

House Bill 19 and the Texas Business Court: A Business Litigator's Perspective

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A Major Change to the Texas Business Litigation Landscape

- House Bill 19 (88R): effective September 1, 2023
- Applies to civil actions filed on or after September 1, 2024
- Texas joins many other states in having a specialized court or docket for business-oriented or complex commercial litigation
- But there are notable differences between the Texas business court and the business courts / commercial or complex dockets of other states

The Texas Business Court

- *Structure*
- *Judges*
- *Jurisdiction*
- *Venue, removal, and transfer procedures*
- *Appeals*
- *Comparison to other states' business courts*
- *Constitutional challenges?*

The Structure of the Business Court

The Structure of the Court

Sec. 25A.002. CREATION. The business court is a statutory court created under Section 1, Article V, Texas Constitution.

Sec. 25A.003. BUSINESS COURT JUDICIAL DISTRICT; DIVISIONS.

(a) The judicial district of the business court is composed of all counties in this state.

(b) The business court is composed of divisions as provided by this section.

The Structure of the Court

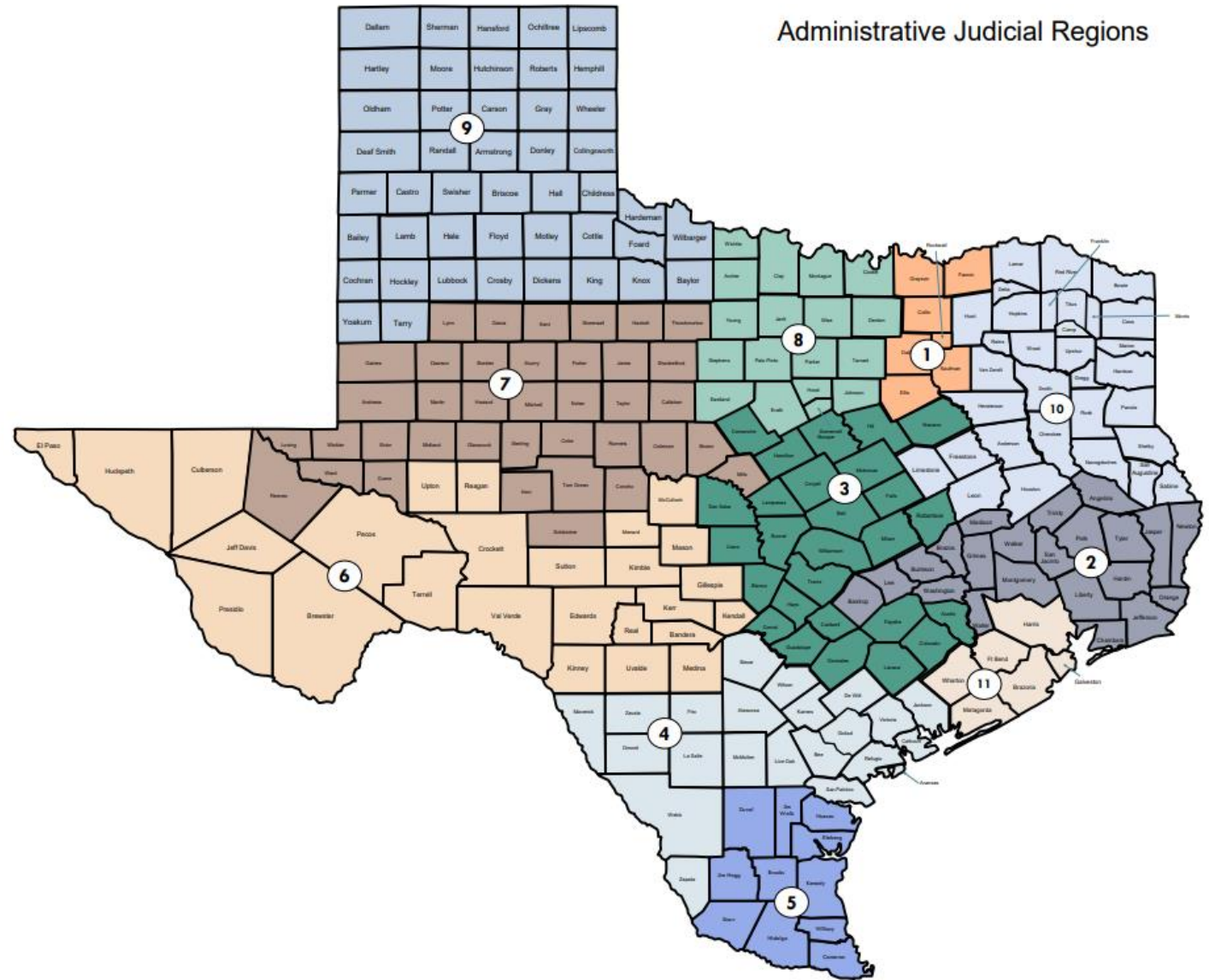
- Five business court divisions for which:
 - Judges are appointed as soon as practicable after Sept. 1, 2023
 - Funding has been provided
 - The division is not automatically abolished Sept. 1, 2026
- Six business court divisions for which:
 - Judges are not appointed before July 1, 2026
 - Funding has not (apparently) been provided
 - The division is automatically abolished Sept. 1, 2026 (unless reauthorized in 2025)

