

# The Texas Lawbook

Free Speech, Due Process and Trial by Jury

## A Review of February's Business Court Decisions

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The Business Court had a historic February. It presided over its first-ever jury trials, resulting in wins on both sides of the “v.” The Court also penned five opinions, including the first interpretation of its intellectual property jurisdiction. The Court also weighed in on issues related to buy-sell option clauses, personal jurisdiction and responsible third parties.

This month will be remembered as a culmination of the Court’s first chapter, as two cases near the end of their life cycle with the Court’s first jury trials. A testament to the Court’s dynamism — and as its own local rules put it, the “fair, efficient, and timely resolution of business disputes” — the outcomes were wildly different. *Quintero v. Urban Infaconstruction*, in Dallas’s First Division, ended with a directed verdict on the trial’s second day because the plaintiffs’ damages evidence was “glaringly” insufficient. Meanwhile, in Houston’s Eleventh Division, jurors sat through eight days of testimony and endured five courtroom changes (while also enjoying a donut delivery from another Business Court judge) to return a verdict for the plaintiff in *Powers v. Berry*.

On top of all this, in *Brown v. Exxon Mobil*, the plaintiff has challenged the constitutionality of the Court. We’ll be keeping a close eye on that one.

### **Crain v. Northern, 2026 Tex. Bus. 4 (8th Div.)**

#### *The Decision*

The Court strictly enforced a buy-sell

option clause in the company agreements between Michael D. Crain and William Northern, ordering Crain to sell his membership interests to Northern after Crain failed to respond to a buy-sell notice. The Court ordered specific performance and awarded Northern attorney’s fees.

#### *What Happened*

Crain and Northern were 50/50 members in a trio of LLCs governed by nearly identical company agreements, each containing a mandatory buy-sell option clause, which provided for a mandatory buy-sell procedure if Crain or Northern sought to sell or buy membership interests in an entity. After Crain and Northern unsuccessfully discussed dissolving their partnership and dividing the LLCs, Northern sent Crain a buy-sell notice seeking to purchase Crain’s 50 percent interests in the three LLCs. Under the buy-sell option clause, Crain had 30 days to notify Northern of his election to either sell his interests or purchase Northern’s interests. However, Crain did not respond within the 30-day period required by the agreement, which, by its terms, was deemed an election to sell to Northern. Crain later sued Northern, alleging breaches of fiduciary duty and various other claims, while Northern counterclaimed for specific performance of the buy-sell option.

#### *Validity and Enforcement of the Buy-Sell Option Clause*

The Court found the buy-sell options

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unambiguous and enforceable. The Court rejected Crain’s attempt to challenge the validity of the agreements, noting that he failed to support his challenge with evidence. Applying Texas contract law, the Court emphasized that it would enforce the express terms of the parties’ contract and would not rewrite unambiguous terms.

## *Specific Performance*

The buy-sell option granted each party the right to compel specific performance if the counterparty failed to perform its obligations, and the Court held that Northern was entitled to specific performance of the buy-sell option clause. Northern complied with the buy-sell option by sending the required notice, and Crain forfeited his membership interests by failing to respond. The Court declined Crain’s invitation to “selectively enforce” certain clauses but not others and ordered specific performance of the buy-sell option.

## *Attorney’s Fees*

The Court also awarded Northern attorney’s fees, finding the testimony of Northern’s counsel regarding the hours and fees accumulated was unrefuted, clear, direct, and positive.

The decision came from Judge Jerry D. Bullard of the Texas Business Court, Eighth Division.

Northern was represented by Larry E Cotton, Jerold Mitchell and Randall Schmidt of Cotten Schmidt. Crain was represented by Garette Amis and Avery McDaniel of the Law Office of Avery McDaniel.

## **Preston Hollow Capital, LLC v. Truist Bank, 2026 Tex. Bus. 5 (1st Div.)**

### *The Decision*

The Court granted Truist Bank’s motion for leave to designate responsible third parties, conditioned on Truist amending its pleadings to specify how

each third party separately contributed to the Plaintiff’s alleged injuries. The decision clarified and interpreted the law regarding the definition of “responsible third party” under TCPRC Chapter 33.

