

# Chapter IV

## Texas Business Court - First Year Evolution

*Hon. Grant Dorfman, Texas Business Court*

A “controlled experiment”—that’s how lead counsel in the case resulting in the new Business Court’s first merits-based disposition described his experience in the court at my most recent Continuing Legal Education event. He meant it as a compliment. And, upon reflection, it struck me as an apt metaphor for the Texas Business Court’s inaugural year.

So, who started this “controlled experiment” and how is it going?

### IV-1 INTRODUCTION: A HISTORIC BEGINNING

Well, on September 1, 2024, Texas launched its first specialized business court system, a product of years of legislative planning and a growing recognition that complex commercial disputes demand active judicial management. House Bill 19 became effective that day, making Texas the 31st state to establish a business court or complex litigation system.<sup>1</sup> More than just an administrative

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<sup>1</sup>. See American Bar Association, *Recent Developments in Business Courts 2024* (Mar. 7, 2024) (“There are currently functioning business courts of some type in cities, counties, regions, or statewide in twenty-five states: (1) Arizona; (2) Delaware; (3) Florida; (4) Georgia; (5) Illinois; (6) Indiana; (7) Iowa; (8) Kentucky; (9) Maine; (10) Maryland; (11) Massachusetts; (12) Michigan; (13) Nevada; (14) New Hampshire; (15) New Jersey; (16) New York; (17) North Carolina; (18) Ohio; (19) Pennsylvania; (20) Rhode Island; (21) South Carolina; (22) Tennessee; (23) West Virginia; (24) Wisconsin; and (25) Wyoming. States with dedicated complex litigation programs encompassing business and commercial cases, among other types of complex cases, include (26) California, (27) Connecticut, (28) Minnesota, and (29) Oregon. The California and Connecticut programs are expressly not business court programs as such. (30) Utah and Texas began operating business courts in 2024.”).

reorganization, it marked the first significant structural change in the state's appellate system in over 60 years<sup>2</sup> and a paradigm shift in how Texas handles high-stakes business litigation.

Other chapters included in the beginning of this volume detail the Texas Business Court's structure and jurisdiction. This chapter provides a "State of the Court" report – detailing the number and nature of cases the Business Court has attracted as of its one-year anniversary. We also sketch the initial processes the Business Court's leadership has put into place and the preliminary jurisdictional questions that it has addressed to date. These mark the first, early guideposts along the intended route to a much-desired destination: where Texas emerges as a national leader in business court litigation and innovation.

## IV-2 FUN WITH STATISTICS: A CASELOAD AND FILING ANALYSIS

### IV-2:1 Filings in the First Year

Let's get right to the top-line numbers. In its first year, the Texas Business Court saw 185 filings representing two essential case types: "Qualified transactions"<sup>3</sup> in excess of \$10 million in controversy and corporate governance-type disputes that have over \$5 million in controversy or involve a publicly-traded entity. The cases split roughly 50-50 between these two categories.

The 185 case total compares favorably with the Texas Business Court's most recently-launched peers. For example, Georgia's statewide business court, launched in 2019, received eighty-six new filings in its first thirty-two months of operation—an average of thirty-four cases per year. Wyoming's statewide chancery court

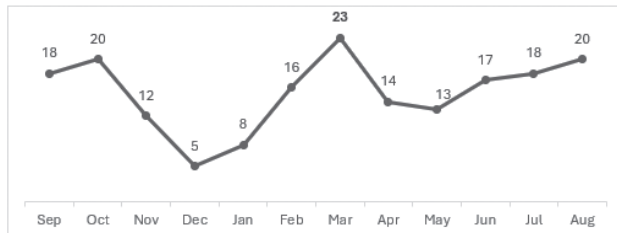
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<sup>2</sup> See *In re Dallas Cnty.*, 697 S.W.3d 142, 146 (Tex. 2024) (noting S.B. 1045 "creates a new court of appeals—the first in Texas since 1967").

