

GIBSON DUNN



Antitrust & Competition Law Update

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Texas Antitrust 2026 Third Quarter Update

This issue covers developments from July 1 through September 30, 2026. The third quarter was defined by merits rulings and closed with the Texas Attorney General opening an antitrust investigation into the ABA's law-school accreditation practices.

Texas is quickly becoming an active venue for important antitrust disputes involving emerging technologies and novel issues. With the growth of Texas antitrust litigation, Gibson Dunn has begun publishing quarterly Texas antitrust updates to ensure clients are familiar with important regulatory and litigation developments throughout the year. Gibson Dunn is lead counsel or strategic counsel in several of these significant Texas antitrust matters—spanning group boycotts, energy-sector competition, Business Court proceedings, and appellate challenges. Gibson Dunn's Texas antitrust team is integrated with its preeminent national and global antitrust practice and led by Dallas partners **Scott Hvidt**, **Ashley Johnson**, **Betty Yang**, **Russ Falconer**, and **Liz Ryan** as well as Houston partner and former Fifth Circuit Judge **Gregg Costa**. Gibson Dunn's Texas antitrust team also earned the highest honors ("Elite") from Global Competition Review in its most recent review.

The third quarter of 2026 was defined by merits rulings and closed with the Texas Attorney General opening an antitrust investigation into the ABA's law-school accreditation practices. Running through three of the quarter's decisions is a common theme: plaintiffs who cannot define a relevant market do not get far.

I. Appellate Developments

Texas Appeals Court Holds NCAA Eligibility Rules Subject to Antitrust Scrutiny but Dissolves Injunction. On August 31, 2026, the Eastland Court of Appeals reversed a temporary injunction barring enforcement of the NCAA's Five-Year Rule—which limits athletes to four seasons of competition within five years of first enrolling—against Tarleton State basketball player Freddy Hicks III. *NCAA v. Hicks*, S.W.3d, 2026 WL 2574852 (Tex. App.—Eastland Aug. 31, 2026). Rejecting the NCAA's position that eligibility rules are noncommercial, the court held that eligibility rules “limit participation in a labor market and thus interfere with student athletes’ free exercise of their right to engage in commerce.” *Id.* at *6. But Hicks showed no probable right to relief: he offered no evidence supporting his proposed market for Division I basketball players, and no evidence that the Five-Year Rule reduced output, raised prices, or depressed wages—only evidence of his own exclusion, which the court held insufficient. *Id.* at *6–7.

Why It Matters: By treating athletic-eligibility rules as commercial, the decision brings them within the antitrust laws and, with them, the ordinary requirements of defining the market and proving competitive effects.

Fifth Circuit Rejects Per Se Challenge to Texas Water-Supply Agreement. On August 18, 2026, the Fifth Circuit affirmed judgment for the San Jacinto River Authority in a Section 1 challenge to contracts implementing a mandated 30% reduction in groundwater use by large-volume groundwater users in Montgomery County. *Quadvest, L.P. v. San Jacinto River Auth.*, F.4th, 2026 WL 2409682 (5th Cir. Aug. 18, 2026). Quadvest, one of roughly 80 utilities that signed substantially identical contracts with the Authority to comply with the mandate collectively, alleged that its contract was per se unlawful price fixing and market allocation. *Id.* at *1, *5. The Fifth Circuit held the agreement vertical rather than horizontal because “[n]ot every agreement between horizontally related firms is necessarily a horizontal agreement,” and Quadvest and the Authority were not competitors when they entered it. *Id.* at *7–8. With the per se rule inapplicable, Quadvest had to satisfy the rule of reason, and it “falter[ed] out of the gate” by failing to prove a relevant product or geographic market at trial. *Id.* at *14.

Why It Matters: The ruling reinforces that competition between two firms in one setting does not make every agreement between them horizontal; courts examine the relationship in the transaction challenged, measured when the agreement was made. Rule-of-reason plaintiffs still need a defensible relevant market.

II. Trial-Court Developments

Texas Business Court Dismisses Louisiana Antitrust Claim on Interstate-Comity Grounds. On August 12, 2026, Judge Adrogué of the Texas Business Court's Eleventh Division dismissed a Louisiana Monopolization Act (LMA) claim brought against Denbury Carbon Solutions, which contracted to transport and sequester carbon-dioxide emissions from a clean-hydrogen and blue-ammonia project in Louisiana—services the plaintiffs alleged only Denbury could supply. *Clean Hydrogen Works, LLC v. Denbury Carbon Sols., LLC*, 2026 WL 2547067 (Tex. Bus. Ct. Aug. 12, 2026). Judge Adrogué cited *Coca-Cola Co. v. Harmar Bottling Co.*, 218 S.W.3d 671, 674–75 (Tex. 2006), for the proposition that Texas courts “will not decide how another state’s antitrust laws and policies apply to injuries confined to that state.” 2026 WL

2547067, at *2. Because the LMA claim was an antitrust claim under another state's law, and presented "a Louisiana pipeline, a Louisiana project, and Louisiana competitive harm," the court dismissed it. *Id.* at *3. However, the court declined to extend *Coca-Cola* beyond what it called the "unambiguous central holding" of that opinion, and so allowed the accompanying Louisiana unfair-trade-practices claim to proceed. *Id.*

Why It Matters: The Business Court enforced a Texas Supreme Court antitrust precedent but refused to broaden *Coca-Cola* beyond its "unambiguous central holding" even where defendants argued that an unfair-trade-practices claim rested on the same theory as a dismissed monopolization claim.

