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TEXAS BUSINESS COURTS: A NEW “FRONTIER” IN BUSINESS LITIGATION

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Association of Corporate Counsel
March 7, 2024

TEXAS BUSINESS COURTS

- What are they?
- History of Business Court Efforts
- The “Nuts & Bolts” of How They Work
- Why Is This Important to Your Company?
- Q&A
- Happy Hour

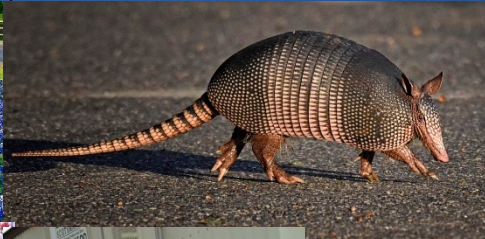
WHAT ARE THE BUSINESS COURTS?

- Dedicated Courts of limited jurisdiction to adjudicate certain business disputes
 - Content and Amount-in-Controversy restrictions
 - Initially only Dallas, Fort Worth, Austin, Houston, and San Antonio Court of Appeals Regions
- Will have a dedicated, new Court of Appeals with its own body of law
- Starting September 1, 2024
- Appointed, not elected judges (at least initially)
- Written opinions and special procedures
- Designed to operate like Federal Courts or Delaware Chancery Court

WHY DO THIS?

- Texas District Courts have general jurisdiction
 - Criminal
 - Family Law
 - Probate
 - Civil
 - Personal injury (car wrecks, medical malpractice, products liability)
 - Employment
 - Collection cases
 - Foreclosure
 - Business Litigation

WHY DO THIS?



WHY DO THIS?



Texas Named Best State For Business For Record-Shattering 19 Years In A Row

April 26, 2023 | Austin, Texas | [Press Release](#)

Governor Greg Abbott today celebrated Texas being named the Best State for Business by the nation's leading CEOs in an annual survey conducted by Chief Executive Magazine for a record-shattering 19th year in a row.

"For the 19th year in a row, America's CEOs

- #1 in Quantity of Fortune 500 Companies
- #1 in Corporate Relocations
- #1 in GDP Growth Amongst States
- #1 for Business Climate (Site Selection Magazine)
- #1 for Business (Chief Executive Officer Magazine)
- #1 for Business (International Economic Development Council)



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WHY DO THIS?

- Competition with Delaware
 - 68% of Fortune 500 companies are incorporated in Delaware
 - More businesses than people in Delaware
- 26 States have specialized business courts
- Consistent rulings
- Timely rulings
- Business cases use disproportionate court resources
- Nuclear verdicts

HISTORY OF TORT REFORM

- 2005 – HB4 – Placed caps on punitive damages, medical malpractice.
- 2021 – HB1875 – Business Courts Bill Proposed – Rejected by Texas Legislature
 - Rural Interests Torpedoed Bill
- 2023 – HB19 – Passed
 - Compromise with Rural Interests

WHO OPPOSED?

- Democrats
- Plaintiff's Bar
- Rural Texas Republicans

ELON MUSK – TEXAN BY CHOICE

≡ FORTUNE

SEARCH

COMPANIES • ELON MUSK

‘Never incorporate in Delaware’: Elon Musk sees his record-breaking \$56 billion Tesla pay package voided by judge—and is now polling his followers over a possible Texas move

Delaware court judge Kathaleen McCormick’s 200-page ruling offers a scathing indictment of a Tesla board entirely beholden to its CEO.

