

McKool Smith

**Overview of New Business
Courts in Texas**

Key Implications for Business
Litigation

CONTACT:

Robert Manley

Principal | Dallas

(214) 978-4226

rmanley@McKoolSmith.com

Table of Contents

3 - Introduction

4 - Background

6 - Jurisdiction and Powers

11 - Judicial Authority and Filing

12 – Jury Trial

14 - Courtrooms, and Remote Proceedings

15 - Written Opinions

16 - Appeals

18 - Judges

21 - Questions Going Forward

Introduction – Business Courts

Specialized Handling of Business Disputes:

- Business courts are designed to handle complex commercial litigation efficiently and expertly, offering a reliable and streamlined process for business-related cases.

Expertise and Efficiency:

- Judges appointed to business courts will have specialized knowledge and experience in business law, which leads to more consistent and informed decisions.

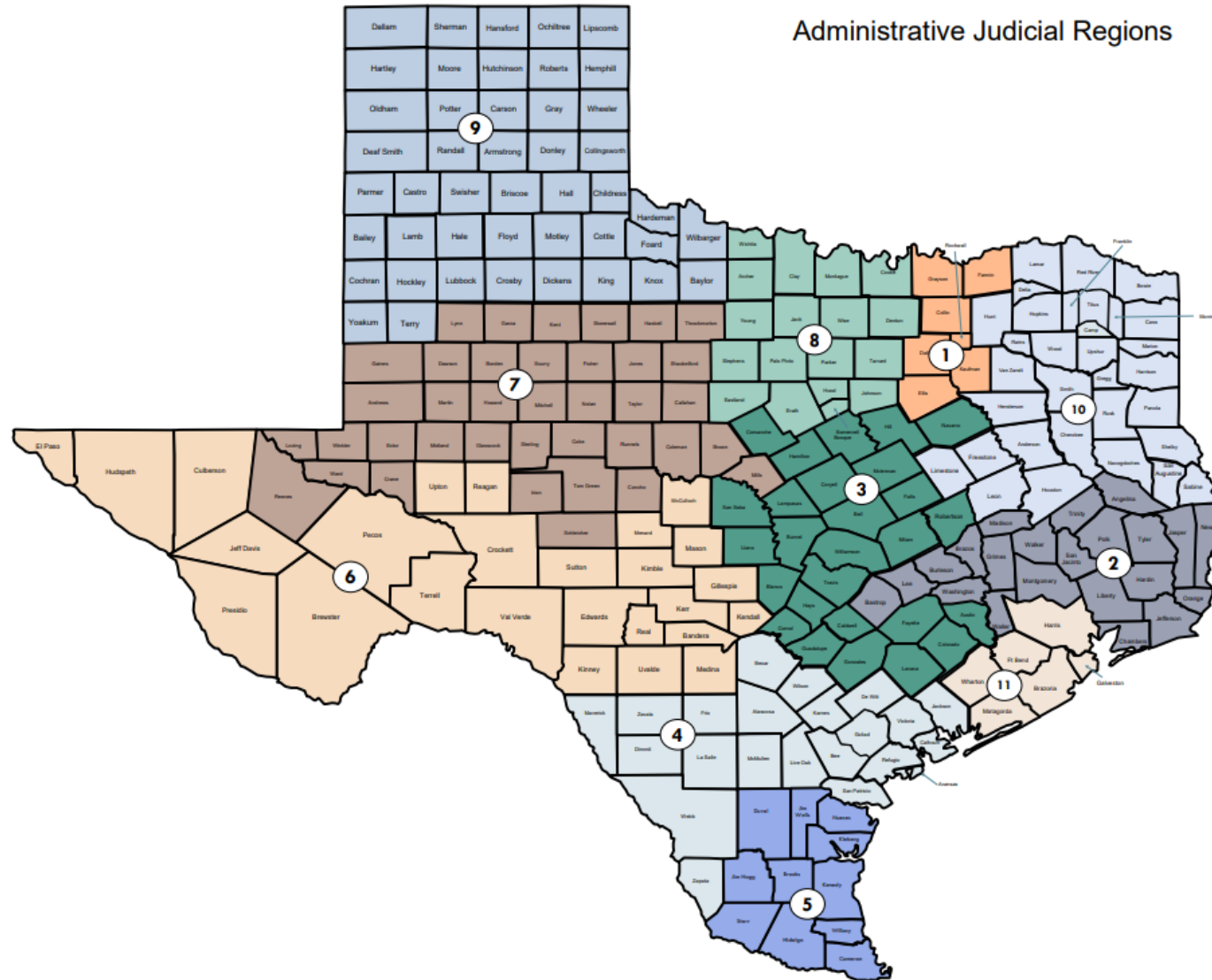
Enhanced Business Environment:

- By resolving disputes more quickly and predictably, business courts create a more favorable environment for business operations and investments.