Western District Dismisses GLP-1 Antitrust Claims for Failure to Plead a Relevant Market. On August 3, 2026, Judge Alvarez of the Western District of Texas dismissed with prejudice a compounding pharmacy's Sherman Act and Clayton Act claims alleging that Eli Lilly and Novo Nordisk foreclosed it from telehealth distribution channels. *Strive Specialties, Inc. v. Eli Lilly & Co.*, 2026 WL 2263540 (W.D. Tex. Aug. 3, 2026). The court reasoned that compounded GLP-1 medications "cannot reasonably be understood as an interchangeable substitute for branded GLP-1 medications in the ordinary sense of market competition" because "compound GLP-1 medications are only available to patients that cannot use branded GLP-1 medications as a matter of medical necessity." *Id.* at *5. The court alternatively found no antitrust injury. *Id.* at *6–7.

Why It Matters: In regulated industries, whether two products are legally available as substitutes bears directly on reasonable interchangeability for purposes of market definition.

Southern District Narrows Patients' Anesthesia Rollup Suit. Judge Alfred H. Bennett issued a multifaceted order on September 30, 2026, in a case involving an alleged scheme to buy up anesthesia practices in Texas and fix prices. U.S. Anesthesia Partners, Inc. and related entities moved to dismiss. Judge Bennett granted the motion in part and denied it in part. He dismissed the claims related to the ambulatory-surgery-center market because the named plaintiff, who received anesthesia services only in a hospital, lacked standing to bring them. *Musharbash v. U.S. Anesthesia Partners, Inc.*, No. 4:25-cv-00116, Dkt. 162 at 9–10 (S.D. Tex. Sept. 30, 2026). Judge Bennett denied the motion to dismiss as to related entities U.S. Anesthesia Partners Holdings, Inc. and U.S. Anesthesia Partners of Texas, P.A. ("Texas, P.A.") because the complaint contained sufficient allegations that each entity participated in the alleged scheme. U.S. Anesthesia Partners Holdings, Inc. shares with U.S. Anesthesia Partners, Inc. the directors, managers, and officers who negotiated and implemented many of the challenged acquisitions. *Id.* at 14–15. The complaint also included specific allegations as to U.S. Anesthesia Partners of Texas, P.A.'s participation in the alleged scheme. Specifically, it included allegations that Texas, P.A. was the only defendant that was party to an agreement under which Texas, P.A. billed its allegedly anticompetitive rates. Notably, Judge Bennett's decision not to dismiss Texas, P.A. departs from his ruling in a related lawsuit brought by a class of employee benefit plans. See *Elec. Med. Tr. v. U.S. Anesthesia Partners, Inc. ("EMT")*, No. 4:23-cv-04398, Dkt. 216 at 9 (S.D. Tex. Mar. 27, 2026). Judge Bennett emphasized that in *EMT*, there were only bare allegations that Texas, P.A. was a party to merger agreements, whereas here, the First Amended Complaint identified a specific agreement, pricing mechanism, and implementation by Texas, P.A. *Musharbash*, Dkt. 162 at 18.

Why It Matters: Antitrust plaintiffs must ensure they allege markets in which they have actually engaged, and prospective classes should choose class representatives with harm traceable to challenged conduct in all alleged markets. Specific, targeted pleadings alleging implementation of an anticompetitive scheme are required for each named defendant—even if it is under the same corporate umbrella.

III. Ongoing Investigations

Texas Attorney General Announces Investigation into Potentially Anticompetitive Conduct in the American Bar Association’s Law-School-Accreditation Policies. On September 30, 2026, Texas Attorney General Ken Paxton issued a press release announcing that his office had issued a Civil Investigative Demand to the ABA as part of an investigation that will “examine whether accreditation requirements have unlawfully restricted competition or increased the cost of legal education, including through requirements affecting faculty compensation and law school operations.” The Attorney General alleges that the ABA has “weaponized its accreditation authority to artificially inflate faculty salaries, exclude law schools who challenged the ABA’s view of ‘elite’ legal education, [] impose costly, burdensome accreditation requirements,” and “impose unconstitutional racial and gender preference requirements on law schools’ admissions and hiring processes.” The press release states that the ABA’s conduct has “deprived the market of innovative, lower-cost approaches to legal education.” The press release concludes by noting that the Office of the Attorney General has provided related testimony to the Department of Education.

Why It Matters: The investigation reinforces two themes from last quarter’s update—the growing use of antitrust law to reach conduct carrying an alleged political valence, and the Texas Attorney General’s cooperation with federal agencies in matters touching on antitrust law.

Gibson Dunn attorneys are closely monitoring these developments and are available to discuss the implications. For further details, see our previous Client Alerts and related resources on the firm’s Antitrust and Competition page [here](#).

The following Gibson Dunn lawyers prepared this update: Scott Hvidt, Ashley Johnson, Gregg Costa, Arjun Ogale, Warren Bloom, Jed Greenberg, and Noah Frazier.

Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm’s Texas [Antitrust and Competition](#) team:

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