BY CHRISTIAAN HETZNER

January 31, 2024 9:00 AM EST



≡ CNBC

WATCH LIVE

THE BOTTOM LINE

How Elon Musk’s war on Delaware could change the way corporations make some of their biggest decisions

PUBLISHED WED, FEB 14 2024 10:59 AM EST

UPDATED WED, FEB 14 2024 7:52 PM EST

Ian Thomas

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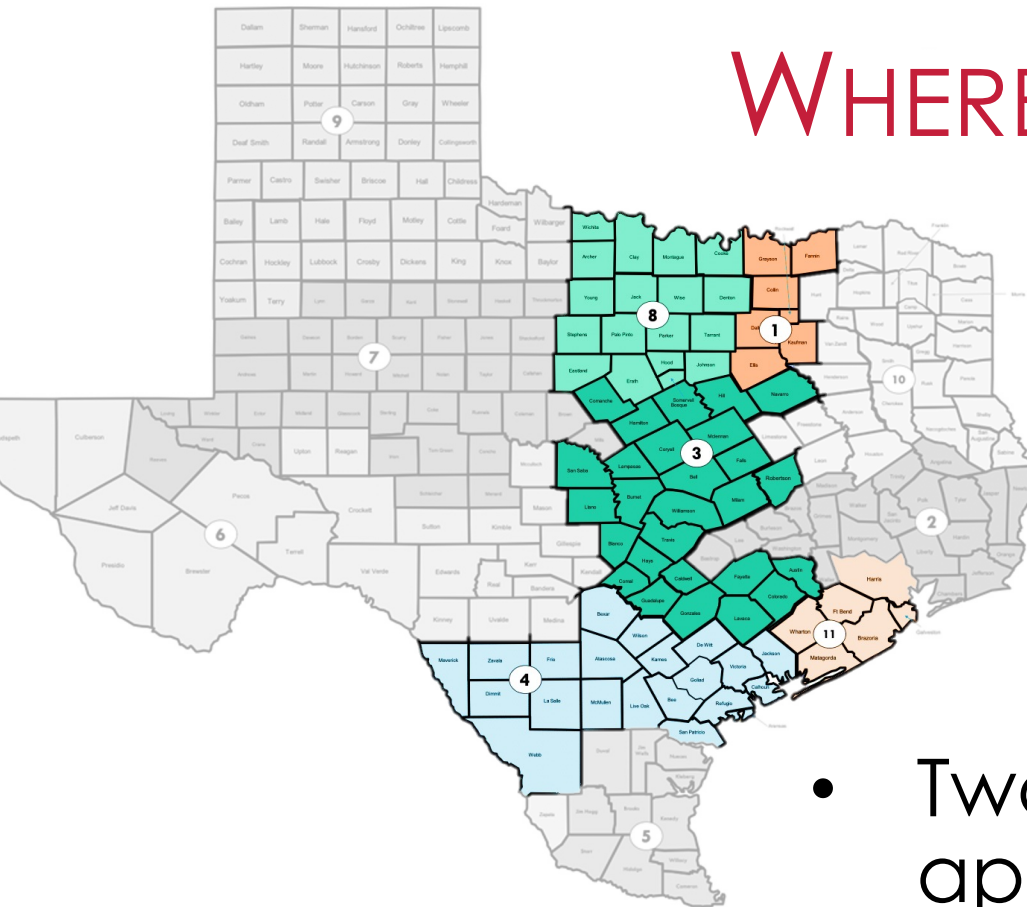
WATCH LIVE

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HOW WILL THEY WORK?

- Where will they be?
- What cases can they hear?
- Who will be the judges?
- How to get in?
- How and where will they operate?
- Unanswered Questions

WHERE WILL THEY BE?



- Initially, Dallas (1st), Austin (3rd), San Antonio (4th), Fort Worth (8th), and Houston (11th)
- Two years to fund and approve the rest
- Courts track the Judicial Administrative Districts, including the counties they will serve (Tex. Gov't Code § 74.042)

WHAT CASES CAN THEY HEAR?

- Concurrent/original jurisdiction
- Supplemental jurisdiction
- Exclusions

CONCURRENT JURISDICTION

- Actions against private companies (AIC >\$5million) and publicly traded companies:
 - Derivative actions
 - Actions regarding governance, governing documents, or internal affairs of the company
 - State or federal securities or trade regulation laws
 - Breach of fiduciary duty
 - Actions to hold owner/governing person liable for obligation of the company, and
 - Actions arising out of the Bus. Orgs. Code

CONCURRENT JURISDICTION CONT.