<sup>3</sup> The Texas Business Court's statute defines a "Qualified transaction" as "a transaction, or series of related transactions 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 \$5 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 \$5 million." Tex. Gov't Code § 25A.001(14). The dollar amount was reduced from \$10 million to \$5 million by H.B. 40, which went into effect on September 1, 2025. See Act of June 1st, 2025, 89th Leg., Reg. Sess. Ch 912 § 43, § 25A-001.14(1) 2025 Tex. Sess. Law Serv. 912.

went live in December 2021, with thirteen cases filed in its first 11 months.<sup>4</sup> North Carolina’s business court averaged 52 cases a year in its first 14 years of operation.<sup>5</sup> Citing these comparators, one legal commentator concluded just a few months into its existence: the “Texas Business Court’s caseload has outpaced that of other states’ business courts . . . [and] the number of cases suggest strong interest in the Business Court.”<sup>6</sup> At that time, the Business Court boasted a mere 40 filings.

The initial concern that litigants might adopt a “wait and see” attitude towards the Texas Business Court seems borne out by the pattern of case filings. Monthly trends reveal a steady rise throughout the first year, with demand increasing as time passed. This growth suggests favorable word of mouth, and that with growing awareness of the new court system also came a recognition that specialized business court adjudication offers important advantages.



**Cases Added in the First Year (Original Petitions and Notices of Removal)**

The geographic distribution of case origins demonstrated the broad reach envisioned by the Legislature, with cases flowing not just from major metropolitan areas but from smaller Texas

<sup>4</sup> While it is fair to point out the smaller size of these comparator states, both geographically and population-wise, one should also note that the Business Court does not include all of the State of Texas. Currently, the five operational divisions cover only 102 out of Texas’s total 254 counties.

<sup>5</sup> North Carolina Judicial Branch, *Business Court Report: February 2010 (January–December 2009)* (Feb. 2010), available at <https://www.nccourts.gov/documents/publications/nc-business-court-reports>.

<sup>6</sup> Ryan Sullivan, *Texas’ New Business Court: What We’ve Learned from Its First 2 Months*, *Tex. Lawyer* (Nov. 7, 2024, 1:00 PM), available at <https://www.law.com/texaslawyer/2024/11/07/texas-new-business-court-what-weve-learned-from-its-first-2-mont-hs/?slreturn=20241201191928>.

cities. The Houston Division led the Texas Business Court in total filings, followed by the Dallas Division, reflecting these cities' prominence as commercial hubs and their relatively high concentration of publicly-traded corporations within the larger U.S. economy. To more effectively distribute its resources—and to fulfill the Legislature's directive “[t]o promote the orderly and efficient administration of justice”<sup>7</sup>—the Business Court assigned judges in divisions with fewer filings to cases in busier venues. This “equalization” procedure allowed the Business Court to spread case assignments more evenly, and had the added benefit of introducing lawyers and litigants to capable jurists whom they might not otherwise have encountered. The Business Court's reputation, we believe, can only be enhanced the more that parties and people experience the quality and work ethic of the judges whom Governor Greg Abbott appointed to it.

Two other important features of the Texas Business Court's “equalization” procedure bear mentioning here. First, equalized cases are not transferred away from the original division that they were filed in. A Houston case remains a Houston case, for example, even though a judge from another division has been assigned to handle it. In such circumstances—absent agreement of the court and parties to do otherwise—the trial and all evidentiary hearings will be held in the division where the case was filed.<sup>8</sup> Second, absent unusual circumstances, an equalized case will be re-assigned more or less immediately upon filing, if not before.<sup>9</sup> The Business Court judges believe that, to the extent possible, a single judge should be assigned to call the “balls and strikes” in any given case. Efficiency

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<sup>7</sup>. See Tex. Gov't Code § 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.”).

<sup>8</sup>. Business Court Local Rule 2 makes this clear: “The administrative presiding judge may re-assign cases for the purpose of equalizing the docket. The trial and all in-person hearings in a re-assigned case will remain in the same Division regardless of the judge assigned, absent the agreement of all parties.”

