Observations from the First Two Years of the Texas Business Court

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September 10, 2026

Executive Summary

The new and specialized Texas Business Court has now been operating for two years, and a meaningful body of opinions has begun to emerge from that court. Because the business court, unlike district courts, routinely issues detailed written opinions, practitioners finally have real guidance on how the court approaches both substantive business disputes and procedural questions that may arise along the way. This Alert summarizes what practitioners have observed in litigating before the Texas Business Court, explains why its opinions matter, and reviews some of the key holdings from the court's most significant decisions to date.

Jurisdiction and Framework of the Business Court

The Texas Business Court's jurisdiction is defined by statute, specifically Chapter 25A of the Texas Government Code. The Business Court's jurisdiction is relatively narrow and designed to specifically address complex commercial disputes that impact publicly and privately held businesses. *See generally* Tex. Gov't Code § 25A.004; *see also Sebastian v. Durant*, 707 S.W.3d 124, 126 (11th Div. 2025). A lot has been written since the outset on the types of cases that are under the purview of the Business Court's jurisdiction, but a quick non-exhaustive summary is always helpful. The Business Court, in essence, can hear the following types of claims where the amount in controversy exceeds $5 million:

- Derivative proceedings;
- Governance, governing documents, or internal affairs of an organization;
- Certain types of claims under state or federal securities or trade regulations;
- Actions by organizations (or owners of an organization) against owners or controlling persons;
- Owner or controlling person breaches of fiduciary duty;
- Claims arising out of the Texas Business Organizations Code (TBOC);
- Claims arising out of transactions other than loans by banking institutions where the aggregate value of the transaction or non-banking organization originated loan is greater than $5 million;

- Claims arising out of contracts or transactions where the parties agreed to the jurisdiction of the Business Court (except where the claim arises out of an insurance contract); and
- Claims arising out of or relating to the ownership and use of intellectual property.

See id.

During the first two years of the business court's operation, there were numerous cases dealing with the Court's jurisdiction and the narrow scope of it under the Texas Government Code. It is anticipated that jurisdictional challenges will continue, particularly where one side of the litigation feels that it is advantageous to be in traditional state district court versus the business court. This was the case in a recent significant jurisdictional opinion from the Eleventh Division Business Court, *Brown v. Exxon Mobil Corporation*, 2026 WL 1531165 (11th Div. May 29, 2026).

The *Brown* case addressed whether an employment racial discrimination claim by a former executive was a claim that fell under the narrow jurisdiction of the Business Court. Exxon removed the case to the Business Court, arguing that Plaintiff's employment discrimination claims were subject to the Business Court's jurisdiction because they arose from the internal affairs of the organization and from a qualified transaction. *See id.* at *1. The Business Court, however, concluded that there was no jurisdiction and remanded the case back to the District Court. *See id.*

Two key takeaways from the Eleventh Division's decision in *Brown* have to do with how narrowly the Court is going to read its jurisdictional grant under the Texas Government Code.

First, simply because the claims allege the involvement of a company's CEO or other decision-maker, does not mean that the alleged action giving rise to the suit is one that involves the internal affairs of a corporation. Instead, "internal affairs is read in context with two associated terms, "governance" and "governing documents," which are best understood as encompassing internal entity governance as dictated by the entity's governing documents and governing law. . . . Under the interpretation of "internal affairs' ExxonMobil urges this Court to adopt, almost any CEO's decision made or action taken would involve the "rights, powers, and duties of an organization's governing persons [or] officers," conferring Business Court jurisdiction." *Id.* at *8-*9. Second, the Court is going to look at the critical aspect of a plaintiff's claims in order to not "yield outcomes inconsistent with the statutory purpose" developing the Business Court. *Id.* at *12. For example, in *Brown* the Court declined jurisdiction because one of the claims involved Exxon's alleged refusal based on Brown's race not to award stock units. As the Business Court noted, this is not a dispute regarding the ownership of the stock units at issue themselves and therefore does not confer jurisdiction on the Court.

Why the Business Court's Written Opinions Matter

One of the most significant differences between the business court and a traditional district court is the frequency and depth of written opinions. District courts rarely issue detailed written opinions; the business court often does, giving litigants and transactional lawyers alike a growing body of reasoned case authority. Examples of this case authority are discussed more fully below.

Under Rule 360 of the Texas Rules of Civil Procedure, the business court must issue a written opinion if either (i) a party requests one on a dispositive motion or (ii) the issue presented is a matter of importance to the jurisprudence of the state, regardless of whether a party requested it. Tex. R. Civ. P. 360(a). Otherwise, the court has discretion to issue a written opinion "in connection with any order." Tex. R. Civ. P. 360(b).

As one commentator has explained, these opinions are "intended to enhance the predictability of legal issues for Texas businesses." Byron F. Egan, Texas Business Court, 11 SMU Ann. Tex. Survey 323, 326 (Tex. 2025). In practice, that predictability is showing up in two distinct ways:

- *Procedural guidance*. Business Court opinions are addressing procedural issues — evidentiary objections, responsible-third-party designations, protective order disputes — that rarely receive detailed treatment in appellate opinions.
- *Substantive guidance*. Business Court opinions are also beginning to develop substantive Texas law on corporate governance, officer and director liability, and the interpretation of complex business transaction documents.