- If AIC is >\$10million and the action arises out of a:
 - Qualified transaction (any transaction that isn't a loan or advance of money/credit)
 - Contract or commercial transaction with venue clause (except insurance contracts)
 - Violation of Finance Code, and
 - Violation of Business and Commerce Code

SUPPLEMENTAL JURISDICTION

- Over claims that form part of same case or controversy:
 - Claims by or against governmental entity
 - Foreclosure of a lien
 - Claims arising out of:
 - Subchapter E, Chapter 15, and Chapter 17 of Business and Commerce Code
 - Estates Code
 - Insurance Code
 - Chapter 53 and Title 9 of the Property Code
 - Production or sale of farm products
 - Consumer transactions under Business and Commerce Code Section 601.001
 - Duties or obligations under an insurance policy

SUPPLEMENTAL JURISDICTION CONT.

- How are claims under supplemental jurisdiction handled:
 - They “may proceed in the business court only on the agreement of all parties to the claim and a judge of the division”
 - If parties do not agree, “the claim may proceed in a court of original jurisdiction concurrently”

EXCLUDED CLAIMS

- Personal injury
- Medical Malpractice
- Legal malpractice

WHO ARE THE JUDGES?

- 35 years or older, resident of a county within their division, and **MUST** have at least 10 years of experience in one or more areas:
 - Complex civil litigation
 - Business transactions
 - Civil judge
- Early names obtained from Open Records Request by Texas Lawbook

ELECTED? APPOINTED? BOTH.

- Business Court Trial Judges are appointed for two-year terms by the Governor on advice and consent from the Senate.
- Justices on the Fifteenth Court of Appeals are initially appointed for two-year terms by the Governor on advice and consent from the Senate then up for statewide election.

HOW WILL THEY WORK?

- How to get cases into the Business Courts?
- Where will they operate?
- Remote Proceedings
- Opinions
- Staffing
- Appeals

FILE, REMOVE, OR TRANSFER

- File it just like a normal lawsuit
 - If no jurisdiction: transfer or dismiss
- Remove it within 30 days knew or should have known of jurisdictional facts
 - If no jurisdiction: remand
 - If TI pending: then 30 days after ruling
- Transfer by Administrative Judge upon request by district judge “if the action is within business court’s jurisdiction”

WHERE WILL THEY OPERATE?

- Local courts in counties within division
- Law schools
- Remotely unless it is a jury trial or taking oral testimony (absent all parties' agreement)
- Jury trial conducted in county where filed before removal or based on venue statute if filed originally in Business Court

OPINIONS AND APPEALS

- Texas Supreme Court will determine rules for written opinions
 - Early word: novel or important issues and will have persuasive authority with other judges
- Staff including briefing attorneys at trial court level
- Appeals go to 15th Court of Appeals
 - Current cases will be transferred on 9/1/2024

UNANSWERED QUESTIONS

- Texas Supreme Court Advisory Committee working on additional rules that (hopefully) will:
 - Provide clarity on calculating AIC
 - Fill holes in removal procedures
 - Set the filing fees

