

The Texas Lawbook

Free Speech, Due Process and Trial by Jury

Business Court: May 2026 Decisions

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May was the Texas Business Court's busiest month yet. Even with a record-setting number of decisions across the court's divisions, the Court maintained its principled and stalwart deference to the text of the contract. Whether applying Texas or Delaware law, the Court consistently refused to rewrite bargains parties had struck, whether that meant enforcing a perpetual payment obligation in *Cobalt Falcon*, applying a dilution mechanism against a transferee who wanted the benefits of LLC membership without the burdens in *Camino Real*, holding that "payable" means legally due regardless of whether a party can afford to pay in *The Mark at Weatherford*, or construing crude-oil storage and transportation contracts according to their plain terms in *DK Trading v. Wink to Webster Pipeline*.

Two decisions, *May v. INEOS* and *Westlake v. Eastman*, rejected attempts to use course-of-performance evidence to override unambiguous contract language, a thread that echoes the Court's consistent refusal to let extrinsic evidence do what plain text will not. *DK Trading* struck the same chord, sustaining objections to course-of-performance testimony offered to rewrite an unambiguous pipeline-transportation agreement. These textualist instincts are nothing new — they have animated the Court's opinions since its inception.

The month also continued a familiar stream of jurisdictional disputes with *Aspire*, *Pradera*, and *DrinkPAK* testing the Business Court's \$5 million amount-in-controversy threshold, among

other jurisdictional questions.

And in the high-profile *Dallas Sports Group* arena-ownership case involving the Mavericks and the Stars, the Court ordered each side to bear its own attorney's fees following the Mavericks' substantive win.

May v. INEOS USA Oil & Gas LLC, 2026 Tex. Bus. 20 (4th Div.)

The Decision

The Court sustained the defendants' objections to the plaintiffs' summary-judgment evidence, striking certain extrinsic evidence from the record. This decision followed the Court's March 27 memorandum opinion, in which it partially granted and partially denied the defendants' motion for partial summary judgment, construing the oil-and-gas farmout agreement at the center of the parties' dispute.

What Happened

Plaintiffs' cross-motion for summary judgment, adjudicated in March, relied on evidence extrinsic to the agreement — specifically, post-execution course-of-performance evidence such as the defendants' reports, records and emails that the plaintiffs claimed showed how the agreement's provisions were implemented in practice.

The Court struck this evidence, disposing of the plaintiffs' cited case law because those cases either involved only pre-execution evidence — not evidence

of contractual performance — or reversed lower courts’ use of extrinsic evidence to construe contracts.

The Court also highlighted the tension in the plaintiffs’ positions. Throughout the litigation, the plaintiffs characterized the agreement as unambiguous, yet here they argued the defendants’ construction was “not the only reasonable construction.”

Relying on its prior construction of the agreement, the Court concluded that “one reasonable meaning clearly emerges” after applying established contract-construction rules. The Court held that the agreement’s plain language was reasonably susceptible to only one meaning, foreclosing the plaintiffs’ effort to use extrinsic post-execution evidence. This holding was consistent with the Supreme Court of Texas’ recent statement in *Equinor Energy v. Lindale Pipeline* that “courts can’t consider course-of-performance evidence to interpret an unambiguous contract.”

The decision came from Judge Stacy Rogers Sharp of the Texas Business Court, Fourth Division.

Foxborough Energy Company, West George Prospect and Robert May were represented by Michele Spillman of Phillips Murrah.

Meteor Energy and Steven C. Howard were represented by Rachel Banks and William Dunn of Dunn Sheehan.

INEOS USA Oil & Gas was represented by David Pruitt Jr. and Justin Lipe of Gray Reed.

Chesapeake Exploration and Chesapeake Operating were represented by Amy Dashiell and Christopher Sileo of Scott Douglass & McConnico.

CNOOC Energy USA was represented by Harris Stamey, Mary Anna Rutledge and Joseph G. Thompson III of Porter Hedges.

Larchmont Resources was represented by Demetri Economou and Thomas Ciarlone Jr. of Kane Russell Coleman Logan.

Thompson v. Anchor Capital GP LLC, 2026 Tex. Bus. 21 (1st Div.)

