The Texas Lawbook

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Two Years in, Texas Business Court Wins Praise, But Dedicated Courtrooms, Extended Terms Are Needed

JULY 29, 2025 | **BY MARK CURRIDEN**

By all accounts, the Texas Business Court has met or exceeded expectations. Business court judges have moved their growing dockets quickly and efficiently, and they have not been as unfriendly to plaintiffs as many lawyers feared. Yet some practitioners see specific areas that have room for improvement.

Just Wednesday morning, Texas Gov. Greg Abbott reappointed all 10 judges to the new specialty court for their second two-year terms, which most lawyers applauded.

"Nonetheless, most lawyers agree the terms should be longer," said Vinson & Elkins litigation partner Marisa Giles. "If we are looking to develop an experienced Business Court judiciary and an established body of jurisprudence, as exists in Delaware, we need judges who have been on the bench for longer tenures. Even elected state court district judges serve four-year terms. Why shouldn't we, at minimum, grant equal terms to Business Court judges?"

The Texas Lawbook this week launches its new Texas Business Court section with a Q&A featuring Vinson & Elkins partners Marisa Giles and Nick Shum, whose practices focus heavily on the business court.

Later this week, we will publish an in-depth interview with Dowd Bennett litigation partner Ben Barnes and an updated quarterly review of cases and decisions issued during the past three months by the judges of the Texas Business Court.

Texas Lawbook: What were your initial expectations of the Texas Business Court when it was first proposed, and what are your thoughts now after nearly two years of operation?

Marisa Giles: My initial expectation was that it would be Texas' version of the Delaware Court of Chancery and would bring a different set of cases into Texas state court. That expectation has been met. The Court is doing incredibly well. Filings have gone up significantly, and we expect that to continue. And the Court undoubtedly has been a factor in some companies' decisions to redomicile in Texas.

Lawbook: What have been the biggest surprises so far?

Nick Shum: I expected corporate governance cases to make up a larger percentage of the Court's docket. Many of the cases filed in the Court so far have fallen under the "qualified transaction" prong, which allows the Court to hear high-value, complex commercial disputes.

Lawbook: Looking back since the Business Court launched, what types of disputes are actually showing up on the docket? How does that mix compare to what you and your clients expected?

Giles: In a recent *Texas Lawbook* article, we studied the Court's caseload and, to Nick's point, found that qualified transaction cases have been the primary source of the Court's docket to date. That has been particularly true since the

Legislature in House Bill 40 lowered the value threshold for qualified transaction jurisdiction from $10 million to $5 million. There has also been an increase in trade secret cases since HB 40 became effective last September and extended the Court's jurisdiction to certain IP disputes. It's going to take a while for governance disputes to become a bigger part of the Court's caseload.

Lawbook: What have you or your clients liked or disliked most about litigating in the Business Court so far (speed, expertise, predictability, etc.), and how is that shaping your strategy moving forward?

Shum: Business Court litigation so far has been a great experience, particularly the speed and efficiency with which the Court resolves cases. That has been a huge benefit to our clients. You can have a firm bench trial date within 12 months of a suit being filed and a jury trial within 18 months. Also, across the board, the judges are prepared for hearings and have read all the briefings beforehand, which helps with the efficient resolution of matters.

Lawbook: What has the impact been of the requirement that the Business Court must issue written rulings?

Giles: It is very helpful. It makes it easy to follow the Court's jurisprudence and offers clients a measure of predictability. At Vinson & Elkins, for example, we publish a quarterly report that analyzes all of the Court's opinions. Even when it comes to resolving discovery disputes, in our experience, the Court will lay out its reasoning in writing. That gives a road map to both plaintiffs and defendants.

Lawbook: Has it seemed to make much of a difference that there is not dedicated courtroom space for the Business Court? If not, what impact do you think that will have on lawmakers' appetite to fund a Business Court courthouse?

