida or New York, require less than \$1 million to utilize the state's business court. *See* Reestablishment of the Proc. for Complex Bus. Litig. in the Cir. Civ. Div. of the Eleventh Jud. Cir. of Fla., Admin. Order No. 25-01 (Fla. 11th Jud. Cir. Jan. 1, 2025) (setting the complex business litigation section amount in controversy at \$750,000); N.Y. C.P.L.R. 202.70(a) (setting the amount in controversy requirement for the commercial division of New York County at \$500,000). Only North Carolina has a jurisdictional threshold of at least \$5 million. N.C. GEN. STAT. ANN. § 7A-45.4(b).

206. *Hearing on Tex. H.B. 40 Before the Tex. H. Comm. on Judiciary & Civ. Juris.*, *supra* note 9, at 4:45:45 (statement of Rep. Richard Hayes). *Id.* at 4:46:30 (statement of Rep. Maria Luisa Flores); *id.* at 4:57:15 (statement of Mike Tankersly).

207. Section II.C; Figure 4.

208. Section II.C; Figure 4–5.

over other categories of claims discussed below, may very well see the court's caseload expand much greater than the 20–30% estimate.

H.B. 40 also confirms—or expands, depending on your point of view<sup>209</sup>—the Business Court's jurisdiction over two types of claims. First, the law authorizes the court to hear “an action arising from or relating to the ownership, use, licensing, lease, installation, or performance of intellectual property.”<sup>210</sup> Such actions are broadly defined to cover many categories of discrete technology,<sup>211</sup> as well as trade secret misappropriation or sealing actions.<sup>212</sup> Second, H.B. 40 provides that the Business Court has authority to enforce an arbitration agreement or to review an arbitration award, provided the claim covered by the arbitration is otherwise within the court's jurisdiction.<sup>213</sup> Although these claims may have already been within the court's jurisdiction, their enumeration in H.B. 40 will likely encourage more litigants to bring such claims in the Business Court.

## 2. Jurisdictional Determinations

Over the first year, parties have tested the contours of the Business Court's jurisdiction—and that trend will only continue as the court fields

209. There is a reasonable case that trade secrets and arbitration actions were already covered in the Business Court's jurisdiction. Such claims may concern a “transaction” in which a plaintiff “is entitled to receive, consideration with an aggregate value of at least \$10 million” for purposes of the prior business court statute. Tex. H.B. 40, 89th Leg., R.S. (2025). H.B. 40's proponents spoke about the provisions as confirming jurisdiction that the court already had. *See Hearing on Tex. H.B. 40 Before the Tex. H. Comm. on Judiciary & Civ. Juris.*, *supra* note 9, at 4:44:15 (statement of Rep. Brooks Landgraf) (explaining his view that H.B. 40 “confirms the court's jurisdiction” as to trade secrets and arbitration actions); *Hearing on Tex. S.B. 2883 Before the Tex. S. Comm. on Juris.*, *supra* note 9, at 54:20 (statement of Mike Tankersly) (testifying those claims “were probably covered already” under the prior statute).

210. TEX. GOV'T CODE ANN. § 25A.004(d)(5).

211. *Id.* § 25A.004(d)(5)(A) (providing that an intellectual property action includes “computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies”).

212. *Id.* § 25A.004(d)(5)(B), 25A.004(D)(6). In addition to confirming the Business Court's authority to hear trade secrets claims, the legislature also passed a separate bill designed to make it easier to file trade secret information under seal. *See Tex. H.B. 4081, 89th Leg., R.S. (2025)* (outlining steps necessary to seal trade secrets). At a cursory level, H.B. 4081 amends the labyrinthian sealing process prescribed by Texas Rule of Civil Procedure 76a. *Id.* The new procedure allows a party to initiate an original proceeding to seal trade secret information. *Id.* If the party provides a declaration substantiating the protected nature of the information, the trial court must seal the documents, absent an objection from opposing party. *Id.* This new process gives greater certainty and flexibility to trade secrets litigation, making sealing the rule rather than the exception, and allowing parties to seek sealing whenever they choose.