The Decision

The Court granted in part and denied in part the plaintiffs’ motion for partial summary judgment in a dispute over a promissory note, security agreement, guaranty, employment agreement and incentive compensation.

What Happened

Thompson is an owner and president of Thompson Petroleum Corporation, a family business that manages assets and employs personnel for the Thompson Family Office. Michael Mann is the founder and CEO of Anchor Capital, a private-equity investment brokerage. Thompson invested millions into Anchor-managed funds through a holding company.

Mann asked Thompson to loan Anchor money to buy out a partner. The parties documented the loan through a secured promissory note, security agreement and personal guaranty, later amending the arrangement when Mann sought additional funds to buy out another partner.

Thompson then offered Mann employment as the family office’s copresident and chief investment officer. Under the employment agreement, Mann was responsible for developing alternative-investment strategy. Critically, he was prohibited from committing any Thompson entity to a new alternative investment without Thompson’s written preapproval. Within weeks of starting, Mann allegedly committed the holding company to five investments without written preapproval. He was subsequently terminated for cause.

Books and Records

Thompson argued that Anchor breached the note and security agreement by failing to provide access to “books and records” related to the collateral, triggering an event of default and entitling her

to accelerate the loan. Anchor responded that it had complied by producing over 2,300 pages of documents.

The Court held that while “books and records” was undefined, it was not ambiguous. Because the collateral’s value depended on carried interests, the only reasonable interpretation included documents necessary to determine those interests’ values. However, the Court found a fact issue as to whether Anchor satisfied its production obligation and denied summary judgment.

Guaranty

Thompson argued Mann breached the guaranty by failing to ensure Anchor complied with its books-and-records obligations, failing to ensure Anchor paid the accelerated balance and failing to provide an audited personal financial statement. The Court found fact issues on the first two theories because they depended on the disputed note and security agreement breach.

On the financial-statement issue, the Court held that the guaranty required a statement “in form and substance reasonably satisfactory to the Lender” but did not expressly require an audited statement. Because Thompson did not conclusively prove that an audited statement was the only reasonable way to perform, the Court found a fact issue and denied summary judgment.

Employment Agreement

TPC sought summary judgment as to liability on its employment-breach claim, arguing Mann breached by committing the holding company to investments without written preapproval. The Court denied the motion because TPC failed to prove damages — a required element even for partial summary judgment as to liability under Rule 166(a).

The only harm TPC identified was its lost right to decide whether to fund the investments. The Court found this legally insufficient because TPC offered no evidence it would not have entered the investments absent Mann’s unauthorized

conduct or that his actions caused financial injury.

Incentive Compensation

TPC sought a declaration that Mann was not entitled to incentive compensation because he either resigned or was terminated for cause. Mann argued written notice was required for any for-cause termination. The Court rejected the written-notice argument, noting that the employment agreement included notice requirements for some for-cause bases but not others. The Court explained: “Had the parties wished that every for-cause basis include a notice requirement they could have included that language.”

Nonwaiver

The employment agreement contained a nonwaiver clause requiring that any waiver be in writing and signed by the waiving party. Mann presented evidence that the parties communicated about the investments before execution and that Thompson gave oral preapprovals. The Court acknowledged that these alleged oral approvals could be inconsistent with the written preapproval requirement. However, the Court found Mann failed to present evidence that Thompson also intended to waive the nonwaiver clause’s separate requirement that waivers be in writing. In other words, oral conduct that might waive one contractual requirement does not necessarily waive a nonwaiver clause that itself requires written waivers.

In footnote 93, the Court distinguished *Dallas Sports Group*, which involved an asserted implicit waiver through inaction, whereas here Mann alleged affirmative oral approvals — making that case’s waiver analysis inapposite.

Because Mann failed to raise a fact issue on waiver, the Court held TPC conclusively proved a for-cause basis to terminate him based on the subject investments and granted declaratory relief that Mann was not entitled to incentive compensation. The remainder of Thompson and TPC’s motion was denied.

The decision came from Judge Bill

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Whitehill of the Texas Business Court, First Division.

Thompson Petroleum Corporation, Christy 2017 and Jean Christine Thompson were represented by Monica Gaudio, Alex More and Robert C. Rowe of Carington, Coleman, Sloman & Blumenthal.