### *What Happened*

Preston Hollow sued Truist Bank for claims arising out of a bond for a senior living center. Senior Care Living VI financed construction of a senior living center with bond financing, with Truist as trustee and Preston Hollow controlling the bond funds during construction. Preston Hollow alleged that Truist failed to discharge its duties by improperly approving Senior Care’s deviation from certain bond documents and other requirements. Truist sought leave to designate Senior Care and its president, Mark Bouldin, as responsible third parties, arguing their actions — such as failing to pay contractors, taxes and properly deposit revenues — contributed to the harm Preston Hollow alleged.

### *Standard for Designating Responsible Third Parties*

The Court interpreted the statutory definition of “responsible third party” under Chapter 33 of the Civil Practice and Remedies code, which, in relevant part, is: “any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought.” The Court specifically focused on the meaning of “harm,” concluding the term is akin to the legal concepts of “injury” or “damage” rather than “breach.” The Court concluded that the current definition of “responsible third party” focused on whether the third party at all contributed to the ultimate harm or injury through an unlawful act, rather than on whether the third party would be directly liable to the claimant by breaching the same legal standard as the defendant. To reach this conclusion, the Court engaged in a thorough textual analysis of the “responsible third party” definition that also considered previous iterations

of the definition and other provisions in Chapter 33.

## *Application to the Case*

Applying these principles to the facts of the case, the Court found that Senior Care and Bouldin plausibly contributed to the complained-of harms. The Court explained that a non-fiduciary, such as Senior Care and Bouldin, can contribute to the harm caused by breach of fiduciary duties. The Court rejected Preston Hollow's narrow framing that the "harm" was Truist's alleged breach of fiduciary and trustee duties, explaining that Preston Hollow's own pleadings connected Senior Care and Bouldin's alleged actions to the "irretrievable deterioration of the trust estate," which was a harm for which Preston Hollow sought damages. The Court also clarified that Chapter 33 does not require the responsible third party to have caused or contributed to all harms alleged in the suit. The Court granted Truist's motion, conditioned on amended pleadings specifying the connection between the third parties' conduct and the alleged injury.

The decision came from Judge Bill Whitehill of the Texas Business Court, First Division.

Hayden Hanson, Jared Eisenberg, and Eric Pinker of Lynn Pinker Hurst & Schwegmann represented Preston Hollow Capital. Truist Bank was represented by Zachary Coots and Alexis Watson of King & Spalding, along with John C Eichman of the Eichman Firm.

## **Alamo Title Company v. WFG National Title Company of Texas, LLC, 2026 Tex. Bus. 6 (4th Div.)**

### *The Decision*

In this case, the Texas Business Court considered its own jurisdiction under its enabling statute, Tex. Gov't Code § 25A.004. The Court denied Alamo Title Company's motion to remand, holding that the Court had jurisdiction over the suit because the amount in controversy exceeded \$5 million and the case involved

both alleged breaches of duty by a managerial official and issues relating to intellectual-property ownership or use.

### *What Happened*

Alamo Title sued WFG National Title, alleging that WFG took employees and customers, misappropriated sensitive business information, tortiously interfered with Alamo's customer contracts, and aided and abetted breaches of fiduciary duty by Alamo's former president, who left for WFG. WFG removed the case to the Business Court, and Alamo moved to remand. The Court denied the motion. In the Court's first interpretation of its intellectual property jurisdiction, the Court held that a case need only "relate to" intellectual property to fall under the Court's purview.