<sup>9</sup>. See, e.g., Business Court Local Rule of Administration 3.2, which contemplates that some cases may be re-assigned for docket equalization purposes prospectively, even before they have been filed: “On a quarterly basis, the Business Court may enter an administrative order stating that a specified number of the cases next filed in one or more Divisions of the Court after a certain date, exclusive of cases in which a temporary restraining order is requested, will be assigned to identified judges in other Divisions of the Court, who will sit as judges of the originating Division for purposes of that case.”

is best served when parties do not have to adjust to the different strike zones of substitute umpires.

**IV-3 WHAT KINDS OF CASES DID THE BUSINESS  
COURT ATTRACT?**

The Texas Business Court has been attracting the high-value disputes for which it was designed. The distribution of case values above the \$5 million and \$10 million thresholds established by House Bill 19 demonstrates that these jurisdictional requirements were effectively screening for the complex, significant business disputes that warrant specialized attention.

The parties before the Texas Business Court represent a mix of both publicly-traded companies and private entities, suggesting that the Business Court attracted not only Fortune 500 corporations but also closely-held businesses and partnerships involved in complex commercial relationships. This diversity suggested that the Business Court’s benefits extended beyond mega-litigation to encompass the full spectrum of significant business disputes.

Litigants in the Business Court represent broad representation across Texas’s diverse economy – from traditional energy and agriculture sectors to emerging technology and financial services industries. This wide range of businesses bodes well for the Texas Business Court’s continued growth, as it indicates knowledge of and interest in it has reached beyond a handful of isolated industries. Which makes an increasing caseload more likely despite potential future downturns in any one economic area. This broad sectoral participation validates the Business Court’s design as a general business litigation forum rather than a specialized court for particular industries.

Finally, the case types that the Texas Business Court has seen in its first year likewise reflect a mix including complex contract contests, fraud allegations, corporate governance issues, securities litigation matters, and intellectual property disputes—along with the occasional executive employment contest. While the Business Court’s jurisdictional grant assuredly reflects a narrow slice of the Texas state court civil case docket, it would seem that the Legislature chose well. In particular, with the recent legislative clarification that the Business Court possesses jurisdiction over

intellectual property disputes,<sup>10</sup> there does not appear to be any obvious and significant category of cases demanding—but being denied—entry into the Texas Business Court.

#### **IV-4 JURISDICTIONAL DEVELOPMENT AND CLARIFICATION**

##### **IV-4:1 In its Initial Opinions, the Business Court Addresses Foundational Jurisdictional Challenges**

The Texas Business Court’s early opinions focused on jurisdictional questions—hardly surprising given the restrictive statutory framework and the fact that its initial caseload consisted entirely of either newly-filed or newly-removed matters. In particular, the Business Court was faced with novel issues of removal and remand procedure—a hardy staple of the federal court system, but heretofore unknown to Texas civil trial practice.<sup>11</sup> In addition, the majority of the judges had to wrestle, early on, with the question of whether the Business Court could accept cases commenced in other state courts before its September 1, 2024 start date.

These initial rulings filled in some of the gaps in the legislative latticework that created the Texas Business Court’s structure, and provided substantial guidance for practitioners evaluating whether their cases qualified for business court jurisdiction. The following are three such examples that the Business Court grappled with in its first year. Other such issues have arisen, and undoubtedly will continue to arise, given the intricacies created by the Business Court’s novel jurisdictional structure and the efforts to synchronize it with existing Texas court practices.

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<sup>10</sup> See H.B. 40, Sec. 45(d)(4) (codified at Tex. Gov’t Code § 25A.004(d)(4)).

<sup>11</sup> Tex. R. Civ. P. 355 was approved by the Texas Supreme Court on June 28, 2024, and governs removal and remand procedures in the Texas Business Court. See Final Approval of the Rules for the Business Court, Tex. Supreme Court, Misc. Docket 24-9037 (June 28, 2024).