The Structure of the Court

- Effectively, therefore:
 - **Five** divisions that are coming into existence now
 - Corresponding to the to the first, third, fourth, eighth, and eleventh administrative judicial regions
 - **Six** divisions not yet in existence, and whose future existence is uncertain
 - Corresponding to the to the second, fifth, sixth, seventh, ninth, and tenth administrative judicial regions

The Structure of the Court

Business court divisions are established in the **1st** (Dallas), **3rd** (Austin), **4th** (San Antonio), **8th** (Fort Worth), and **11th** (Houston) Administrative Judicial Regions



The Structure of the Court

- Logistics:
 - Business court judges will select an administrative presiding judge for the business court by majority vote
 - The administrative presiding judge will appoint a clerk, whose offices will be in Travis County. The clerk shall accept filings.
 - Judges will maintain chambers in a county selected by the judge, within the division to which the judge is appointed
 - Court may be held at any courtroom within the division
 - Judges may order remote proceedings (other than for jury trials; and if oral testimony is taken in a hearing, all parties must consent)
 - Business court judges may exchange benches and sit for one another

The Structure of the Court

- Jury Trials:
 - County of jury trial will be announced after establishment of jurisdiction and venue
 - If case filed initially in the business court, plaintiff may choose county of jury trial, provided venue is proper in that county
 - If a case was removed, jury trial will be held in county in which action was originally filed (provided venue is proper)
 - Procedures regarding jury panels, jury selection, and other jury-related procedure shall mirror that of the district court in the county in which the trial is held

Judges on the Business Court

Judges

Sec. 25A.009. APPOINTMENT OF JUDGES; TERM; PRESIDING JUDGE; EXCHANGE OF BENCHES.

(a) The governor, with the advice and consent of the senate, shall appoint:

(1) two judges to each of the First, Third, Fourth, Eighth, and Eleventh Divisions of the business court

. . . .

(b) A business court judge shall serve for a term of two years, beginning on September 1 of every even-numbered year.

Texas Constitution, Article 16, Section 30:

“The duration of all offices not fixed by this Constitution shall never exceed two years.”

Judges

SECTION 4.

(b) If the appointment of judges by the governor to the divisions of the business court under Section 25A.009, Government Code, as added by this Act, **is held by the Texas Supreme Court as unconstitutional**, the business court shall be staffed **by retired or former judges or justices who are appointed to the court** as provided by Section 25A.014, Government Code, as added by this Act.

Judges

- Requirements for judges on the business court:
 - At least 35 years old, a United States citizen
 - A resident of a county within the division for at least five years
 - A licensed attorney in Texas with ten or more years of experience in:
 - Practicing complex civil business litigation;
 - Practicing business transaction law;
 - Serving as a judge on a civil court; or
 - Some combination of these

Jurisdiction of the Business Court

Jurisdiction

Concurrent Jurisdiction with District Courts

- The \$5 million (or publicly traded company) category
- The \$10 million category
- Declaratory or injunctive relief involving a dispute in one of above categories

But No Jurisdiction Over Certain Cases / Claims Unless Supplemental

- Supplemental jurisdiction must be agreed to by all parties and judge
- List of categories of cases

Supplemental Jurisdiction

- Applies to claims that are part of same case / controversy; must be agreed

No Jurisdiction at All, Not Even Supplemental

- Medical liability claims
- Claims seeking recovery of monetary damages for bodily injury or death
- Legal malpractice claims