### *Amount in Controversy*

The Court held that Alamo's suit satisfied the five-million-dollar amount-in-controversy requirement. The Court applied a burden-shifting framework, finding that while the petition was silent as to the amount-in-controversy, WFG's removal notice, which pleaded more than \$5 million in controversy, was sufficient to satisfy the requirement. Alamo failed to rebut this with evidence, and WFG pointed out that Alamo's own discovery responses indicated at least \$4.7 million in damages for 2025 alone, plus additional amounts for unjust enrichment. The Court specifically noted that future monetary damages (which Alamo also sought) are included in amount in controversy determinations. The Court also differentiated a previous removal case—Black Mountain SWD — where the Eighth Division remanded because the plaintiff's motion to remand indicated that the maximum recovery sought was \$4.4 million.

### *Statutory Jurisdictional Requirements*

The Court found two independently sufficient bases for jurisdiction under Chapter 25A of the Texas Government

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Code, which places various substantive topics in the Court’s jurisdiction: (1) the suit alleged breaches of duty by a controlling person or managerial official (including Alamo’s former president, who left for WFG), and (2) the suit related to the ownership and use of intellectual property, as Alamo alleged that WFG misappropriated Alamo’s sensitive business information, including customer lists and compensation details. In a highly textual analysis of the enabling statute, the Court recognized the broad and often overlapping nature of the Court’s multiple jurisdictional grants. Indeed, the Court found that it had jurisdiction over claims that “relate to” trade secrets, even if there was no misappropriation claim. The Court noted that satisfying the jurisdictional requirements described above granted the Court jurisdiction over not just individual claims, but over the “action” — meaning the entire lawsuit.

The decision came from Judge Stacy Sharp of the Texas Business Court, Fourth Division. Johnathon Bramble and Michael Jones of Morgan Lewis & Bockius, along with Gregory T. Brewer and Patrick Joost of Fidelity National Financial represented Alamo Title Company. Lisa Barkley and Lamont Jefferson of Jefferson Cano, along with Paul D Flack and Reagan Douglas Pratt of Pratt & Flack represented WFG National Title Company of Texas.

## **American Airlines, Inc. v. JetBlue Airways Corporation, 2026 Tex. Bus. 7 (8th Div.)**

### *The Decision*

The Court denied JetBlue’s special appearance. The Court held that JetBlue’s contacts with the state, including its flights to and from Texas airports, were sufficient to establish specific jurisdiction over American Airlines’ claims. Applying a mix of federal and state precedents, the Court concisely addressed the due-process issues raised by the special appearance.

### *What Happened:*

JetBlue and American Airlines formed an alliance to increase service among the Northeast United States and Texas. After the federal government enjoined the alliance’s operations, American Airlines sued JetBlue in Texas for breach of contract, alleging that JetBlue owed American Airlines under their contract’s reconciliation and payment processes. JetBlue filed a special appearance, contesting the Court’s personal jurisdiction over JetBlue.

### *Jurisdictional Analysis and Findings:*

The Court first determined that JetBlue purposefully availed itself of Texas by specifically targeting Texas and Texans. The Court noted that JetBlue operated thousands of flights to and from Texas, had Texas-based employees, and leased property in Texas. Applying precedents from the Supreme Court of Texas and the United States Supreme Court, the Court also rejected JetBlue’s arguments that Texas courts lacked jurisdiction over the airline because JetBlue operations were predominantly in the Northeast. The fact that the relevant agreements had a New York forum-selection clause did not defeat jurisdiction either.

The Court then held that relatedness was satisfied too. The Court reasoned that American Airlines’ pleadings revealed a substantial connection between JetBlue and the Texas-based claims. American Airlines pleaded that the contracts contemplated increased JetBlue services to and from Texas-based airports and were executed for the purpose of serving Texas-based customers. In addition, JetBlue’s payments under the contracts were due to American Airlines at its Fort Worth headquarters. While the Court acknowledged JetBlue’s argument that much of the complained-of conduct occurred outside of Texas (in the Northeast), the Court emphasized that American was seeking recovery for revenue that was derived at least in part from JetBlue’s relationship with Texas.