## IV-5 KEY JURISDICTIONAL PRECEDENTS ESTABLISHED

### IV-5:1 Pre-September 1 Temporal Jurisdiction

As noted above, a critical early question concerned whether the Texas Business Court could accept removals of cases that had been filed in other Texas state courts prior to its creation. The enrolled version of House Bill 19, after all, had provided that “[t]he changes in law made by this Act apply to civil actions commenced on or after September 1, 2024.”<sup>12</sup>

In the end, eight of the Texas Business Court’s ten judges addressed this question—either *sua sponte* or in response to a party’s remand motion. And all eight resolved it the same way: in favor of remand back to the district court.<sup>13</sup> In subsequent opinions, the Fifteenth Court of Appeals confirmed the judges’ legislative construction.<sup>14</sup>

### IV-5:2 Removal Procedures and the Proper Burden of Proof

A key removal principle, expected to apply in numerous cases moving forward, was established in *C TEN 31 LLC v. Tarbox*.<sup>15</sup> There, Judge Melissa Andrews of the Texas Business Court’s Third Division clarified the burden of proof to establish the amount in controversy when a removal petition seeks to bring a case within the court’s jurisdictional limits. While the rules governing originally-filed petitions require a plaintiff to “plead facts to establish the business court’s authority to hear the

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<sup>12</sup> Act of May 25, 2023, 88th Leg. Reg. Sess., ch. 380, §§ 8-9.

<sup>13</sup> See *Energy Transfer LP v. Culberson Midstream*, 2024 Tex. Bus. 1, 705 S.W.3d 217 (1st Div. 2024) (Whitehill, J.); *Jorrie v. Charles*, 2024 Tex. Bus. 5, 705 S.W.3d 787 (4th Div. 2024) (Sharp, J.); *Seter v. Westdale Asset Mgmt., Ltd.*, 2024 Tex. Bus. 7, 2024 WL 5337346 (1st Div. 2024) (Bouressa, J.); *Tema Oil & Gas Co. v. ETC Field Servs.*, 2024 Tex. Bus. 3, 705 S.W.3d 226 (8th Div. 2024) (Bullard, J.); *Lone Star NGL Prod. Servs. LLC v. EagleClaw Midstream Ventures, LLC*, 2024 Tex. Bus. 8, 705 S.W.3d 243, 246 (11th Div. 2024) (Adrogué, J.); *XTO Energy, Inc. v. Houston Pipe Line Co.*, 2024 Tex. Bus. 6, 705 S.W.3d 239 (11th Div. 2024) (Dorfman, J.); *Yadav v. Agrawal*, 2025 Tex. Bus. 7, 708 S.W.3d 246 (3d Div. 2025) (Sweeten, J.); *Morningstar Winans v. Berry*, 2024 Tex. Bus. 5, 705 S.W.3d 236 (4th Div. 2024) (Barnard, J.).

<sup>14</sup> *In re ETC Field Servs., LLC*, 707 S.W.3d 924, 926-28 (Tex. App.—[15th Dist.] 2025, no pet. h.); *Lone Star NGL Prod. Servs. LLC v. EagleClaw Midstream Ventures LLC*, No.15-25-00003-CV, 2025 WL 2318307, at \*2 (Tex. App.—[15th Dist.] July 31, 2025, no pet. h.).

<sup>15</sup> *C TEN 31 LLC v. Tarbox*, 2025 Tex. Bus. 1, 708 S.W.3d 223 (3d Div. 2025).

action”<sup>16</sup> – i.e., whether the damages exceed the \$5 million and \$10 million thresholds – there is no such requirement in general state court practice.<sup>17</sup> In the typical case, where the defendant effects removal to the Business Court, the attached petition will not supply this information. And while the removal notice must plead facts to establish the Business Court’s authority to hear the action,<sup>18</sup> not every defendant can or does comply; it frequently lacks evidence that fixes the plaintiff’s damages.<sup>19</sup> For such cases, *C TEN 31* establishes a workable burden-shifting framework for assessing pretrial challenges to amount-in-controversy pleadings, in which the party urging remand bears the burden of showing that the alleged amount in controversy is either fraudulent or may be readily established to be insufficient.<sup>20</sup>

### IV-5:3 Partial Removal Prohibition

The First Division, in *Osmose Utilities Services, Inc. v. Navarro County Electric Cooperative*, firmly established a prohibition on “partial removal,” holding that a party’s “attempt to remove only part of the underlying case was improper.”<sup>21</sup> The issue arose in the context of the removal, by a co-defendant to a personal injury lawsuit, of its cross-claim for contractual indemnification from a second co-defendant and of the latter’s counterclaim under the same contract.