Anchor Capital GP was represented by Nathaniel Lee, Aaron O'Dell, LeElle Slifer and Michael Pezzulli of Winston & Strawn.

Michael Mann was represented by Nathaniel Lee, Aaron O'Dell and LeElle Slifer of Winston & Strawn.

The Mark at Weatherford Owner, LLC v. German, 2026 Tex. Bus. 22 (8th Div.)

The Decision

The Court enforced a seller's negotiated put right after the buyers failed to remit property-related fees that were due at closing. The Court held that the agreement's key terms — “default” and “payable” — were unambiguous and granted Plaintiff's traditional motion for summary judgment.

What Happened

The Mark sold a multimillion-dollar apartment complex to buyers German and Darcorp. When the defendants struggled to fund the deal, the plaintiff offered seller financing and received membership units in the buying entity. To protect that short-term seller credit, the plaintiff negotiated a put right: If an “automatic trigger” occurred — including “a default under any material agreement related to the Property or the Company” — the plaintiff could require German to repurchase its interest for a defined price.

Declaratory Relief

Before reaching the merits, the Court first addressed the defendants' threshold argument that the plaintiff should be precluded from seeking declaratory reliefs regarding alleged defaults under the agreement since, it claimed, the plaintiff is not a party to the agreement. The

Court rejected the defendants' construction, finding that the plaintiffs sought to enforce its own contract — the side letter — which purposefully conditioned the put right on a qualifying default under a related agreement.

The Court also recognized that the defendants' construction would “strip the Automatic Trigger provision of any operative effect” as it would prevent the plaintiff from ever obtaining a judicial determination of default. The Court emphasized that Texas law construes contracts to give effect to every provision, “not to leave negotiated language inert.”

'Default' and 'Payable': Unambiguous Terms

The Court found that the term “default” was unambiguous. Although the defendants argued the term was unclear because the related agreements used different categories of default, the side letter used the unmodified term “default.” The Court explained: “When contracting parties choose a general term without qualification — particularly in a provision designed to operate as an objective trigger — courts do not supply limitations the parties did not include.” The Court declined to rewrite the trigger as applying only to a narrower set of defaults.

The Court reached the same conclusion as to the term “payable.” The defendants argued that fees were not “payable” unless the obligor had enough cash to pay them. The Court disagreed, finding the term “payable” refers to amounts legally due or owed, not amounts the obligor happens to have the liquidity to satisfy. As the Court put it, “A party can be flat broke and still owe every penny.” The defendants' argument amounted to economic impracticability, which, the Court pointed out, is not a recognized defense in Texas.

That interpretation resolved the dispositive issue. The fees in question became due at closing, were covered by the contract and were not remitted to the plaintiff. That failure was a default under the side letter and therefore an automatic trigger for the put right.

The Court did not, however, accept the

plaintiff's broadest reading of the repayment provision. That provision reached fees and distributions arising from the property, not unrelated revenues from the defendants' broader portfolio. The Court declined to transform a "targeted repayment mechanism" into "something closer to a general lien on Defendants' entire business operations." The Court emphasized that contracts should be interpreted "in light of their subject matter." This contract centered the property and the parties' economic interests related to the sale; the provision in question should similarly be "anchored to that context."

Reasonableness and Confidentiality

Not every theory supported summary judgment. The Court found a fact issue as to whether the defendants used "reasonable efforts" to reacquire the plaintiff's interest because the record contained competing evidence on the issue. The Court also pointed out that "[i]t also does not help that the agreement provides no objective, measurable standard for reasonableness."

The Court likewise declined to grant summary judgment on the plaintiff's confidentiality theory since the record did not conclusively show that German disclosed protected, term-level information.

The decision came from Judge Brian Stagner of the Texas Business Court, Eleventh Division.

The Mark at Weatherford Owner was represented by Joseph Cecere of Cecere PC and Rogge Dunn and Alec Pedigo of Rogge Dunn Group.

Darcorp Management Group and Darwin German were represented by Austin Caldera and Jay Newton of Bourland, Wall & Wenzel.

Aspire Commercial, LLC v. Stephenson, 2026 Tex. Bus. 23 (11th Div.) (mem. op.)

