

Testing The Waters As New Texas Biz Court Ends 2nd Month

By **Andrew Price, Rafe Schaefer and Kate Ergenbright** (October 28, 2024, 4:34 PM EDT)

On Sept. 1, the much-anticipated Texas Business Court opened its doors. Since then, more than two dozen complex commercial disputes have been filed or removed to the court, and several jurisdictional and preliminary issues have been teed up for consideration.

The Texas Business Court's Growing Docket

Going into the final week of October, there were 35 cases pending in the Texas Business Court across all five of the court's divisions. The majority of the cases are pending in the First Division, in Dallas, and the Eleventh Division, in Houston.

Of the pending cases, 19 arrived in the court via removal from other Texas trial courts, and 16 are original filings. Of the 19 removed cases, 14 were already pending on Sept. 1 when the court began accepting filings.

Consistent with the Texas Legislature's pro-business impetus in creating the court,[1] several of its currently pending cases involve sizable damages claims brought by public companies with a large Texas presence.

For instance, in *BP Energy Co. v. Brad E. Cox*, BP seeks damages of more than \$270 million for an alleged breach of contract,[2] and in *Siemens Energy Inc. v. PDV Holdings Inc.*, Siemens seeks more than \$200 million from an alleged alter ego of *Petroleos de Venezuela SA*, related to a judgment obtained in the U.S. District Court for the Southern District of New York.[3]

Jurisdictional and Preliminary Issues of Interest

In its first several weeks, the Texas Business Court has already encountered a number of interesting jurisdictional and preliminary issues.

For those hoping the court will compete with the Delaware Court of Chancery as a preferred venue for complex corporate disputes, close attention should be paid to *Quantum Loophole Inc. v. TPG RE III Volt Holdings LP*.[4]

On Sept. 23, in what appears to be a race to the courthouse, Quantum, an Austin-based company, filed suit in the Texas Business Court against its joint venture partner TPG and TPG's affiliate Catullus



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Development Co. related to Quantum's removal as the manager of two Delaware joint venture entities.[5]

Three days later, TPG filed suit in the Court of Chancery against Quantum and several affiliated entities seeking a declaration, among other relief, that its removal of Quantum as manager of the joint venture entities was proper.[6]

On Sept. 30, Quantum filed a motion to dismiss or alternatively stay in the Court of Chancery proceeding "in favor of a first filed action in the Texas Business Court," which the court denied in a telephonic hearing shortly thereafter.[7]

As other similar lawsuits are brought in Texas Business Court, the authors expect this issue, and similar issues, will arise again, and parties will seek to challenge cases in the Texas Business Court with mirror-image suits in other jurisdictions where such cases have traditionally been filed, like the Court of Chancery or New York's superior court.

The authority to hear removed cases initially filed before the court opened on Sept. 1, appears top of mind for the Texas Business Court, as jurisdictional briefing on the issue has been ordered across divisions.[8] As previously noted, nearly half of the cases currently in business court fall in this category.

The court is also already dealing with its first request for judicial recusal, which has been referred to the presiding administrative judge for resolution.[9] The presiding administrative judge is the administrative judge for the judicial region where the court's division is located.[10]

According to the government code, "disqualification or recusal of a business court judge shall be governed by the same procedure as disqualification or recusal of a district judge." [11]

Under these procedures, if recusal is ordered, the case must be transferred to another court or assigned to another judge.[12] The procedures are silent as to whether a Texas Business Court case would be reassigned to another judge in the same division, to a judge in a different division of the court, to a different court entirely, or if a visiting judge would be appointed.[13]

If a visiting judge is appointed, the visiting judge must meet the court's qualification requirements.[14]

A Lag in Filings

Despite an uptick in filings, the court's docket remains fairly light. Several factors could contribute to a lag in filings.

For instance, for parties incorporating the Texas Business Court into dispute resolution provisions of their agreements, there will inherently be a lag as disputes related to those agreements may not yet exist.

Other litigants are likely employing a wait-and-see approach before choosing to file in the new jurisdiction. As time goes on and litigants get more comfortable with the Texas Business Court, filings will likely increase.