The second co-defendant had previously settled with the personal injury claimant. Obviously, the underlying personal injury lawsuit

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<sup>16</sup> Tex. R. Civ. P. 354(a).

<sup>17</sup> Cf. Tex. R. Civ. P. 47(c) (requiring non-Family Code petitions to specify only whether the damages sought fit within one of four monetary categories—with the highest category being “monetary relief over \$1,000,000.00”).

<sup>18</sup> Tex. R. Civ. P. 355(b)(2)(A).

<sup>19</sup> See also *C TEN 31 LLC v. Tarbox*, 708 S.W.3d 223, 239 (3d Div. 2025) (“[T]here is no duty to file jurisdictional evidence with a notice of removal to this [Business] Court.”).

<sup>20</sup> See *C TEN 31 LLC v. Tarbox*, 708 S.W.3d 223, 243-44 (3d Div. 2025). The ultimate burden of proof at trial remains with the party asserting the Business Court’s jurisdiction—if jurisdiction is still in issue at that time.

<sup>21</sup> *Osmose Utils. Servs., Inc. v. Navarro Cnty. Elec. Coop.*, 2025 Tex. Bus. 3, 707 S.W.3d 117, 123 (1st Div. 2025).

could not have been removed to the Texas Business Court.<sup>22</sup> And neither, Judge Bouressa determined, could the Court accept a partial removal of the associated indemnification dispute—which, although pled after September 1, 2024, was nonetheless contained within a case that pre-dated the Court’s existence.<sup>23</sup>

## IV-6 THE TEXAS BUSINESS COURT AND THE FIFTEENTH COURT OF APPEALS

### IV-6:1 An Unprecedented Appellate Partnership

The creation of the Fifteenth Court of Appeals, and its exclusive jurisdiction over all appeals from the Texas Business Court, arguably represents the single most innovative aspect of Texas’s new Business Court system. Despite the over thirty American jurisdictions that boast some form of business court or commercial division, Texas’s incarnation represents the first to partner trial and appellate levels into one streamlined review process. The design substantially reduces the uncertainty and delay that might otherwise result were Business Court appeals to be distributed across a vast state and its fourteen separate intermediate appellate courts—which possess varying levels of business law expertise and whose decisions do not bind each other.

### IV-6:2 Predictability Through Concentrated Expertise

Perhaps the most significant practical advantage of this system is the enhanced predictability it affords practitioners and their clients. In a district or county court lawsuit in Houston, for example, an attorney asked to advise his client about their appellate prospects must face the challenge of predicting (1) to which of two appellate courts—the First or the Fourteenth Court of Appeals—the notice of appeal may be assigned; and (2) which combination of three justices (among the nine total in each of the two courts) will be assigned as the panel, many months later.

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<sup>22</sup> See Tex. Gov’t Code § 25A.004(h)(2) (The Business Court has no jurisdiction over “a claim in which a party seeks recovery of monetary damages for bodily injury or death.”).

<sup>23</sup> See *Osmose Utils. Servs., Inc. v. Navarro Cnty. Elec. Coop.*, 2025 Tex. Bus. 3, 707 S.W.3d 117, 123 (1st Div. 2025); see also *Sebastian v. Durant*, 2025 Tex. Bus. 4, 707 S.W.3d 124 (11th Div. 2025).

This creates a “panel lottery” effect where a prediction about the outcome of an appeal may hinge upon which three justices (out of eighteen possible) happen to be assigned at random. It is hardly controversial to opine that different panels of the same court may diverge in their approach to complex legal issues; or that not every case can or will warrant en banc consideration.

The paired Texas Business Court system eliminates this lottery effect. Regardless of where in Texas your Business Court case originates, practitioners know their appellate path and can advise their clients accordingly—even before the case is filed, much less the notice of appeal. This consistency provides several significant advantages:

- **Predictable outcomes:** Practitioners can more accurately advise clients on appeal prospects based on established patterns from the same three-justice panel
- **No forum shopping:** The appellate process cannot be gamed through strategic case positioning
- **Uniform interpretation:** Business law principles develop coherently across the state rather than fragmenting across multiple appellate courts
- **Efficient precedent development:** Legal principles evolve systematically rather than through conflicting decisions from different panels in geographically diverse appellate courts

The concentrated expertise in business law matters at the appellate level complements the trial court’s specialization, creating a cohesive litigation process from filing to the final appeal.

