

What Financial Executives Want to Know about the Business Court but Are Afraid to Ask



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What Is a Business Court ?

- Specialized trial court to handle complex business disputes



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Be Prepared for a Different Experience!

- Your experience will be unlike anything you have ever experienced in court
 - Targeted disposition goals
 - Streamlined procedures to achieve goals
 - Innovation



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Why Do We Need One?

- Booming economy
- Backlogged courts
- Compete for new business formations
 - Business flexible governance laws
 - Predictability
 - Need expertise and speed
- Mission
 - Bring efficiency and expertise
 - Innovative and creative
 - Beat Delaware



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How Booming is Texas?

- Second largest US population
- Houston, San Antonio, Dallas, Fort Worth, Austin in top twelve
- Seven of the fastest growing Texas cities are in Dallas area
- Eighth largest GDP in the world
 - Larger than Russia, South Korea, Italy, Australia
 - DFW > Poland
 - Gulf Coast > Argentina
- Fifty-four Fortune 500 HQs (Exxon, Chevron, ConocoPhillips, AT&T, American Airlines, Southwest Airlines, TI, Halliburton, Waste Management)



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How Booming is Texas Part 2?

- DFW nation's largest metro area by 2030
- Dallas second most important US financial center
 - Three new stock exchanges
 - Y'all Street
 - NASDQ
 - NYSE
 - Goldman Sachs
- DFW Airport
 - Airports Council Int'l rates as best in North America
 - World's third busiest for passengers in 2024



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How Booming is Texas Part 3?

- Houston world energy leader
 - ExxonMobil
 - Chevron
 - ConocoPhillips
 - Shell USA
 - BP USA
 - Total Energies E&P USA
 - Transocean Drilling US
 - Valaris
- Largest US port in tones of waterborne freight, 15th in world
- World's largest medical complex



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How Booming is Texas Part 4?

- Austin and Dallas are tech and telecom hubs
 - Tesla, SpaceX, Dell Computers, Hewlett Packard, AT&T
- Corpus Christi, largest US and third largest oil port
- Most US farms and ranches, with 126 million acres
- Largest cattle, cotton, sheep, goats, mohair, and hay
- Largest watermelon producer
- Third largest US citrus producer



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Why is Texas Booming?

- No income taxes and light regulatory burden
- Commitment to getting things done
- Natural resources and educated work force
- Legislative changes
- Texas Business Court



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What Are Some Recent Legislative Changes?

- SB 29
 - Codified and heightened business judgment rule
 - Derivative suit ownership thresholds
 - Upfront rulings regarding board independence
 - Bars attorneys' fees in disclosure only derivative suits
- SB 2337
 - Proxy advisors must explain basis of advice and how it subordinates financial interest to other interests
 - Requires specific economic analysis if advice is different from the board



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What Are Some Recent Legislative Changes?

- SB 1057 – Ownership and solicitation requirements-Texas based Cos.
 - Headquartered in Texas or listed on a Texas based exchange
 - Own \$1M or 3% of voting shares for six months
 - Must solicit at least 67% of shares entitled to vote on the proposal
 - NA to director nominations or procedural resolutions
- HJR 4 – Const. Amendment
 - Prohibits new taxes on securities transfers conducted by “registered securities market operators”



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Are Specialized Courts New?

- 1891 Court of Criminal Appeals three original courts of civil appeals
- Criminal, family, tax, juvenile, truancy, etc.



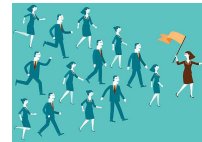
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Is Texas Leading the Way with Business Courts?

- Yes and no
 - Delaware is more than 200 years old
 - More than thirty states have some form of business court
 - Legislature and TBC adopted best practices



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How Is the Business Court Structured?

- Eleven authorized divisions
 - Five operating divisions
- One court but ten judges, for now
- Appointed judges/two-year terms
- Expect six-year terms (someday)



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Where Is the Dallas Division Located?

- Two for the First Division
 - Whitehill
 - At SMU I
 - Bouressa
 - Currently off 121 in McKinney
- Impact on Whitehill's approach



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What Is Its Jurisdiction?

- Two big buckets/lots of specifics (Sec. 25A.004)
 - Contract disputes (\$10MM soon \$5MM), except commercial bank loans
 - Internal affairs (\$5MM)
- HB 40
 - Arbitration disputes
 - Trade secrets and other IP not exclusively federal
 - Series of transactions
- Supplemental jurisdiction
 - Same case or controversy
 - *Reed v. Rook TX*, 2025 Tex. Bus. 23 (one hook enough)
 - Some only if supplemental (antitrust, DTPA, etc.)
- Excluded jurisdiction



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How Do We Get Cases into TBC?

- Plaintiff's choice
- Defendant removals
- Either party removes if facts change
- Parties agree at any time
- District court punts
- Forum selection clauses
- Pre-September 1, 2024, by agreement and with permission



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Are There Jury Trials?

- You bet
- Where and how



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What Are the Venue Rules?

- TEX. CIV. & PRAC. REM. CODE Ch. 15/within a division
- Other statutes
- Forum selection clauses



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Who Are the Judges?

- <https://www.txcourts.gov/businesscourt/about-the-court/>
- Division One (Dallas): Andrea Bouressa and Bill Whitehill
- Division Three (Austin): Melissa Davis and Patrick Sweeten
- Division Four (San Antonio): Marialyn Barnard and Stacy Sharp
- Division Eight (Fort Worth): Jerry Bullard and Brian Stagner
- Division Eleven (Houston): Sofia Adroque and Grant Dorfman



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How Is Texas Different?

- Devoting resources exclusively to TBC
- How we process cases (All electric with one clerk))



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What Are the Exclusive Resources?

- Full time judges
- Staff lawyers
- Law clerks
- Technology



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How Will TBC Be Different?

- Envision federal practice (rocket docket) and arbitration (access and informality) marriage
 - One-year to trial
 - Mandatory Rule 166(g) and (p) early planning conference and scheduling orders (FED. R. Civ. P 26(f) and 16(b)(2))
- Judge availability
 - Informal conferences
 - Quick access
- Substantive Opinions
- Streamlined non-dispositive motions
- Continuances “disfavored”
- Technology



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How Do I Find/Cite TBC Opinions?

- Westlaw, Lexis, <https://scholar.google.com/>, etc.
- <https://www.txcourts.gov/businesscourt/opinions/>
- 2025 Tex. Bus. 1 (1st Div.)



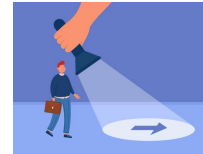
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What to Expect in Division 1B (Part One)?

- Goals: Transparency, accessibility, customer service
- A-Team Staff
- Welcome letter
- Templates
 - <https://www.txcourts.gov/media/1459381/texas-business-court-division-1b-guidelines.pdf>
 - [Proposed Scheduling Order](#)
 - [Proposed Protective Order](#)
 - [Form ESI Order](#)
- “Guidelines,” not rules



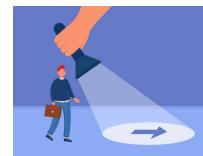
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What to Expect in Division 1B (Part Two)?

- Goal: focus on dispositive issues
- Planning conferences
- Flowcharts
- Status Conferences
- TRCP 166(g) and (p)
- General Accessibility



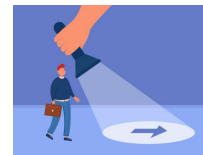
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What to Expect in Division 1B (Part Three)?

- Discovery requests
- Discovery disputes and non-dispositive motions
- Hearings
- Pretrial conference



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Buckle Up!



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