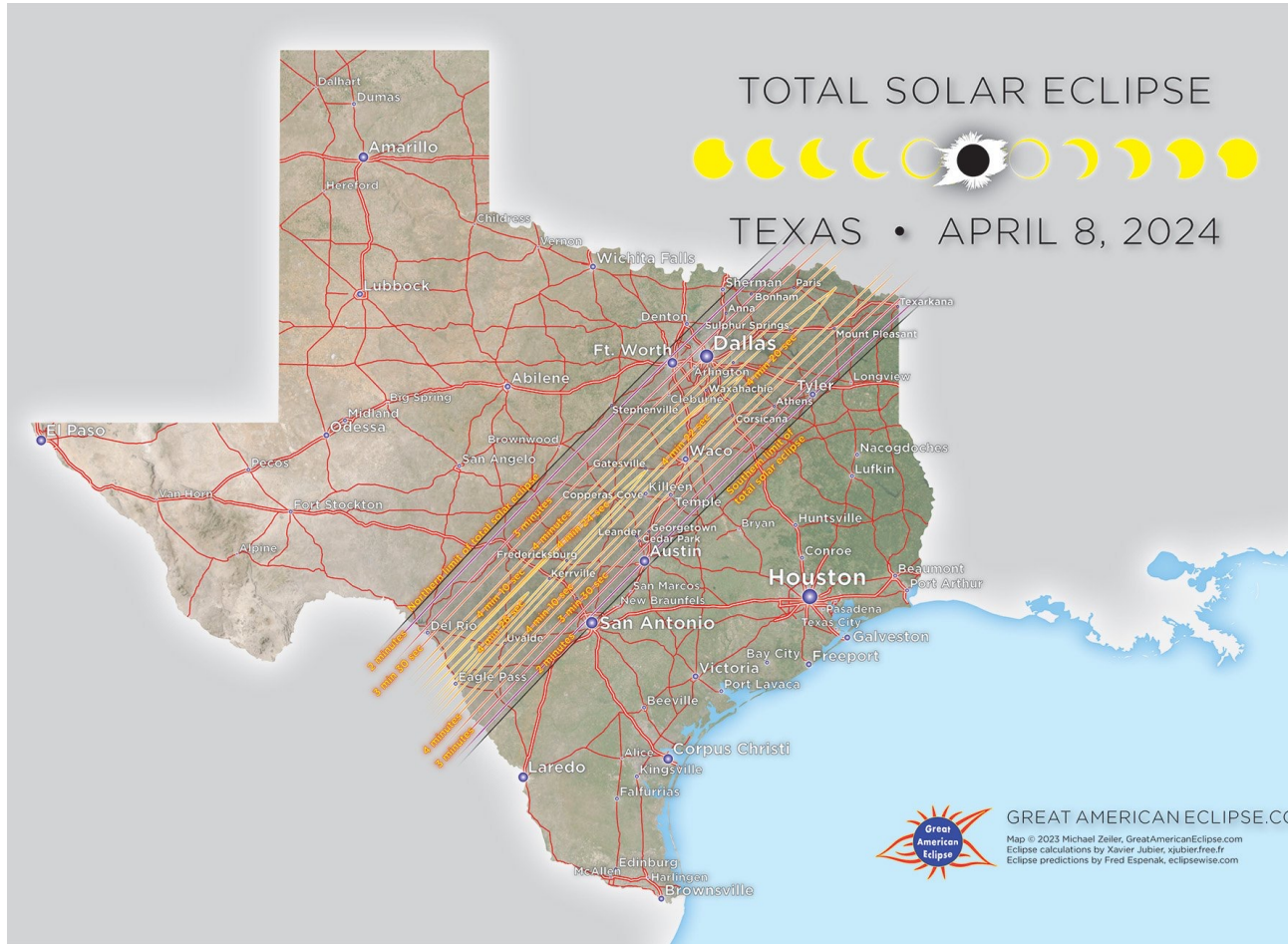
WHY IS THIS IMPORTANT FOR YOU?

1. Expect “business-friendly” treatment
2. Expect “briefing-heavy” cases (*i.e.*, mini-Federal Court system)
3. Expect a more complicated venue analysis
4. Expect actual rulings
5. Expect contracts to be strictly construed (So be prepared!)

CONSIDERATIONS

- Does your case qualify?
 - Contract interpretation will be a hot area
- Carefully evaluate venue (i.e., only certain areas funded)
 - Race to the Courthouse potential
 - Should you add a venue selection clause to major contracts
- Jury waivers
- Cost considerations
- Risk of multiple lawsuits from same case due to supplemental jurisdiction limits
- Judicial donations?

SOLAR ECLIPSE



April 8
1:30-1:50

Once every 50 years
visible in Texas.

Free glasses
courtesy of Bell
Nunnally!

QUESTIONS?

Thank you for your time!

Heath Cheek

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