213. GOV'T § 25A.004.

more cases. A frequent request by the business community was a desire for the court's jurisdiction to be determined at an early stage in the case, before committing too much time and expense.<sup>214</sup> To that end, H.B. 40 directs the Texas Supreme Court to adopt new rules for determinations of Business Court authority, with the possibility of an interlocutory appeal.<sup>215</sup> The Texas Supreme Court referred the subject—and other potential new rules—to the Texas Supreme Court Advisory Committee, which in turn referred the matter to the Business Court Subcommittee.<sup>216</sup>

The Subcommittee presented its report to the Advisory Committee on June 27, 2025.<sup>217</sup> It recommended creating a new Rule 361 of the Texas Rules of Civil Procedure, which would govern venue and authority determinations by the Business Court.<sup>218</sup> The proposed rule provides that jurisdictional challenges "should" be brought within thirty days of filing or removal, and that, "[a] motion challenging other aspects of the business court's authority must be filed within [thirty] days."<sup>219</sup> The rule would also allow for limited jurisdictional discovery, as already exists for a plea to the jurisdiction or special appearance.<sup>220</sup>

The proposed rule offers options for appealing an order resolving the Business Court's jurisdiction. The first option is an interlocutory appeal as a matter of right.<sup>221</sup> This option would benefit from more quickly developing caselaw on the court's authority, but would tend to slow the pace

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214. See, e.g., *Hearing on Tex. S.B. 2883 Before the Tex. S. Comm. on Juris.*, *supra* note 9, at 49:45–50:30 (statement of Mike Tankersly) ("I think that's an early stage question that people need to have decided in the first sixty/ninety days of litigation . . . there's been more wrestling over that than is probably beneficial . . . think having the Supreme Court with a year of experience to look at to write some rules . . . is an opportunity to provide some clarity.").

215. GOV'T § 25A.004.

216. See Memorandum from JCC Rules Task Force, Bus. Ct. Subcomm., to Sup. Ct. Advisory Comm., on Proposed Revisions to Procedural Rules for the State Commission on Judicial Conduct (June 27, 2025) [hereinafter Bus. Ct. Subcomm. Memorandum] (on file with Sup. Ct. Advisory Comm. Meetings, Materials, TEXAS JUD. BRANCH), <https://www.txcourts.gov/media/1460804/06272025-revised-scac-meeting-notebook.pdf> [<https://perma.cc/77YK-HDMT>] (proposing amendments to the Texas Rules of Civil Procedure and Rules of Judicial Administration for the Business Court).

217. *Id.*

218. *Id.* at Ex. A, Proposed R. 361(a)(2).

219. *Id.* at Ex. A, Proposed R. 361(a)(1)–(2).

220. *Id.* at Ex. A, Proposed R. 361(a)(3). See *In re Christianson Air Conditioning & Plumbing, LLC*, 639 S.W.3d 671, 676–78 (Tex. 2022) (discussing standards for jurisdictional discovery); *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004) (same); *In re Congregation B'Nai Zion of El Paso*, 657 S.W.3d 578, 584–85 (Tex. App.—El Paso 2022, no pet.) (same).

221. Bus. Ct. Subcomm. Memorandum, *supra* note 216, at Ex. A, Proposed R. 361(a)(6)(a).

of resolving Business Court cases. The second option is a slightly modified version of the preexisting permissive appeal process under Texas Civil Practice and Remedies Code § 51.014.<sup>222</sup> Ordinarily, a party seeking to take a permissive appeal must obtain consent from both the trial court and the court of appeals.<sup>223</sup> But the proposed rule would require permission only from the Fifteenth Court of Appeals, generally making the process easier.<sup>224</sup>

The final version of the new rules is likely to change. The Supreme Court will weigh the Subcommittee's recommendations, preliminarily approve the new rules with any edits, and then solicit public comment on those rules.<sup>225</sup> It remains to be seen exactly how jurisdictional determinations will be made and to what extent they may be appealed. However, in any event, practitioners should develop a new mechanism to determine more quickly whether a case belongs in the Business Court.