BLUF: Business courts were created to make Texas more attractive for business.
Applies to civil actions after September 1, 2024.

Background

Single statewide statutory court with eleven “divisions” same as admin. regions.



Background

Long-Time Coming

- Proposals for specialized court's creation for over a decade.
- Texas becomes 30th state to have specialized business court.
- Authorized under Texas Constitution Section 1, Article V.
- Exists under Chapter 25A of Tex. Gov. Code.
- Texas Supreme Court Advisory Committee will publish final rules around August 2024.

Jurisdiction and Powers – General Overview

Jurisdiction depends on the action and amount in controversy.

- Concurrent jurisdiction with civil district courts over specific business disputes.
- Divided between amounts in controversy exceeding \$5 million and those exceeding \$10 million.

Same powers as district courts, including:

- Issue writs of injunction, mandamus, sequestration, attachment, garnishment, and supersedeas.
- “Grant any relief that may be granted by a district court.”

Civil Jurisdiction

Actions with jurisdiction for amount in controversy exceeding \$5 million*:

- Derivative proceedings
- Actions regarding governance or internal affairs of an organization
- Claims under state or federal securities or trade regulation laws against organizations, controlling persons, underwriters, or auditors
- Actions by organization or owner of organization against an owner, controlling person, or managerial official of the organization
- Breach of duty claims (loyalty, good faith)
- Actions holding owners liable for organization's obligations
- Actions arising out of the Business Organizations Code

***Publicly Traded Company:**

- Regardless of the amount in controversy, jurisdiction for the above actions when a publicly traded company is party to the action

Civil Jurisdiction

Actions with jurisdiction where controversy exceeds \$10 million:

- Qualified transactions (consideration or money/credit at least \$1 million)
- Contract or commercial transaction agreements where the parties had previously agreed to business court jurisdiction (excluding insurance contracts)
- Violations of Finance Code or Business & Commerce Code by organizations/officers (excluding banks, credit unions, savings and loan associations)

Actions for injunctive relief and declaratory judgments have jurisdiction based on those disputes having jurisdiction above.

Civil Jurisdiction

Supplemental jurisdiction exists for any other related claims to a case or controversy within business court's jurisdiction.

- May proceed in business court only with agreement of all parties and a judge of that division
- If no agreement, claim may proceed concurrently in court of original jurisdiction

Following claims excluded from business court, unless supplemental jurisdiction:

- Brought by or against governmental entities
- Foreclosure actions on liens
- Claims under specific codes:
 - Subchapter E, Chapter 15: Monopolies, Trusts, and Conspiracies in Restraint of Trade
 - Chapter 17: Deceptive Trade Practices
 - Estates Code, Family Code, Insurance Code
 - Chapter 53: Mechanic's, Contractor's, or Materialman's Liens
 - Title 9, Property Code: Trusts
- Claims related to farm product production/sale, consumer transactions, and insurance policy duties

Civil Jurisdiction

No jurisdiction for these claims, regardless of supplemental jurisdiction:

- Chapter 74: Medical Liability
- Bodily injury or death damages
- Legal malpractice

Judicial Authority and Filing

A business court judge has all powers, duties, immunities, and privileges of a district judge.

Initial Filing, Removal, and Remand:

- Actions can be filed in business court if venue is established in a county in a division of the business court; and, the action will be assigned to that division
 - Venue established by law, or by written contract if a specific county for venue was provided
- Courts either transfer or dismiss if the business court lacks jurisdiction
- A party may remove actions from district or county courts to the business court, with remand if jurisdiction is lacking
 - Party may not remove to business court if county of proper venue is not within an operating division of the business court

Jury Trial – Guarantees and Procedure

Constitutional Guarantee: Parties have a right to a jury trial.

Practice and Procedure

Consistency with District Courts:

- Same procedures for jury selection and practice as district courts.

Conduct of trials, hearings, and other business:

- Governed by district court rules, unless specified otherwise in this chapter.