The Decision

The Court denied a motion to remand by Stephenson, the defendant, holding that Aspire's removal to the Business

Court was not premature even though a temporary injunction application remained pending in district court. The Court also held that Aspire sufficiently pleaded facts supporting the \$5 million amount-in-controversy requirement. Finally, the Court rejected Stephenson's forum-shopping argument, concluding that a party's motive for removal is not a basis for remand where jurisdiction exists and the removal complied with the governing procedural requirements.

What Happened

Aspire sued Stephenson in Harris County district court, asserting various trade secrets claims. The district court entered a temporary restraining order against Stephenson, later held a hearing on Aspire's temporary injunction application and took that application under advisement. Aspire then filed a second amended application with an additional defendant, and an ancillary court entered a second TRO against both defendants. Before the first temporary injunction application was resolved, and before the second temporary injunction application could be heard, Aspire removed the case to the Business Court, invoking jurisdiction under Texas Government Code Section 25A.004.

Removal While a Temporary Injunction Application is Pending

Stephenson argued that removal was premature because Section 25A.006(f) (2) required Aspire to wait until after the pending temporary injunction application was adjudicated before removing. The Court disagreed, reading the statute as setting a *deadline* for removal, not a mandatory waiting period.

Amount in Controversy

The Court applied the familiar burden-shifting framework for amount-in-controversy challenges. Under that framework, the plaintiff must first plead facts affirmatively demonstrating jurisdiction, including facts showing

that the relief sought satisfies the minimum amount in controversy. If the plaintiff does so, the burden shifts to the party challenging jurisdiction to present evidence showing that the pleadings are a sham or that the amount in controversy is readily established as outside the Court's jurisdiction. Aspire alleged multiple bases for more than \$5 million in controversy, including a threatened revenue stream, potential royalty damages tied to access to confidential information, confidential closed-transaction information and risk relating to a client portfolio. The Court found those allegations sufficient at the pleading stage.

Forum Shopping

Stephenson also argued that Aspire engaged in improper forum shopping by removing only after proceedings had occurred in district court. The Court rejected this, finding that a party's motive for removal is immaterial to the remand analysis. The only considerations are subject matter jurisdiction and compliance with procedural requirements.

The decision came from Judge Brian Stagner of the Texas Business Court, Eleventh Division, sitting by assignment.

Aspire Commercial was represented by Hunter Barrow, Andrew Bender, Mark Jeffrey Levine and Rahul Rao of Andrews Myers.

Christopher Stephenson was represented by Maria Dickerson and Andrea James of Holland & Knight.

BES.AI was represented by Craig Dillard and Mike Rahmn of Nelson Mullins Riley & Scarborough.

Dallas Sports Group, LLC v. DSE Hockey Club, L.P., 2026 Tex. Bus. 24 (1st Div.)

The Decision

The Court ordered each side to bear its own attorney's fees and costs following the Mavericks' win on the substantive issues and the parties' stipulation that each side had incurred \$3.6 million in reasonable and necessary attorney's fees.

What Happened

This attorney's fee dispute followed the Court's rulings in the high profile arena-ownership fight between the Dallas Mavericks and Dallas Stars organizations, where the Mavericks prevailed on all substantive issues.

The Court's fee analysis began with Section 37.009 of the Texas Civil Practice and Remedies Code, which provides that, in a declaratory judgment case, the court may award "costs and reasonable and necessary attorney's fees as are equitable and just."

After the Court indicated its starting point was likely to require each side to pay its own fees (though acknowledging it was open to being persuaded either way), the parties stipulated to avoid a separate fee trial. The stipulation provided that both the Mavericks' and the Stars' reasonable and necessary attorney's fees were \$3.6 million, and they later waived further presentations to the Court.

After considering the record, the stipulation and the parties' waiver of their opportunity to persuade the Court, the Court concluded that requiring each side to bear its own fees and costs was equitable and just.

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

Dallas Sports Group and Radical Arena were represented by Chris Bankler, Charles L. Babcock, Sarah Starr, Minoo Blaesche and Gabriela Barake of Jackson Walker.

DSE Hockey Club was represented by Douglas W. Alexander, Kirsten M. Castañeda and Wallace B. Jefferson of Alexander Dubose Jefferson; Chad Baruch of Johnson Tobey Baruch; and Frank Carroll, Ben Hamel, John David Janicek, Cory Johnson, Andrew Patterson and Joshua Sandler of Winstead.