Shum: While the Court and litigants have been resourceful in making do without dedicated courtrooms, the lack of dedicated space can present challenges. In one Business Court case I handled, there was no dedicated courtroom for trial, so we used a voir dire room in the family court instead. I know there was another case in Houston in which the parties rented space at a hotel to conduct the trial. Given the growing prestige and importance of the Court, I do think there will be an appetite in the next legislative session to fund dedicated courtrooms.

Lawbook: Talk a little about the two-year term for the judges. Should their terms be longer?

Giles: The Governor recently announced that all the judges would be renewed for two-year terms, which essentially extends their terms to four years. Nonetheless, most lawyers agree the terms should be longer. If we are looking to develop an experienced Business Court judiciary and an established body of jurisprudence, as exists in Delaware, we need judges who have been on the bench for longer tenures. Even elected state court district judges serve four-year terms. Why shouldn't we, at minimum, grant equal terms to Business Court judges? The judges' terms should also potentially be staggered, so that you don't have a full slate of judges facing reappointment decisions in the same year.

Lawbook: There's been a big jump between year one and year two in the number of cases being filed in the Business Court. Do you think docket equalization measures have been effective in managing that? And also, where is the tipping point where we see time to resolution in the Business Court start to look more like time to resolution in the district courts? Is that a concern?

Shum: The use of docket equalization has been very effective in helping to relieve the Houston and Dallas divisions, which have drawn most of the Court's

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filings. It is functioning as one unified court even though it is divided into 11 divisions, which helps ensure that cases are resolved expeditiously wherever they are filed. In one of our Business Court cases, which was filed in Houston, an Austin judge presided over the case and travelled to Houston for every in-person hearing and for the trial. It was a unique experience for me. In every lawsuit I have handled, it is the other way around — parties and their lawyers travel to the Court.

Lawbook: As far as day-to-day operations of the Business Court go, what have you observed? Is it functioning as intended? Are there ways that it could be improved?

Shum: The Court has operated smoothly in my experience and is litigant friendly. Whenever you need to schedule a hearing or time with the Court, the staff is very responsive in providing dates. The Court's local rules have also fostered efficiency. I have found that the procedure to submit short letters concerning any unresolved discovery disputes prior to engaging in motion practice has been effective to expedite resolution of discovery issues which otherwise might bog a case down.

Lawbook: If Texas lawmakers could grant you one wish as it relates to the Business Court this session, what would you ask for?

Giles: An appropriation for dedicated courtroom space for every division. If we want this Court to continue functioning as a marquee locale for high-dollar disputes, we need to create dedicated courtroom spaces. Trying cases is very difficult as it is, particularly complex high-dollar disputes that require extensive IT and audio-visual support and the space to accommodate large trial teams, journalists and others interested in attending proceedings.

Shum: I second the wish for funding dedicated courtrooms in all active divisions. As Marisa mentioned earlier, I also would like the state to consider longer and perhaps staggered terms for judges.

Lawbook: What have you learned about the Court's motion practice and case management, which seemed a selling point for its creation? For example, the Business Court's appetite for early dispositive motions, evidentiary hearings or aggressive scheduling orders in complex cases?

Giles: If you file a motion to dismiss, it's taken very seriously. It's not illusory. But I would like to see a mechanism in place, like there is in Chancery, to request an expedited trial setting, a super-fast track to get a complete decision on the merits. In certain kinds of Chancery matters, merger challenges for example, you can schedule a trial on the merits in as little as three to four months. A similar procedure in Texas Business Court could lead to more merger disputes being filed in the state.

Lawbook: To what extent are parties taking advantage of the ability to funnel complex matters to Texas by contract?

Giles: I have seen more clients identify the Texas Business Court as their chosen forum in contracts. Often now, for Texas transactions or companies, the forum choice is the Texas Business Court or a federal court in Texas. Of course, the parties to any contract have to keep in mind the jurisdictional limits of the Business Court when choosing it as a forum.

Shum: Given the change from $10 million to $5 million to qualify for Texas Business Court in September 2025, it seems likely that, going forward, any substantial commercial case filed in Texas will be filed in the Business Court or removed there. It is one of the first forums we talk to clients about when advising on venue provisions.

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