Finally, the Court reject JetBlue’s fairness arguments that jurisdiction in Tex-

as was unreasonable. Specifically, the Court explained that it was irrelevant that American Airlines could also obtain relief in other forums, and that the State of Texas has a clear interest in adjudicating breach of contract disputes like this one.

The decision came from Judge Jerry D. Bullard of the Texas Business Court, Eighth Division. American Airlines was represented by Michael Bern, David Tolley, and William Trach of Latham & Watkins, along with Dee Kelly Jr and Julia Wisenberg of Kelly Hart. JetBlue was represented by Konadu Amoakuh, Andrew Breland, Michael Hanin, Adair Kleinpeter-Ross, and Joshua Naftalis of Pallas LLP; Justice Harriet O’Neill; and Paul F Schuster and Warren Harris of Bracewell.

## **BNSF Railway Company v. Level 3 Communications, LLC, 2026 Tex. Bus. 8 (1st Div.)**

### *The Decision*

In this decision, the Court analyzed procedural and substantive arbitrability issues related to a rate dispute between a railway and a communications company. The Court denied BNSF Railway Company’s application to vacate an arbitration award and granted Level 3 Communications’ counterapplication to confirm the award.

### *What Happened*

In 1998, BNSF and Level 3 executed a twenty-five-year master right-of-way agreement allowing Level 3 to install fiber optic facilities along BNSF railroads. In 2022, Level 3 elected to extend the MROW, and the MROW required the parties to negotiate a renewal rate. Despite several extensions of the negotiation period, the parties could not agree on a renewal rate. Pursuant to the MROW’s arbitration clause, Level 3 filed a demand for arbitration with the AAA. The arbitration panel denied BNSF’s motions to dismiss and ordered the parties to abide by a rate negotiated between the parties earlier in the process. BNSF then filed an application in the Business

Court to vacate the award, arguing that the arbitration panel exceeded its authority by replacing contractually mandated appraisal with arbitration. Level 3 counterclaimed to confirm the award.

### *Applicable Law & Arbitrability*

After first confirming that both the Federal Arbitration Act and the Texas Arbitration Act apply, the Court explained that under both statutes, a court must confirm an arbitration award unless the movant demonstrates grounds for vacatur, including that the arbitrators exceeded their authority. This requires a showing that the arbitrators determined a matter that the relevant agreement did not submit to arbitration.

### *Substantive Arbitrability*

BNSF primarily argued that the panel exceeded its authority by determining an issue — rate renewal — that the MROW left to the appraisal process. The Court explained that this raised a substantive arbitrability issue, which is typically decided by the court in the absence of contractual provisions to the contrary.

However, the MROW’s arbitration clause provided that arbitration “shall be conducted in accordance with the Commercial Rules of the American Arbitration Association” and Rule 7 of the AAA Commercial Rules grants the arbitrator the “power to rule on his or her own jurisdiction, including any objections with respect to ... arbitrability of any claim or counterclaim.” Applying precedents from the Supreme Court of Texas and the Fifth Circuit, the Court explained that the parties’ adoption of AAA Commercial Rules delegated issues of substantive arbitrability to the arbitration panel. The Court therefore rejected BNSF’s substantive arbitrability arguments.

### *Procedural Arbitrability*

BNSF also argued that the panel exceeded its authority by allowing arbitration prior to completion of certain other dispute-resolution processes in the

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MROW. Because this issue involved a condition precedent, the Court explained that BNSF's second challenge raised a question of procedural arbitrability. Under Texas law, procedural arbitrability is for arbitrators to determine as well. Because the arbitration panel had the authority to decide both substantive and procedural arbitrability issues, the Court held that the panel had the power to resolve the dispute.

The decision came from Judge Andrea K. Bouressa of the Texas Business Court, First Division. BNSF Railway Company was represented by Caitlyn Hubbard, David Keltner and Jody Sanders of Kelly Hart & Hallman, and Anne McGowan Johnson of Tillotson Johnson & Patton. Level 3 Communications was represented by John Johnson III, Eric J. Nichols and Amanda Taylor of Butler Snow.

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