Jurisdiction: The \$5 Million Category

- Derivative actions
 - Actions regarding governance of a business organization
 - State or federal securities or trade regulation claims against certain parties
 - Actions arising from Business Organizations Code
 - Actions seeking to hold an owner or governing person liable for obligation of the organization (veil-piercing)
 - Certain actions by a business organization or owner against an owner / controlling person / managing official of the organization re: acts or omissions
 - Actions alleging that an owner / controlling person / managing official breached a duty to organization or owner
- ***Note: these cases are within the Business Court's jurisdiction regardless of amount in controversy if a publicly trade company is a party to the action***

Jurisdiction: The \$10 Million Category

- Actions arising from a contract or transaction in which the parties agreed to the jurisdiction of the business court (except an action that arises out of an insurance contract)
- Actions arising out of a violation of the Finance Code or Business & Commerce Code by an organization or officer or governing person (excluding banks, credit unions, and savings and loans)
- Actions arising out of a “qualified transaction”

Jurisdiction: The \$10 Million Category

(14) "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.

Excluded from Jurisdiction, Unless Supplemental

- Actions brought by or against a governmental entity
- Foreclosures on a lien or real or personal property
- Claims arising from Title 9 Property Code (related to trusts)
- Claims arising from the Estates Code or Family Code
- Claims related to mechanic's, contractor's, materialman's liens
- Texas Antitrust Act claims
- DTPA claims
- Claims arising from the Insurance Code
- Claims related to the duties and obligations under an insurance policy
- Claims related to a consumer transaction
- Claims arising out of the production or sale of a farm product

Exercise of supplemental jurisdiction requires agreement of all parties and the court – see next slide

Supplemental Jurisdiction

... [t]he business court has supplemental jurisdiction over any other claim related to a case or controversy within the court's jurisdiction that forms **part of the same case or controversy**. A claim within the business 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. If the parties involved in a claim within the business court's supplemental jurisdiction do not agree on the claim proceeding in the business court, **the claim may proceed in a court of original jurisdiction concurrently** with any related claims proceeding in the business court.

Excluded from Jurisdiction Entirely

- Medical liability claims
- Claims seeking recovery of monetary damages for bodily injury or death
- Legal malpractice claims

To Be Determined

- Actual application of jurisdictional rules to a variety of cases and claims
- Will the amount-in-controversy requirements force parties to specify damages numbers early in the case?
- If a plaintiff seeks to avoid the business court on grounds that the amount in controversy is not met, will a binding stipulation be required? If so, will it also be sufficient?

Venue, Removal, and Transfer

Venue, Removal, and Transfer

- Parties may file actions directly in the business court (venue must be proper in a county in the business court division)
- Actions filed in district or county court that are within the business court's jurisdiction are removable to the business court
- However, a party may not remove to the business court an action filed in a district or county court of proper venue that is not within an operating division of the business court
- If the business court is found to lack jurisdiction, it may transfer or remand the action to a proper district or county court

Venue, Removal, and Transfer

(i) Removal of a case to the business court is not subject to the statutes or rules governing the due order of pleading.

(j) Removal of a case does not waive a defect in venue or constitute an appearance to determine personal jurisdiction.

Appeals

Appeals

- Appeals of judgments and orders of the business court will go to the newly created Fifteenth Court of Appeals
- The Fifteenth Court will have five justices elected statewide (three justices for the first three years)
- It will have statewide jurisdiction over appeals involving:
 - Matters brought by or against a state entity (with certain exceptions)
 - Matters in which a party challenges the constitutionality or validity of a state statute or rule and the attorney general is a party to the case
 - Appeals from the business court

Observation

The business court likely **increases** the number of strategic issues a Texas litigator must consider. Among many considerations:

- Whether litigating in the business court and Fifteenth Court of Appeals is desired – decisions about venue, parties, claims may follow
- Present incomplete coverage of state, and effect on forum selection
- Addition or subtraction of claims that would (or would not) be within business court's jurisdiction
- Whether to agree to supplemental jurisdiction or to proceed with two actions concurrently
- Two-year judicial terms and effect on case progress and continuity

Comparison to Other States

Comparison to Other States

- Selection of judges:
 - Texas—governor appoints
- Terms of judges:
 - Texas—two years
- Mandatory vs. agreed jurisdiction:
 - Texas—effectively mandatory, except for supplemental jurisdiction

Comparison to Other States

- Statewide court vs. regional or local court:
 - Texas—statewide (but operating in approx. 1/3 of counties)
- Created by constitution, statute, or judicial rule:
 - Texas—statute
- Appeals:
 - Texas—all appeals to a specialized statewide appeals court

Constitutional Challenges?

Constitutional Challenges

SECTION 4. (a) 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.

Concluding Thoughts and Questions