The Texas Supreme Court’s validation of the new court of appeals’ statewide jurisdiction in *In re Dallas County* provided critical affirmation of the entire system’s legal foundation.<sup>24</sup> It not only eliminated a potential constitutional challenge, it also confirmed that the Legislature’s bold design for streamlined business litigation was legally sound and practically achievable.

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<sup>24</sup> *In re Dallas Cnty.*, 697 S.W.3d 142, 146 (Tex. 2024).

**IV-6:3 A Harmony of Purpose and Approach**

Thus far, the Fifteenth Court of Appeals has generally affirmed Texas Business Court decisions.<sup>25</sup> Litigants, moreover, made many attempts to obtain mandamus review of interlocutory trial court rulings, but the Fifteenth Court has largely rebuffed them on the merits. This initial harmony suggests a consistency in approach between the Fifteenth Court and the Business Court that bodes well for the future. Particularly illustrative of this point is *In re ETC Field Services, LLC*,<sup>26</sup> in which the Fifteenth Court noted the “unique context of new trial and appellate courts interpreting new rules” and the Legislature’s intent, expressed in HB 19 “to create a consistent, uniform, and predictable body of corporate and business law by creating a single business court . . . designed for prompt and uniform resolution of complex business litigation.”<sup>27</sup> Adopting a more flexible, pragmatic approach to mandamus review, Chief Justice Brister opined, made sense within this context: “Mandamus review of significant rulings in exceptional cases would allow this Court ‘to give needed and helpful direction to the law that would otherwise prove elusive,’ without unduly interfering on ‘issues that are unimportant both to the ultimate disposition of the case at hand and to the uniform development of the law.’”<sup>28</sup>

Arising as it does out of an understanding of the Texas Business Court’s charge to innovate and expedite, this openness to appellate review—particularly when it saves parties time, money, and resources that might otherwise be misspent—underscores the efficiency gains that can be wrung from the Business Court’s concentrated appellate structure. This enhances certainty and

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<sup>25</sup> See *In re ETC Field Servs., LLC*, 707 S.W.3d 924 (Tex. App.—[15th Dist.] 2025, no pet. h.) (holding that the Business Court did not abuse its discretion in remanding gas company’s action against LLC); *In re Synergy Glob. Outsourcing, LLC*, No. 15-25-00002-CV, 2025 WL 582311 (Tex. App.—[15th Dist.] Feb. 21, 2025, no pet. h.) (denying relator’s mandamus petition for the same reasons set out in *In re ETC Field Services, LLC*).

<sup>26</sup> *In re ETC Field Servs., LLC*, 707 S.W.3d 924 (Tex. App.—[15th Dist.] 2025, no pet. h.).

<sup>27</sup> *In re ETC Field Servs., LLC*, 707 S.W.3d 924, 928-29 (Tex. App.—[15th Dist.] 2025, no pet. h.).

<sup>28</sup> *In re ETC Field Servs., LLC*, 707 S.W.3d 924, 928 (Tex. App.—[15th Dist.] 2025, no pet. h.) (quoting *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004)).

decreases delay that might otherwise imperil time-sensitive business matters.

## **IV-7 LOCAL RULES AND FORMS: BUILDING A “CUSTOMER-FRIENDLY” COURT**

These are early days for the Texas Business Court. And much of what is written here is provisional and contingent, given that the Business Court has but one year’s existence under its belt. But if what’s past is prologue,<sup>29</sup> one should anticipate that as the Business Court grows, and its docket expands, it will retain its emphasis on approachability and demystification. Put less grandly: although undeniably a “specialty Court,” the Texas Business Court seeks to be user-friendly—focusing on form over substance and, whenever possible, deciding matters on the merits, not procedural defaults. Herewith we describe a few promising early shoots that we hope foretell a (one-day) mighty oak of adjudication.