Dallas Sports & Entertainment was represented by Douglas W. Alexander, Kirsten M. Castaneda and Wallace B. Jefferson of Alexander Dubose Jefferson; Chad Baruch of Johnson Tobey Baruch; and Joshua Sandler of Winstead.

Pradera SFR, LLC v. American Housing Ventures, LLC, 2026 Tex. Bus. 25 (4th Div.)

The Decision

The Court denied AHV's plea to the jurisdiction, holding that Pradera's pleaded damages were sufficient to invoke the Business Court's subject-matter jurisdiction. The Court rejected AHV's attempt to use a contractual insurance-proceeds limitation to defeat jurisdiction, concluding that the enforceability of that limitation was a merits issue, not a jurisdictional one.

What Happened

The dispute arose from the Pradera Project, a 250-home single-family rental development in San Antonio, where Pradera was owner and AHV was development manager. Pradera alleged AHV improperly shared architectural plans with another architect, leading to copy-right litigation that Pradera alleged exposed it to as much as \$70 million in disgorgement damages.

After that litigation settled, Pradera alleged it preserved indemnity claims against AHV tied to remaining USIC policy coverage. After a federal court declined jurisdiction over those state-law claims, Pradera refiled in the Business Court, asserting indemnification, breach of the settlement agreement and rescission or reformation.

Amount in Controversy

AHV argued the settlement agreement capped Pradera's recovery at either the \$2 million USIC policy limit or nothing because USIC had denied coverage. The Court was not persuaded. Relying on Texas plea-to-the-jurisdiction standards, the Court held that absent proof of fraud or sham pleading, Pradera's pleaded damages controlled the jurisdictional analysis. Because Pradera alleged damages exceeding the Business Court's \$5 million jurisdictional threshold for qualified transactions, the plea was denied.

The decision came from Judge Marilyn Barnard of the Texas Business Court, Fourth Division.

Claudia Frost of Fletcher Held represented Pradera SFR.

American Housing Ventures was represented by Elin Isenhower and James Ruiz of Winstead.

Westlake Longview Corp. v. Eastman Chemical Co., 2026 Tex. Bus. 26 (11th Div.) (mem. op.)

The Decision

The Court granted in part and denied in part Westlake's motion for traditional summary judgment in a long-running ethylene supply-and-exchange dispute with Eastman, construing the parties' ethylene sales agreement (ESA) under Delaware law. The Court found that the ESA gave Westlake first-refusal rights to buy Eastman's excess ethylene quantities (EEQ), while giving Eastman free exchange rights for EEQ that Westlake did not buy, but only within the contract's limits.

What Happened

The dispute arose from a 2006 transaction in which Eastman sold Westlake polyethylene facilities in Longview, Texas, and a pipeline connecting Longview to Mont Belvieu, while Eastman retained the Longview crackers that produced ethylene. The ESA addressed that post-sale separation of supplier, customer and transporter: Westlake received an opportunity to purchase Eastman's Longview ethylene, and Eastman received a way to move ethylene Westlake did not buy to customers outside Longview.

Annual Nominations and Committed EEQ

The Court first addressed the annual nomination process. It held that Eastman must, in good faith, offer Westlake all EEQ it intends to produce in the following year. Once Westlake commits to buy annual EEQ, however, the ESA does not require Westlake to take that committed quantity in equal monthly installments.

The Court reasoned that the contract says nothing imposing ratable monthly purchases and that the parties' production and needs vary over the year. Still, Westlake's timing discretion is not unlimited: Delaware's implied covenant of good faith and fair dealing — which the Court noted is a distinction between Texas and Delaware law — prevents Westlake from structuring purchases arbitrarily or unreasonably to deprive Eastman of the bargain.

Third-Party Sales After Annual Nominations

The Court next addressed what Eastman may do with EEQ Westlake declines in the annual process. Westlake argued that Eastman had only until Dec. 31 to secure third-party contracts, but the Court declined to write that deadline into the ESA. The Court nevertheless adopted Westlake's broader structural point: The contract authorizes only one-year third-party contracts for the relevant nomination year, not spot sales. Otherwise, Eastman could bypass Westlake's monthly first-refusal right by deciding each month whether to sell to Westlake or a third party based on market price.