#### B. Transfer of Older Cases

The second of the two most significant amendments is to allow some cases filed before September 1, 2024, to be removed to the Business Court.<sup>226</sup> This subject was the most litigated issue in the court last year, with dozens of parties attempting to remove older-filed cases to the Business Court, sometimes on an agreed basis.<sup>227</sup> However, the Business Court judges unanimously interpreted the business court statute not to confer jurisdiction over cases filed before the court took effect.<sup>228</sup>

Now, however, H.B. 40 provides that these cases may be transferred to the Business Court "on an agreed motion of a party and permission of the business court" under rules adopted by the Texas Supreme Court for this

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222. *Id.*

223. TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(d), (f).

224. Bus. Ct. Subcomm. Memorandum, *supra* note 216, at Ex. A (proposing amendments to the Texas Rules of Civil Procedure and Rules of Judicial Administration for the Business Court (H.B. 40) and June 5, 2025, Referral Letter).

225. Preliminary Approval of Rules for the Business Court, Misc. Dkt. No. 24-9004 (Tex. Feb. 6, 2024); *see* Final Approval of Rules for the Business Court, Misc. Dkt. No. 24-9037 (Tex. June 28, 2024) (discussing the Supreme Court's orders regarding the previous round of Business Court rulemaking).

226. Bus. Ct. Subcomm. Memorandum, *supra* note 216, at Ex. A.

227. *In re* ETC Field Servs., LLC, 707 S.W.3d 924, 926 (Tex. App.—Austin [15th Dist.] 2025, pet. denied).

228. *Supra* Section III.A.1.

purpose.<sup>229</sup> The legislature also specified that the new transfer rules should be guided by three objectives: “(1) prioritize “complex civil actions of longer duration that have proven difficult for a district court to resolve because of the other demands” on the district court’s caseload; (2) consider “the capacity of the business court to accept” the transfer of the action without impairing the business court’s “efficiency and effectiveness in resolving actions commenced on or after September 1, 2024”; and (3) ensure the “facilitation of the fair and efficient administration of justice.”<sup>230</sup>

The Business Court Subcommittee recommended a procedure that involves input from both the trial court and the Business Court. It’s proposed Rule 363 establishes a two-tiered process in which parties seeking to transfer a case to the Business Court must first move to transfer in the original trial court.<sup>231</sup> Regardless of whether the trial court agrees to the transfer, the parties must then make an agreed motion to the regional presiding judge of the administrative judicial region where the case is pending.<sup>232</sup> In considering the motion, the regional presiding judge is directed to consult with the administrative presiding judge of the Business Court, who should advise as to the Business Court’s “capacity to accept the transfer of the action without impairing its efficiency and effectiveness.”<sup>233</sup> The regional presiding judge must hold a hearing on the motion, and both the trial judge and regional presiding judge are instructed to consider the efficiency and fairness factors laid out in H.B. 40.<sup>234</sup> If the motion is granted, the case is transferred to the appropriate Business Court division and assigned a random judge in that division.<sup>235</sup>

Like with the proposed rules for jurisdictional determinations, the final version of the transfer rules will probably vary from the Subcommittee’s recommendations. But regardless of the details, there will be a mechanism for removing older-filed, complex cases to the Business Court. This could

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229. TEX. GOV’T CODE ANN. § 25A.021 (discussing how the transfer mechanism sunsets on September 1, 2025, at which point there should be little to no cases that were pending before 2024); Bus. Ct. Subcomm. Memorandum, *supra* note 216 at 73 (proposed amendments to the Texas Rules of Civil Procedure and Rules of Judicial Administration for the Business Court (H.B. 40) and June 5, 2025 Referral Letter).

230. GOV’T § 25A.021(a)(1)–(3).

231. Bus. Ct. Subcomm. Memorandum, *supra* note 216, at Ex. A, Proposed R. 363.

232. *Id.*

233. *Id.*

234. GOV’T § 25A.021(a)(1)–(3); Bus. Ct. Subcomm. Memorandum, *supra* note 216, at 83.

235. Bus. Ct. Subcomm. Memorandum, *supra* note 216, at Ex. A, Proposed R. 363.

result in a substantial number of cases that try to take advantage of the new transfer rules, though it isn't immediately clear how many cases pending before September 1, 2024 would fall within the court's jurisdiction. Or the response to the change could be more modest, with only a few cases that have truly languished in district or county court being transferred. Either way, the Business Court's caseload and visibility will continue to grow.

