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A Closer Look at the New Texas Business Courts: Key Developments and Insights

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On September 1, 2024, a notable change occurred in the Texas legal landscape with the official launch of the new Texas Business Courts. Created through House Bill 19, which was signed into law on June 9, 2023, these 11 civil courts aim to provide a specialized venue for trials, specifically those resolving significant, complex commercial disputes. They also seek to streamline cases away from the burdened district courts.

Here's a detailed look at the key features and important updates regarding this noteworthy new addition to Texas' judicial system.

Structure

As of September, five of the 11 planned divisions of the Texas Business Courts have begun accepting cases. The remaining six divisions have been deferred by the legislature and are expected to open on September 1, 2026, unless otherwise determined in the legislative session. The five open divisions are strategically located in larger metropolitan areas: Dallas, Austin, San Antonio, Fort Worth, and Houston. Each of the five open divisions has two judges.

Since their September opening, several original lawsuits have been filed in the Texas Business Courts, including three breach-of-contract cases, a construction dispute, and another alleging fraudulent transfer. Several cases have also been noticed for removal.

Creation and Purpose

The Texas Business Courts were created to handle high-stakes cases involving significant business disputes, including corporate governance, securities, fiduciary duties, and commercial matters. Their establishment aims to expedite the resolution of these complex cases and bring about more predictability and expertise in commercial litigation. By focusing exclusively on high-stakes business matters, the courts separate these cases from the general jurisdiction of the Texas district courts, creating an environment focused on the unique needs of large-scale commercial disputes. The courts' specialized focus ensures that judges with high commercial litigation experience preside over cases, bringing efficiency to complex legal matters. For cases to be eligible, the monetary threshold generally must be a minimum of \$5 million or \$10 million, depending on the nature of the claim and the parties involved. This financial requirement ensures that the courts are reserved for major commercial disputes.

Appellate Process

Rather than going to the geographically organized intermediate courts, appeals are directed to the 15th Court of Appeals, a new court specifically designated to handle cases from the Texas Business Courts. From there, cases can be further appealed to the Texas Court. This streamlined appellate process reduces the chances of conflicting rulings across various courts and ensures a more uniform interpretation of business law.

Constitutional Challenges

As with any structural change to the court system, there have been challenges. In August, the Texas Supreme Court denied a challenge to the constitutionality of the 15th Court of Appeals, which argued, *inter alia*, that the 15th Court violated the Texas Constitution's requirement that the state be divided into courts of appeals districts. The Supreme Court determined that there was nothing unconstitutional about adding another intermediate court of appeals with statewide jurisdiction to supplement the existing districts. There may be similar constitutional challenges asserted with respect to the Texas Business Courts. In addition to the favorable ruling from the Texas Supreme Court, the constitutions of some sister states, including Georgia, have allowed for creation of statewide business courts that are not carved out from geographically distributed trial courts, so there is some precedent to support the constitutionality of the courts.

Higher Filing Fees

Filing fees in the Texas Business Courts are much higher than those in district courts. The initial filing fee for an action originally filed in the Texas Business Courts is \$2,637. These fees are intended to fund the cost of administering these new courts and correspond to the court's mission of handling only large-scale, complex cases.

Unique Procedural Rules and Judge Selection

The Texas Business Courts have distinct procedural rules, setting them apart from other Texas courts. For example, they impose additional pleading requirements and require written opinions on dispositive motions. Furthermore, remote appearances are not allowed for jury trials, maintaining a more traditional courtroom setting. If a case is dismissed due to jurisdictional issues, the statute of limitations is tolled, which offers a degree of protection for litigants. Unlike most state judges, who are elected, the governor appoints Texas Business Court judges for two-year terms. Judges must meet specific qualifications, including being at least 35 years of age, U.S. citizens, and licensed Texas attorneys with at least ten years of experience in complex commercial litigation.

Removal of Older Cases to Texas Business Courts

Litigants have already attempted to remove cases filed before September 1, 2024 to the Texas Business Courts. However, the jurisdiction over such cases is still under scrutiny. The statutory language indicates that the Texas Business Courts are intended to hear cases filed after the September 1 start date, raising questions about the validity of removing older cases. This area remains a gray one that is still to be determined.

Notice and Timing of Case Removal

A party seeking to remove a case to a Texas Business Court must file a notice of removal in both the original and the Texas Business Court. If all parties agree to the removal, it can be filed at any time, but if there is disagreement, the notice must be filed within 30 days of discovering that the

case falls within the Texas Business Court’s jurisdiction.

Remand Process

If a party opposes the removal, a motion for remand may be filed within 30 days. The Texas Business Court may also remand a case, returning it to the district or county court if it deems the transfer inappropriate, but it will first allow the parties to object.





Conclusion

The Texas Business Courts represent a significant change for businesses engaged in high-stakes litigation in Texas. With their jurisdiction over sizable commercial disputes, specific procedural rules, higher fees, and judges with specific expertise, these courts show promise to bring efficiency and predictability to resolving business disputes.

For more information, check out the authors’ One-Hour Briefing, *The Latest on Texas’s Business Courts: What We Know and What You Need to Know*, available from PLI Programs on Demand. A transcript of the program is available exclusively on PLI PLUS.

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