### **IV-7:1 Short and Sweet Local Rules**

Although a startup business in its own right, the Texas Business Court is hardly unprecedented. As noted above, it is blessed to have some thirty such courts in other United States jurisdictions precede it. The Business Court thus had the luxury of time and the opportunity to survey the field to identify and adopt best practices pioneered by its predecessors.

The Texas Business Court’s promulgation of its local rules perhaps best exemplifies this process. Even before the Business Court came into formal existence (on September 1, 2024), its judges scoured rules of practice from other jurisdictions. Many of these are quite long and require extensive study to master their detail.<sup>30</sup>

The Texas Business Court judges, to a person, opted for a more “customer-friendly” approach, ultimately agreeing upon a limited

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<sup>29</sup> William Shakespeare, *The Tempest* act 2, Sc. 1, l. 289.

<sup>30</sup> See, e.g., the North Carolina Business Court Rules, weighing in at 38 pages (North Carolina Business Court Rules | North Carolina Judicial Branch); the New York Supreme Court Commercial Division Rules, at 32 pages (Commercial Division - NY Supreme Court | NYCOURTS.GOV); the Rules of the Georgia State-Wide Business Court, with 62 pages (State-wide-Business-Court-Rules-\_FINAL-1.pdf); and the Rules of the Court of Chancery of the State of Delaware, featuring a hefty 225 pages of guidance for practitioners (<https://courts.delaware.gov/forms/download.aspx?id=160908>).

set of rules that Texas litigators would recognize as familiar from district court practice. Weighing in at a mere five pages, with just ten separate rules, the Local Rules of the Business Court embodied the intent to keep the Business Court approachable, not opaque.<sup>31</sup>

### IV-7:2 Providing Standardized Forms to Parties and Counsel

Another aspect of the Texas Business Court’s “customer-friendly” approach is its provision of standardized forms to parties and their counsel. Recognizing that its matters, higher-dollar and more complex than the typical district court case, will often require customized, “bespoke” procedures—the Business Court has perhaps paradoxically chosen to provide standardized templates for the more common orders to be entered in its cases.

Chief among these are form scheduling orders (usually customized and entered following a conference of the parties, then the Court, that mirrors Fed. R. Civ. P. 26(f)); form protective orders; a standard ESI protocol authored by Division 1B; form pretrial orders; and, in the 11th Division, Steve Susman’s renowned “Susman Rules” (formally, “Towards Trial by Agreement”),<sup>32</sup> which encourage attorneys to adopt “rules that fit [the] particular case and were intended to make litigating less expensive and stressful for both sides.”<sup>33</sup>

The goal here is to reduce the contentiousness that might otherwise arise when counsel first engage on these matters, because the Business Court itself has dictated the form. The attorneys need only fill in the blanks, perhaps making a few additions or subtractions necessary to fit with the special needs of their case. As Steve Susman wrote, in explaining the origin of his “Rules”: “We learned immediately that our chance of striking an agreement depended on having the other side consider these ideas in the abstract, before a dispute arose. Thus, our practice is to send these

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<sup>31</sup>. The (accessible) Local Rules of the Texas Business Court may be accessed online, here: <https://www.txcourts.gov/media/1460640/local-rules-of-the-texas-business-court-effective-12526.pdf>.

<sup>32</sup>. See generally Texas Judicial Branch, *Texas Business Court Divisions*, available at <https://www.txcourts.gov/businesscourt/divisions/>.

<sup>33</sup>. Texas Judicial Branch, Eleventh Division Business Court, *Towards Trial By Agreement* at 1, available at <https://www.txcourts.gov/media/1459755/texas-business-court-eleventh-division-trial-by-agreement.pdf>.

to opposing counsel as soon as all counsel on both sides make an appearance.”<sup>34</sup> So, too, the Business Court recognizes that the best time to encourage the parties to consider reasonable rules and accommodations—that bid fair to streamline court procedures and impending controversies—is *before* their positions harden and *before* the inevitable disputes arise.