### C. New Judges and Divisions

The biggest changes that the legislature *didn't* make is to expand the Business Court to include the six less populous judicial regions or to create additional judgeships for the preexisting divisions.<sup>236</sup> Regarding the latter, the legislature considered adding one additional judge to the Houston and Dallas divisions because of the high number of cases filed there. Provisions to this effect were present in the introduced versions of the bills in the House and Senate, and witnesses testified in support of adding new judges.<sup>237</sup> But the legislature ultimately decided to wait until the next session to see if new judges are needed. Instead, H.B. 40 directs the Office of Court Administration to study the subject of case filing and distribution in the Business Court, and to make annual reports to the Legislature with any recommendations for new judgeships or any other actions needed to allow the court to meet its demand.<sup>238</sup> So, the Business Court bench will remain

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236. *See* Tex. H.B. 40, 89th Leg., R.S., § 7(a)(2) (2025) (proposing "one judge to each of the Second, Fifth, Sixth, Seventh, Ninth, and Tenth Divisions of the business court . . .").

237. *Id.*; *see* Tex. S.B. 2883, 89th Leg., R.S. (2025) (noting the senate committee's attempt to get an additional judge to the Eleventh and First Business Court Divisions); *see also* Hearing on Tex. S.B. 2883 Before the Tex. S. Comm. on Juris., *supra* note 9, at 40:24–50 (statement of Mike Tankersly) ("The Business Court is bringing in cases at a pretty good clip. The next time after this session ends that the legislature could add a new judge to the court would be the 2027 session which would make it January probably of 2028, and we believe between now and January 2028 that the increase of demand will require additional judges.").

238. The bill proposed the following:

Not later than December 1 of each year, the Office of Court Administration of the Texas Judicial System shall submit to the legislature a report on the case activity of the business court in the preceding year [that] includ[es]: (1) the caseloads of each of the judges of the business court in the preceding year; (2) the extent to which judges have been assigned to hear cases in other divisions in order to equalize caseloads; (3) projection(s) of the expected caseloads of the business court judges during the succeeding two-year period; and (4) recommendations regarding action by . . . the legislature, the governor, the chief justice of the supreme court, or the business court

at ten for now, though it would not be surprising to see the lawmakers revisit the issue at the next legislative session—especially if case filings continue to grow in response to the amendments to the court’s jurisdiction.

The legislature also considered, but rejected, expanding the Business Court’s operations beyond the five current divisions.<sup>239</sup> The original business court bill established eleven Business Court divisions, but did not create judgeships for the smaller divisions—which comprise Beaumont (the 2nd Division), the Rio Grande Valley (the 5th Division), El Paso (the 6th Division), Midland/Odessa (the 7th Division), Amarillo (the 9th Division), and Tyler (the 10th Division).<sup>240</sup> The bill also provided that the six smaller divisions would be abolished on September 1, 2026, unless reauthorized by the legislature.<sup>241</sup>

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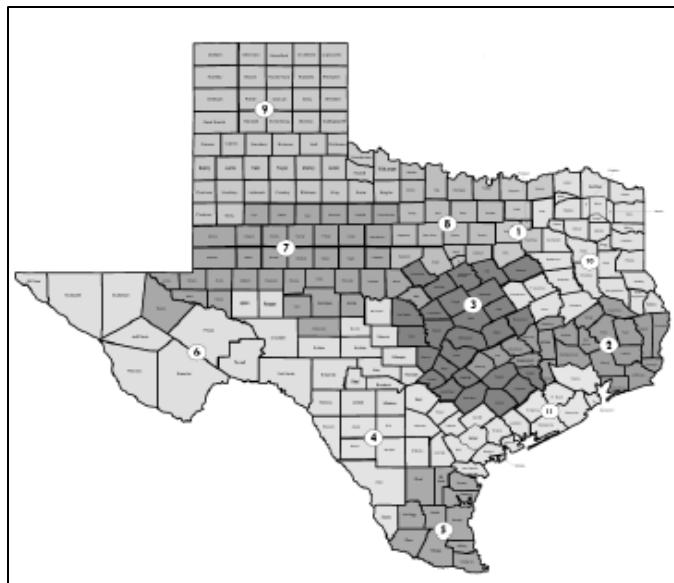
to ensure the business court can meet existing and projected demand for the business court’s services [during that two-year period].