Practical Experience Litigating Before the Business Court

Beyond the written opinions themselves, hands-on experience with the business court has revealed several consistent themes across a range of matter types within the Business Court's jurisdiction, including covenant-not-to-compete disputes, construction disputes, fiduciary disputes, and business or partnership dissolutions.

Time and Patience

Business court judges are reading the complex briefing and the underlying case law before hearings take place. The result is more efficient hearings, with the bench asking targeted questions on the key legal issues rather than working through the record for the first time on the bench. The overall experience feels closer to federal court or appellate practice than traditional state district court practice.

Why does this matter? At hearings, the parties and the Court can drill into the key legal and factual issues that require resolution. As a result, the Court is able to engage in a meaningful dialogue with the parties, which is a hallmark of the judicial system. This meaningful dialogue and focused advocacy by the attorneys representing clients in front of the business court is likely to lead to better and more predictable results for clients and parties. Furthermore, it allows hearings to be conducted in a more efficient manner. The hearing is focused on the specific issue that needs to be ruled on and does not require rehashing the case history, background, and facts at the hearing in advance of addressing the specific legal arguments.

Efficient, Flexible Case Management

The Texas Business Court's case management approach focuses on letting the parties shape the case in a way that fits the specific dispute and issues involved. In practice, that has meant flexibility on discovery scope and flexibility on case scheduling. One such example is allowing the parties in a complex construction dispute to abate the case initially for six months and later for nine months to allow early expert discovery and investigation to proceed in advance of other discovery efforts. In this instance, the early expert discovery was necessary in order to preserve and maintain the status quo of the evidence necessary for the dispute. In doing so, the Court worked directly with the parties regarding the timing and was focused on allowing the parties the time needed, versus focusing on seeking to move the case through discovery and to trial. This also may result in more efficient discovery between the parties, as the evidentiary issues and contentions can be significantly narrowed by the early expert retention and investigation of the construction project at issue.

A More Professional Relationship

The nature of the cases before the court, likely influenced by its jurisdictional limits, has also produced a more professional dynamic between practitioners who are adverse to each other. In our experience with cases pending in the Business Court, practitioners to date have been characterized by a high-level of professionalism with a focus on the specific issues of the dispute. To date, this has resulted in more efficient resolution of disputes between the parties and particularly with respect to issues such as discovery disputes.

Case Notes: The Business Court's Key Opinions

The following opinions illustrate how the Texas Business Court is developing both substantive and procedural Texas law.

Primexx: Fiduciary Duties Between Partners

Primexx Energy Opportunity Fund, LP v. Primexx Energy Corp., 709 S.W.3d 619 (Tex. Bus. Ct. 2025), is the first published Business Court opinion to address issues beyond the court's own jurisdiction, and it is a significant one: it addresses the fiduciary obligations partners owe one another.

Primexx was a limited partnership in which Blackstone, a limited partner, held a controlling interest. Callon made repeated offers to purchase Primexx, which the partnership initially rejected, until Blackstone forced a sale to Callon. That sale primarily benefited Blackstone and offered little financial benefit to the other partners.

The court's opinions in the case established several key points:

- Sophisticated parties have the contractual right to narrow fiduciary duties.
- Subject to the TBOC's minimum requirements, the partnership agreement is the baseline for determining the partners' obligations; common law fiduciary duties apply only to the extent they are compatible with the TBOC and the partnership agreement.

- The TBOC's duty of good faith is not equivalent to the common law fiduciary duty; the TBOC’s duty of good faith requires only fair dealing between the parties; it does not require that one party subordinate its own interests to another's.
- A party does not act in bad faith merely by lawfully exercising its valid contractual rights, even if it intends to injure its partners or knows that its actions will do so.

The minority partners have appealed the business court's ruling to the Fifteenth Court of Appeals. The case was argued on April 23, 2026, and the court of appeals has not yet issued its opinion.

Enosis: Do Officers of a Managing Member Owe Fiduciary Duties?

Enosis Invs., LLC v. Jensen, 737 S.W.3d 357 (Tex. Bus. Ct. 2026), addressed whether an officer of a managing member owes any fiduciary duty to an LLC.

George Lake and Brett Jensen agreed to jointly acquire and manage a mixed-use development in Travis County through several LLCs. Lake formed Enosis to serve as one co-managing member; Jensen formed Braverton, a corporation, to serve as the other. When disputes arose, Enosis sued Braverton and Jensen individually for breach of fiduciary duty. All parties agreed that Braverton owed a fiduciary duty to the LLCs; the question was whether Jensen did as well.