Jury Trial - Venue

Venue for Jury Trial:

Initial Filing in Business Court:

- Jury trial held in any county where the case could have been filed, chosen by the plaintiff.

Cases that were removed to the Business Court:

- Held in the county where the action was originally filed.

Contractual Venue:

- Held in the specified county if a contract designates one.

Agreed Venue:

- Can be held in a different county if all parties and the judge agree; agreement cannot be forced.

Courtrooms and Remote Proceedings

Courtroom: each Business Court must maintain chambers in one of the counties within its division.

- Judge can conduct remote proceedings as needed.
- Judge may not require a party or attorney to attend a proceeding remotely in which oral testimony is heard unless parties agree otherwise.

Location

- Currently unknown where the physical building will be.
- Assumed that judges will sit in state district court buildings.
- Business Court clerk's office will be in Travis County in state facilities.

Written Opinions

Supreme Court of Texas determines rules for issuance of opinions.

Required: Business court judge must issue a written opinion when:

- in connection with a dispositive ruling, on the request of a party; and
- on an issue important to the jurisprudence of the state, regardless of request.

Permitted: may issue a written opinion:

- in connection with any order.

Expected to enhance predictability for Texas businesses by providing clearer guidance on corporate governance, fiduciary duties, and business transaction interpretations.

Appeals

Exclusive Jurisdiction: Newly created Fifteenth Court of Appeals handles all appeals.

Where: The 15th CoA will sit in Austin.

Composition: One chief justice and four justices. (One chief and two justices for first two years).

Rules and Procedures:

- SCAC currently drafting rules to govern the 15th CoA.
- Procedure is same as appeals from district courts.

Pending Appeals:

- SCAC recommended giving autonomy to each court of appeals to decide for themselves how to best effectuate transfers to the 15th CoA.

Appeals

How will the Fifteenth Court of Appeals identify its precedent?

- Fifteenth CoA has statewide jurisdiction over specific cases, therefore it does not have inherited precedent.
- Fifteenth CoA has multiple pools to pull from for its rulings:
 - **English common law:** utilizing “generally understood” common-law ideas
 - **“Vertical” precedent:** Texas Supreme Court, SCOTUS, and Tx. Ct. Crim. Appeals
 - **Federal practice:** “*Erie* guess” – predicting how highest court would decide
 - **Conflicts:** leaning on generally recognized conflict-of-laws principles
 - **Historical examples:** looking to the past where SCOTUS confronted similar problems

Attorneys will need to pay special attention to how the CoA handles its first appeals. What source will support its reasoning?