Tex. H.B. 40, 89th Leg., R.S., § 10 (2025) (codified at TEX. GOV’T CODE ANN. § 25A.0171(e)).

239. *See id.* at § 7(a)(1) (codified at TEX. GOV’T CODE ANN. § 25A.009) (proposing one judge to each of the other divisions of the business court).

240. *Id.* at § 7(a)(2) (codified at TEX. GOV’T CODE ANN. § 25A.009).

241. *Id.* at § 2 (codified at TEX. GOV’T CODE ANN. § 25A.003(d), (g), (h), (i), (k), (l), (m)); DiSorbo, *supra* note 1, at 366.

FIGURE 8. ADMINISTRATIVE JUDICIAL REGIONS.<sup>242</sup>

As introduced, H.B. 40 would have required the Governor to appoint a judge to each of the Second, Fifth, Sixth, Seventh, Ninth, and Tenth Divisions.<sup>243</sup> But this provision was amended out in subsequent proceedings, with the legislature opting to wait and see if there is enough demand to justify a Business Court division in these locations. The Legislature did, however, remove the sunset provisions for these divisions, meaning that the smaller divisions will continue to exist and can be implemented if future laws create judges and appropriate the requisite funds.<sup>244</sup>

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242. *Administrative Judicial Regions* (illustrated map), TEX. JUD. BRANCH, <https://www.txcourts.gov/media/1453885/ajr-map-2017.pdf> [<https://perma.cc/6AGK-4UFH>].

243. See Tex. H.B. 40, 89th Leg., R.S., § 7(a)(2) (2025) (demonstrating that smaller divisions are allocated one judge, unlike the larger divisions which are allocated two judges each). But see TEX. GOV'T CODE ANN. § 25A.009(a)(2) (opting not to include the latter portion of this amendment).

244. TEX. CIV. PRAC. & REM. CODE ANN. § 65.022(e) (permitting one business court judge to issue a writ returnable to another judge if the other judge is unreachable by usual travel or communication); *see also* Hearing on Tex. S.B. 2883 Before the Tex. S. Comm. on Juris., *supra* note 9, at 32:00–30 (statement of Sen. Bryan Hughes) (“There’s no intent with this bill to expand the footprint into those more rural areas. What we would do is repeal that part of the statute that says those courts are going to disappear. Those courts will still be there but not be funded unless and until such time as there is a need.”).

Although H.B. 40 leaves the Business Court divisions mostly undisturbed, it (and H.B. 16 from the second special session) does make two minor changes regarding the counties included in the business court.<sup>245</sup> First is Montgomery County, one of the nation's fastest-growing counties, which includes The Woodlands Township and its significant energy-sector presence.<sup>246</sup> To accommodate this, H.B. 40 removes Montgomery County from the not-implemented Beaumont Division and places it in the Houston Division, so that the court may hear its cases.<sup>247</sup> Second is Bastrop County, which is home to offices of several large corporations, including Elon Musk's Starlink and The Boring Company, MD Anderson Cancer Center, and Agilent Technologies.<sup>248</sup> H.B. 16 removes Bastrop County from the inactive division and places it in the Third Division, headquartered in Austin.<sup>249</sup>

Overall, the legislature took a cautious approach toward expanding Business Court judges and divisions with H.B. 40. It elected not to add new judges or activate the divisions in less populous areas of the state.<sup>250</sup> Trends over the next two years may very well justify those changes, or they may not. But any amendments will have to wait for the next legislative session.

#### D. *Administrative Changes*

Most of H.B. 40 makes minor, administrative changes to the Business Court. In the words of the bill's sponsors, the bill contains many "conforming" changes, meaning that it incorporates the Business Court into other aspects of state law that may have been "overlooked" by the original

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245. *See* TEX. GOV'T CODE ANN. § 25A.003(d) (noting how the Second Business Court Division is composed of counties composing the Second Administrative Judicial Region except Montgomery County).

