

# Locke Lord QuickStudy: The Texas Business Court's First Thirty Days

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The Texas Business Court opened September 1, 2024. In the months before the specialized trial court opened, Governor Abbott appointed ten judges to hear cases in five of Texas' eleven Judicial Administrative Regions, serving 80 counties. The Business Court has original jurisdiction over a variety of business disputes: claims arising from qualified transactions, contracts or transactions with over \$10 million in controversy in which the parties agreed to Business Court jurisdiction, certain actions arising from violations of the Finance Code or Business & Commerce Code, and internal affairs or governance disputes. The Business Court can also exercise supplemental jurisdiction over certain other claims, with some statutory exclusions. For cases within the Business Court's original jurisdiction that are filed in district or county courts, parties have the ability to remove those cases to the Business Court.

This QuickStudy provides an overview of the cases filed in or removed to the Business Court during the Business Court's first thirty days.<sup>[1]</sup>

## The Numbers

- In the Business Court's first thirty days, 18 cases were filed in or removed to the Business Court. Below is a breakdown by division. At least 1 case was filed in each operating Business Court Division. The First Business Court Division, sitting in Dallas, and the Eleventh Business Court Division, sitting in Houston, led the five operating divisions with 6 cases each.

Division	Location	Number of Cases
First Business Court Division	Dallas	6
Third Business Court Division	Austin	3
Fourth Business Court Division	San Antonio	2
Eighth Business Court Division	Fort Worth	1
Eleventh Business Court Division	Houston	6

- 7 of the 18 cases originated by petition. The remaining 11 cases arrived in the Business Court through removal.

## Inside the Numbers

- In more than half of the September 2024 cases (10 of 18), the filing party or removing party has alleged as part of the jurisdictional allegations that the case involves a "qualified transaction." A qualified transaction is defined

as any transaction (except for a loan or advance of money or credit by a bank, credit union, or savings and loan institution) in which the aggregate value of the sale, loan, or similar transaction is at least \$10 million.<sup>[2]</sup> But just because a case arises out of a qualified transaction does not mean the case satisfies the Business Court's jurisdictional requirements. To satisfy the jurisdictional requirements, the amount in controversy for the case must *a/so* exceed \$10 million.<sup>[3]</sup>

- For the 7 cases with original petitions filed in the Business Court, the most common cause of action is breach of contract. Other causes of action in the first set of petitions include breach of the covenant of good faith and fair dealing, conspiracy, declaratory judgment, fraud, and tortious interference with contract.
- 10 of the 11 cases removed to the Business Court are cases that were first filed in another district court or county court before September 1, 2024 (the date the Business Court was officially "created").<sup>[4]</sup> Of the 10 pre-September 1, 2024 cases that were removed to the Business Court, only 2 of the cases involve an agreed removal. The dates these cases were originally filed in other Texas trial courts and the lack of agreement on removal are important facts for the reasons discussed below.

## Key Developments

### 1. The Propriety of Removal for Cases "Commenced" Before September 1, 2024.

The Business Court is subject to three key forms of guidance: (1) a House Bill, (2) a Texas Government Code statute, and (3) the Texas Rules of Civil Procedure.

1. House Bill 19 is the legislation that approved a new statute establishing the Business Court. As to the application of the new statute, one of H.B. 19's final sections states "[t]he changes in law made by this Act apply to civil actions commenced on or after September 1, 2024."<sup>[5]</sup>
2. Texas Government Code Chapter 25A is the statute approved by H.B. 19. Chapter 25A does not include H.B. 19's case commencement date restriction.
3. Texas Rules of Civil Procedure, Part III are the new rules approved by the Supreme Court of Texas to govern procedures in the Business Court. Like Texas Government Code Chapter 25A, Part III does not contain a rule, note, or comment that references the case commencement date restriction.