Qualifications of Judges Expanded

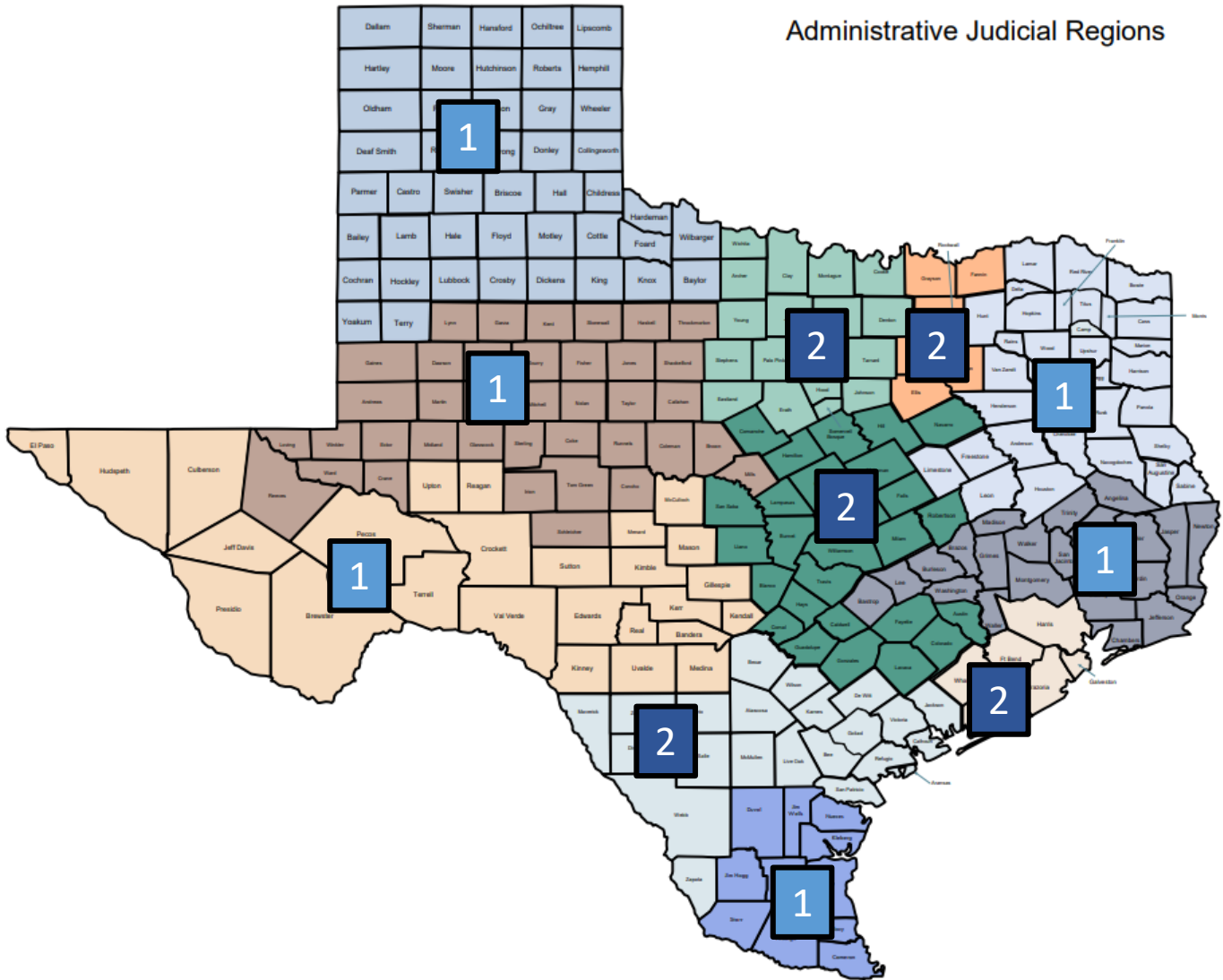
A Business Court judge must:

- 1) Have been a resident of a county within the division of the business court to which the judge is appointed for at least five years before appointment;
- 2) Be a licensed attorney in this state who has 10 or more years of experience in:
 - A. practicing complex civil business litigation;
 - B. practicing business transaction law;
 - C. serving as a judge of a court in this state with civil jurisdiction; or
 - D. any combination of experience described by Paragraphs (A)-(C)
- 3) Be at least 35 years of age; and
- 4) Be a United States citizen.

A business court judge may not have had the judge's license to practice law revoked, suspended, or subject to a probated suspension.

Appointment of Judges

Appointed by the governor with advice and consent of the senate.



Update: Appointed Judges

New 15th Court of Appeals:

- Former Texas Supreme Court Justice Scott Brister will serve as chief justice alongside Justices Scott Field and April Farris. They will each serve two-year terms from Sept. 1 through 2026.

First Business Court Division (Dallas):

- Andrea Bouressa and William “Bill” Whitehill
(composed of counties of Collin, Dallas, Ellis, Fannin, Grayson, Kaufman, and Rockwall)

Eighth Business Court Division (Fort Worth):

- Jerry Bullard and Brian Stagner
(composed of counties of Archer, Clay, Cooke, Denton, Eastland, Erath, Hood, Jack, Johnson, Montague, Palo Pinto, Parker, Somervell, Stephens, Tarrant, Wichita, Wise, and Young.)

Issues Going Forward

Amount in Controversy

- Will a party seeking to avoid a TBS have to formally plead an amount under \$5 million?
- Can a party contest the amount in controversy?
- Will a TBS allow early limited discovery on likely damages?
- Will determination of amount in controversy have a preclusive effect at trial?

Supplemental Jurisdiction

- How will a TBS balance scope of its subject matter jx with reach of supplemental jx?
- “Arises out of” vs. “related to” litigation.
- Claims that include fraud, misrepresentation, and unjust enrichment.

Business Court and MDL Court Interactions

- Can a party tag and transfer an existing TBS case to a newly created MDL matter?
- Would an action subject to an MDL be removable to the TBS if it falls within TBS’s subject matter jurisdiction?

McKool Smith

Questions, comments for
discussion

CONTACT:

Robert Manley

Principal | Dallas

(214) 978-4226

rmanley@McKoolSmith.com