### IV-7:3 Simplifying, and Short-Circuiting, Discovery Disputes

“The purpose of discovery is to seek the truth, so that disputes may be decided by what the facts reveal, not by what facts are concealed.”<sup>35</sup> As noted above, Business Court disputes are complex and will typically require more active and sophisticated discovery management than the average civil case. Experienced litigators, moreover, well know that it is in discovery that a case is most likely to fall into “the ditch”—that place where resolution on the legal merits (“the truth”) often gets delayed while the parties battle to ensure that all the relevant facts are uncovered.

To that end, the Texas Business Court has adopted a practice common in the federal court system of requiring parties—before they haul off and file extensive discovery motions, responses, and replies, and then set them for hearing sometimes weeks after the dispute first arose—to first file a “discovery dispute letter” that summarizes the issue in no more than 700 words, with a similarly-limited response by the non-movant due (if desired) within seven days.<sup>36</sup> The Business Court may take any number of actions after receiving the letters: it may (a) provide written “guidance” to the parties, as to where it is leaning, (b) order a video or phone conference for further discussion, (c) decide the dispute, or (d) direct the parties to file a motion and briefing and notice same for hearing or submission.

This procedure, it is believed, expedites the resolution of discovery disputes in a practical and common-sense way. It also assists the Texas Business Court—and the parties—to “pick their

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<sup>34</sup> Texas Judicial Branch, Eleventh Division Business Court, *Towards Trial By Agreement* at 1, available at <https://www.txcourts.gov/media/1459755/texas-business-court-eleventh-division-trial-by-agreement.pdf>.

<sup>35</sup> *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 555 (Tex. 1990).

<sup>36</sup> Business Court Local Rule 4(d).

spots”: that is, to recognize that not every disagreement about the scope and extent of discovery necessitates the full attention of the Business Court and parties. Some can be resolved far faster, with less time and money—especially by judges who have refereed such disputes before and know where they are likely to come down. For those rarer issues that arise and do require full briefing—especially those for which a mandamus appeal may ensue, warranting the making of a complete record—this procedure enables the Business Court and parties to recognize them sooner and make the time available. Anecdotally, the judges confirm that this rule has resulted in pre-motion resolutions the majority of the times that it has been invoked. That keeps cases on track for trial, and out of the discovery “ditch.”

#### **IV-7:4 Equalization: Ensuring the Business Court Achieves Its Ends**

Rule 2 of the Local Rules provides as follows:

The administrative presiding judge may re-assign cases for the purpose of equalizing the docket. The trial and all in-person hearings in a re-assigned case will remain in the same Division regardless of the judge assigned, absent the agreement of all parties.<sup>37</sup>

Rule 3.2 of the Local Rules of Administration for the Texas Business Court states that the process of equalization may occur “[o]n a quarterly basis.”<sup>38</sup> By balancing case assignments among the judges, the Business Court seeks to ensure a more even workload despite the disparity in the number of filings per division.

One of the chief benefits that business courts offer to litigants is their relatively lean caseload, such that each case gains from active judicial management, an attentive judge, and—when the time for trial comes—an open courtroom. Were judges in certain divisions to stack multiple cases per trial setting, many of these benefits would be dissipated. Equalization helps the Business Court ensure that concern does not come to pass.

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<sup>37</sup>. Business Court Local Rule 2.

<sup>38</sup>. Texas Judicial Branch, *Local Administrative Rules* at 1, available at <https://www.txcourts.gov/media/1461741/local-admin-rules-effective-dec-1-2025.pdf>

## **IV-8 CONCLUSION - A STRONG FOUNDATION FOR FUTURE GROWTH**

The statistical success of the Texas Business Court’s inaugural year—185 cases across 10 judges with consistent growth throughout the year—exceeded initial expectations and demonstrated genuine demand for specialized business litigation services. As importantly, the Business Court met these quantitative goals while establishing an institutional framework that seeks to maximize the objective of streamlined, expedited dispute resolution. Whatever “wait and see” attitude that might have inclined attorneys and their clients initially to hold off in seeking this forum would appear to have yielded, as the pace of filings picked up substantially. And perhaps most importantly of all, the Business Court has demonstrated that complex business disputes can be resolved efficiently and effectively through specialized judicial attention without sacrificing the fairness and accessibility that are so essential to American civil justice.