The court held that Jensen, individually, was neither a manager nor a member of the shared LLCs, and that "[p]laintiffs have not identified, and the Court has not discovered, any basis for imposing a fiduciary duty between the officers or shareholders of a corporation and an LLC in which the corporation is a manager." Enosis, 737 S.W.3d at 364. The court also criticized and distinguished Fifth Circuit authority holding that an officer of a general partner may owe a fiduciary duty to the partnership and its limited partners, noting that Braverton "does not have the kind of exclusive control present in those cases." Id. at 364 n.37.

Slant Operating: Procedural and Substantive Guidance in One Case

Slant Operating, LLC v. Octane Energy Operating, LLC, 729 S.W.3d 336 (Tex. Bus. Ct. 2025), illustrates the business court's value on both fronts, developing substantive law and resolving procedural questions.

Slant Operating and Octane are oil and gas operators that entered into a letter agreement in which each promised to waive any objection to the other's off-lease permit applications. Slant Operating held up its end of the bargain by waiving its objection to Octane's permit on Green Gables. Octane, however, refused to waive its objection to Slant Operating's permit on Gardendale. Slant Operating and its leaseholder, Slant Holdings, sued Octane, and the parties filed competing motions for summary judgment.

Procedural Holding

Texas appellate courts rarely address common evidentiary objections at the trial-court level. Octane asked the court to strike several of Slant Operating's summary judgment exhibits as "incomplete." The court overruled the objection, holding that the proper remedy for an incomplete exhibit is to complete it, "not to strike it." *Slant Operating*, 729 S.W.3d at 347.

Substantive Holding

On the merits, the court addressed whether contractual privity is a matter of capacity or of standing, and specifically, whether a defense that a plaintiff is not a third-party beneficiary of a contract is a capacity defense or a standing objection. The court held that a plaintiff lacks standing to pursue a breach of contract claim if it is neither a party to, nor a third-party beneficiary of, the contract. *Slant Operating, LLC v. Octane Energy Operating, LLC*, 729 S.W.3d 59, 66 (Tex. Bus. Ct. 2025).

Preston Hollow: Responsible Third Parties and Contract-Based Harm

Preston Hollow Cap., LLC v. Truist Bank, 730 S.W.3d 646 (Tex. Bus. Ct. 2026), presented a procedural question with real substantive consequences: may a defendant designate a person as a responsible third party (RTP) if that person committed no tort, but only breached a contract with the plaintiff?

Senior Care secured bond financing to build and develop a senior living facility, with Preston Hollow providing the financing and Truist serving as trustee on the bond indenture. After Senior Care defaulted, Preston Hollow learned that Truist had allowed Senior Care to deviate from the bond documents' requirement that it deposit gross revenues into approved accounts. Preston Hollow sued Truist for breach of fiduciary duty, and Truist moved for leave to designate Senior Care as an RTP.

The court held that, under the RTP statute, a responsible third party is someone who "caused or contributed to" the harm for which the plaintiff seeks damages and that "harm" carries "a meaning more akin to the legal concept of 'injury' than the concept of 'breach.'" *Preston Hollow*, 730 S.W.3d at 651. As a result, an RTP need only have contributed to the plaintiff's injury; it need not have participated in the underlying tort. Rejecting a contrary federal district court decision, the court concluded that an RTP may include a party who contributed to the plaintiff's injury by violating "the standards established by contract." *Id.* at 655.

Westlake Longview: Attorney's-Eyes-Only Designations

Westlake Longview Corp. v. Eastman Chem. Co., 712 S.W.3d 103 (Tex. Bus. Ct. 2025), is another example of the business court filling a gap in Texas authority, specifically, when material may properly be designated Attorney's Eyes Only (AEO) under a protective order. As the court observed, "there is limited authority" in Texas addressing the issue.

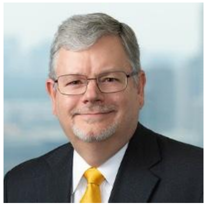
The underlying dispute was a breach of contract action: Eastman sold ethylene to Westlake for use at Westlake's East Texas plants. The parties agreed they needed a protective order for document production but disagreed on two points — whether the order should include an AEO clause and whether AEO material could be disclosed to the parties' in-house counsel.

The court applied a balancing test, weighing the harm of disclosure against the need for production, and held that the party seeking AEO protection bears the burden of showing (i) that the documents are sensitive and (ii) that there is a risk of harm from disclosure. *Westlake Longview*, 712 S.W.3d at 108–09. Depending on the circumstances, the court held AEO provisions may properly bar even in-house counsel from accessing the produced documents. *Id.* at 110–11.

Conclusion

Two years in, the Texas Business Court is delivering on much of its founding promise: a specialized forum that combines efficient case management with detailed written opinions on both procedural and substantive issues. For Texas businesses and their counsel, that growing body of precedent is a genuine asset, offering real guidance on fiduciary duties, contractual standing, RTP designations, AEO protections, and the mechanics of business litigation more broadly. As more cases work their way through the court and, eventually, the Fifteenth Court of Appeals, practitioners should expect that predictability to keep improving.

Byron Keeling and Kat Statman are attorneys at GableGotwals with substantial experience litigating before the Texas Business Court.



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