246. *See* Kyle McClenagan, *Liberty and Montgomery Counties Among Fastest-Growing in the Nation*, HOUS. PUB. MEDIA (Mar. 14, 2025), <https://www.houstonpublicmedia.org/articles/news/local/2025/03/14/516039/montgomery-liberty-counties-among-nations-fastest-growing-regions> [https://perma.cc/9QHW-6QLK] (noting how Montgomery County was "among the top 10 fastest-growing counties in United States from 2023 to 2024").

247. TEX. GOV'T CODE ANN. § 25A.003(d), (m).

248. *See Major Employers*, BASTROP EDC, <https://www.bastropedc.org/workforce/major-employers> [https://perma.cc/AFA8-XE42] (illustrating the variety of industries and employers in the Bastrop area).

249. Tex. H.B. 16, 89th Leg., 2d C.S., § 7.07(a) (2025) (codified at TEX. GOV'T CODE ANN. § 25A.003(e)).

250. TEX. GOV'T CODE ANN. § 25A.009(a)(2).

business court bill.<sup>251</sup> These measures include, among others: authorizing the Business Court to issue writs of attachment and attachment,<sup>252</sup> updating the statutory definition of “court” to include the Business Court,<sup>253</sup> and allowing retired Business Court judges to be appointed to preside over certain cases as a “former judge.”<sup>254</sup> In addition to these ministerial amendments, H.B. 40 also makes the following updates to the Business Court structure:

- Allows “the judicial panel on multidistrict litigation” to transfer cases from the Business Court to an MDL court, or to the Business Court to serve as an MDL court.<sup>255</sup>
- Establishes the office of administrative presiding judge pro tempore, who acts as the presiding judge during the presiding judge’s absence, and who must be from a different division than the presiding judge.<sup>256</sup>
- Entitles counties to be reimbursed for providing Business Court judges and their staff facilities to operate court.<sup>257</sup>
- Adds “the administrative presiding judge of the Business Court” to the Texas Judicial Council.<sup>258</sup>

With the possible exception of the court’s authority to serve as an MDL court, these amendments are not expected to significantly impact court operations.<sup>259</sup> They are the incremental sort of adjustments that should be expected with any major legislative initiative, and are consistent with H.B. 40’s purpose of solidifying the Business Court status as an official part of the Texas judiciary.

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251. *See Hearing on Tex. H.B. 40 Before the Tex. H. Comm. on Judiciary & Civ. Juris.*, *supra* note 9, at 4:43:35 (statement of Rep. Brooks Landgraf) (testifying that the committee substitute before the court is a cleanup measure regarding H.B. 40).

252. TEX. CIV. PRAC. & REM. CODE ANN. § 61.021.

253. *Hearing on Tex. H.B. 40 Before the Tex. H. Comm. on Judiciary & Civ. Juris.*, *supra* note 9, at 4:43:35 (statement of Rep. Brooks Landgraf).

254. TEX. CIV. PRAC. & REM. CODE ANN. §§ 61.021, 63.002, 74.045(a), 154.001(1).

255. TEX. GOV'T CODE ANN. § 74.162.

256. *Id.* § 25A.009(d).

257. *Id.* § 74.162.

258. *Id.* §§ 71.001–.012.

259. *Id.* § 74.162.

## V. CONCLUSION

The fledgling Texas Business Court had a good first year. It received numerous high-dollar disputes involving diverse legal subjects, and its judges devoted themselves to writing many opinions—especially by Texas trial court standards. The amendments made to the business court statute will only expand the court’s presence.

Will the court really displace Delaware<sup>260</sup> and others,<sup>261</sup> growing into the nation’s preeminent commercial court? It’s too early to tell whether the excitement shown so far will carry forward into future years or prove to be skin-deep. What is clear, however, is that the Business Court has already become a prominent force in the Texas judiciary—a force that will only continue to grow in the coming years.

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260. DiSorbo, *supra* note 1, at 381.

261. *Id.* at 382.