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Two years in, and the Texas Business Court has proven its case

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On Sept. 1, the Texas Business Court will complete its second year. Twenty-four months is not long enough to settle every question about a new court. But it is long enough to judge whether the experiment is working.

It is.

Houston offers the clearest evidence.

The Business Court was never meant to replace – or remedy – the district courts. Harris County's civil district judges manage enormous dockets spanning virtually every kind of civil dispute, and they regularly handle complex commercial cases well. We try cases before them and expect to keep doing so.

But there is a practical limit to what any general-jurisdiction judge can do. A judge responsible for hundreds of cases should not have to choose between giving sustained attention to a sprawling, eight-figure commercial dispute and moving dozens of other litigants through the courthouse. The Business Court gives a narrow category of large commercial cases a particular forum. That benefits the parties in those cases, but it also leaves more room on district court dockets for everyone else.

Lawyers and companies figured that out quickly. Across the state, litigants filed 185 cases in the Business Court's first year. Nearly half were filed in Houston's 11th Division, far more than in any other division. Filings accelerated in year two.

Just as important, the Business Court has done something Texas commercial lawyers have wanted for years: It has begun building a body of written commercial law. More than 100 written opinions now address questions that once might have been resolved in a short order – or not addressed in a published opinion at all, given the time demands on district court judges. Those decisions, subject to review by the new 15th Court of Appeals, give companies and their lawyers something valuable before a lawsuit is ever filed: a better sense of what Texas law is likely to mean when real money is at stake.



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Houston also hosted the court's first jury trial. In February, Judge Sofia Adrogué presided over a dispute concerning ownership of an oil-export project at the Port of Corpus Christi. The plaintiff won. From removal to verdict, the case took about 15 months.

That result matters for a reason beyond the parties. The Business Court will not succeed if companies view it as a place to seek a particular result. Its essential value lies elsewhere: a judge who has the time and commercial expertise to master a difficult record, decide legal issues promptly and get the case to trial.

The Legislature has continued to invest in that idea. House Bill 40, effective last September, lowered the jurisdictional threshold from \$10 million to \$5 million, added trade-secret and intellectual-property disputes, and eliminated the sunset provision that threatened the six divisions that have not yet begun operating. Sophisticated parties are now considering the Business Court when they draft forum-selection clauses. That is where the conversation belongs – when the contract is signed, not after the dispute begins.

There's lots of work to do. The Business Court needs

permanent courtrooms. Houston's first trials, one of which we handled, were held in the Family Law Center, whose judges and staff accommodated everyone graciously, but the building was not designed for this purpose. And two-year judicial terms are too short for judges charged with developing a coherent body of commercial law. Longer terms, permanent facilities and funding for the remaining divisions would give the Business Court the stability it needs.

The governor's reappointment of all 10 judges in July was an important step in that direction.

Texas created the Business Court because an economy of this size should have a commercial forum capable of handling its most consequential business disputes without weakening the courts that already serve the rest of the state. Two years into the project, the model is working.

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