Despite H.B. 19's case commencement date restriction, 10 cases commenced *before* September 1, 2024 have been removed to the Business Court during September 2024. This flurry of removal in September 2024 is likely a result of the 30-day deadline for removal for cases in which not all parties agree to removal. Although parties can remove cases to the Business Court at any time with agreement of all parties,<sup>[6]</sup> if all parties do not agree to removal, a notice of removal must be filed "within 30 days after the date the party requesting removal of the action discovered, or reasonably should have discovered, facts establishing the business court's authority to hear the action . . . ."<sup>[7]</sup> So far, the parties that have removed cases largely rely on the argument that the "facts establishing the business court's authority" are the date the Business Court was created and gained authority to hear the case (September 1, 2024). For this reason, in cases where removal is not agreed, a notice of removal must have been filed by October 1, 2024.

For these cases commenced before September 1, 2024, the Business Court faces a significant jurisdictional decision. If the Business Court judges decide to dismiss these cases for lack of jurisdiction, that would roughly cut in half the number of September 2024 cases pending before the Business Court. In preparation for these decisions, judges of four different Business Court Divisions have requested briefing from the parties on whether H.B. 19's restrictive language affects their cases.<sup>[8]</sup>

## 2. Local Rules, Division-Specific Practices, Forms, and Standing Orders Continue to Develop.

As the Business Court starts to handle cases and enter orders, the specific divisions and individual judges are continuing to promulgate local rules, division-specific practices, forms, and standing orders to govern conduct in the specialized trial court. While the new Texas Rules of Civil Procedure have been finalized since June 2024, other guidance remains in development. Just today, the Business Court published its [Local Rules](#) on the Business Court's website.

Judges in specific divisions have communicated introductions, directions, and forms to the parties in their cases depending on the status of each case. For example, in *Primoris T&D Services, LLC v. QLoop, LLC* (24-BC03B-0001), Judge Sweeten sent an introduction letter to all parties enclosing a "Proposed Scheduling & Case Management Order form." Judge Sweeten (Third Business Court Division, Austin) provided the following guidance for the form:

The form is to be filled out jointly by the parties and it contains instructions for its use. The parties must confer and jointly file the proposed joint order by the earlier of: (a) 30 days after the last named-defendant's appearance in the case or (b) 60 days after the petition is filed. If the parties do not agree on a particular date or response, the parties may succinctly note areas of disagreement on the form. The Court asks the parties to refrain from providing extended explanations or argument in the joint proposed order.

Once the joint proposed order has been filed, the Court will set an initial case management conference to address scheduling issues and other matters covered in the order.

While the Business Court continues to develop and publish new guidance, parties and counsel should continue to monitor the Business Court's website for updates.

### Conclusion

Thirty days into the Business Court's existence, cases have been filed in or removed to each of the five administrative regions with operating divisions of the Business Court. One of the first orders of business (pun intended) for the Business Court will be resolution of the jurisdictional issues for removed cases that were originally filed in other courts before September 1, 2024. If the court retains those cases, parties will likely remove more cases by agreement under Texas Government Code § 25A.006(f), which could lead to a significant increase in the number of cases pending in the Business Court.

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[1] As of the time this QuickStudy is published, 33 *total* cases have been filed in or removed to the Business Court. Locke Lord will continue to monitor cases in the Business Court through 2024 and publish new analysis in Q1 2025.

[2] Tex. Gov't Code § 25A.001(14)(A).

[3] Tex. Gov't Code § 25A.004(d)(1).

[4] Act of May 25, 2023, 88th Leg., R.S., ch. 380, § 5 (H.B. 19) (“[T]he business court is created September 1, 2024.”).

[5] *Id.*, § 8.

[6] Tex. R. Civ. P. 355(c)(1) (“A party may file a notice of removal reflecting the agreement of all parties at any time during the pendency of the action.”); see Tex. Gov’t Code § 25A.006(f).

[7] Tex. R. Civ. P. 355(c)(2); see Tex. Gov’t Code § 25A.006(f)(1).

[8] See, e.g., *Primexx Energy Opportunity Fund, LP v. Primexx Energy Corporation* (24-BC01B-0004), September 30, 2024 Order.

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