Several factors could lead to an increase in filings. For example, unlike other Texas state trial courts, the Texas Business Court is required to issue written opinions for dispositive rulings and on issues of

jurisprudential importance to the state.[15]

As these opinions are issued, litigants will get a sense of how Texas Business Court judges may handle certain issues.

The speed at which the Texas Business Court moves cases could also increase filings. If the Texas Business Court resolves cases faster than other Texas trial courts or even arbitration, that could encourage litigants to file in the court.

Depending on how the court rules on whether it has jurisdiction to hear required cases filed before Sept. 1, there could also be a number of additional cases removed by party agreement, including cases removed solely for the purposes of trial if litigants believe they could get to trial faster in the Texas Business Court.

Differences in rules governing dispositive motions could also encourage litigants that would otherwise file in federal court or the Court of Chancery to choose to file in the Texas Business Court instead. Preliminary dispositive motions under Texas Rule of Civil Procedure 91a must be granted or denied in 45 days.[16]

No similar time requirements exist for preliminary motions to dismiss under the Federal Rules of Civil Procedure or the Court of Chancery rules,[17] which can result in monthslong delays in the initiation of discovery when such motions are pending.

Conclusion

As filings in the Texas Business Court continue to increase and the court begins issuing opinions, there will likely be no shortage of interesting issues to watch for those tracking the court's growing development.

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[1] E.g., <https://gov.texas.gov/news/post/governor-abbott-swears-in-texas-business-court-judges-in-fort-worth>.

[2] Original Petition at ¶ 1, BP Energy Company v. Brad E. Cox, No. 24-BC01A-0002 (Sept. 24, 2024).

[3] Original Petition at ¶1, Siemens Energy Inc. v. PDV Holdings Inc., No. 24-BC11B-0010 (Oct. 4, 2024).

[4] Original Petition, Quantum Loophole Inc. v. TPG RE III Volt Holdings LP and Catullus Development Corporation, No. 24-BC03A-0002 (Sept. 23, 2024).

[5] Id. at ¶¶ 8, 10, 22, 27.

[6] Verified Complaint Pursuant to 6 Del. C. § 18-110, TPG RE III Volt Holdings L.P. v. Quantum Loophole Inc. et al., No. 2024-1002-PAF, at ¶¶ 138-150 (Del. Ch. C. Sept. 26, 2024).

[7] Defendants' Motion to Dismiss or, Alternatively, Stay, TPG RE III Volt Holdings L.P. v. Quantum Loophole Inc. et al., No. 2024-1002-PAF (Del. Ch. C. Sept. 30, 2024); October 9, 2024 Order, TPG RE III Volt Holdings L.P. v. Quantum Loophole Inc. et al., No. 2024-1002-PAF (Del. Ch. C. Sept. 30, 2024).

[8] See e.g., September 30, 2024 Order, Primexx Energy Opportunity Fund II LP et al. v. Primexx Energy Corporation et al., No. 24-DC01B-0004.

[9] September 25, 2024 Order of Referral, Michael Vendetti v. Turner, Stone, & Company LLP and Todd Estes, No. 24-BC01A-0003; October 1, 2024 Order of Referral, Michael Vendetti v. Turner, Stone, & Company LLP and Todd Estes, No. 24-BC01A-0003.

[10] Tex. Gov't Code Ann. § 25A.012; Tex. R. Civ. P. 18a.

[11] Tex. Gov't Code Ann. § 25A.012.

[12] Tex. R. Civ. P. 18a(7).

[13] Tex. Gov't Code Ann. § 25A.012; Tex. R. Civ. P. 18a.

[14] Tex. Gov't Code Ann. § 25A.012; Tex. Gov't Code Ann. § 25A.014; Tex. R. Civ. P. 18a.; see also Tex. Gov't Code Ann. § 25A.008.

[15] Tex. Gov't Code Ann. § 25A.016; Tex. R. Civ. P. 360.

[16] Tex. R. Civ. P. 91a.3(c).

[17] See Fed. R. Civ. P. 12; Del. Ch. R. 12.