Monthly Nominations and Inventory

The Court also clarified the monthly nomination process. Eastman must include in monthly nominations the EEQ not already committed to Westlake or to third parties under compliant contracts, and Westlake may purchase any or all of that nominated EEQ. But the Court rejected Westlake's argument that monthly nominations are limited to ethylene produced in the corresponding month, holding that although the ESA limits EEQ to ethylene produced by the Longview crackers, nothing in the ESA imposes a corresponding-month production limitation on monthly nominations.

Free Exchange for Third-Party EEQ

On exchange rights, the Court sided with Eastman in part, holding that EEQ

sold to third parties in compliance with Section 4(f) is entitled to free exchange. The Court read the ESA as creating a binary framework for EEQ: When the parties comply with the agreement, Westlake either buys the EEQ or exchanges it for Eastman without charge.

Tolled or Converted Ethylene

The Court sided with Westlake on tolled or converted ethylene. Because that ethylene is excluded from EEQ, the ESA does not require Westlake to provide free exchange for it. The Court emphasized that the ESA ties Westlake's free exchange obligations to EEQ and separately prices only one category of non-EEQ exchange — ethylene Eastman buys from another seller outside the ESA. Thus, Westlake had no right of first refusal on tolled ethylene, and Eastman had no contractual right to free exchange for it.

Course of Performance

Finally, the Court declined to let course-of-performance evidence expand the ESA's exchange rights. The Court held that the ESA was unambiguous and that, even if Delaware UCC principles applied to some parts of the hybrid sale-and-services contract, they did not permit course-of-performance evidence to override the express exchange terms. The Court therefore construed the ESA from its four corners, without using either side's historical performance to rewrite the bargain.

The decision came from Judge Melissa Andrews of the Texas Business Court, Third Division, sitting by assignment in the Eleventh Division.

Travis Gray, formerly of Baker Botts and now at Tulane, and Kevin Jacobs, Laura Shoemaker McGonagill and Nathan Thibon of Baker Botts represented Westlake Longview Corporation and Westlake Chemical OpCo.

Eastman Chemical Company was represented by Gregory J. DuBoff and Thomas M. Farrell of McGuireWoods.

DrinkPAK, LLC v. PR III/Crow Building C, LP and Trammell Crow Company, LLC, 2026 Tex. Bus. 27 (8th Div.)

The Decision

The Court granted DrinkPAK's motion to remand, holding that PR III/Crow Building C and Trammell Crow Company missed the 30-day deadline to remove the case to the Texas Business Court. The Court also held that a counterclaim does not restart the removal clock and that Rule 408 did not bar consideration of pre-suit demand letters for the limited purpose of determining when the defendants knew the amount in controversy exceeded \$5 million.

What Happened

DrinkPAK, a canned-beverage manufacturer, entered into a lease with PR III for a manufacturing site. DrinkPAK later sued PR III based on alleged foundation failures at the site.

After an initial removal to federal court and stipulated remand to Denton County, the defendants filed an answer and counterclaim and removed the case to the Business Court. DrinkPAK moved to remand, arguing the Business Court removal was untimely. The Court granted the remand.

The Removal Clock

Because DrinkPAK did not consent to removal, the defendants had to remove no later than 30 days after the later of service or the date they discovered facts establishing Business Court jurisdiction. The Court held that deadline expired 30 days after service, rendering the defendants' removal untimely.

The Court rejected the defendants' argument that DrinkPAK's Rule 47 allegation of damages over \$1 million was insufficient to start the clock. The Court relied on the lease's more than \$100 million in contemplated payments and pre-suit demand correspondence seeking more than \$145 million and later \$50,524,831

in damages. Those facts, the Court held, made it clear that the dispute exceeded the Business Court's jurisdictional threshold.

No Reset by Counterclaim

The Court also rejected the defendants' argument that a counterclaim started a new 30-day removal period. The removal statute refers to removal of an "action," the Court explained, and a counterclaim is only a claim added to an already pending action, not a new action that resets the statutory clock.

Rule 408 and Pre-Suit Correspondence

The Court also held that Rule 408, which concerns compromise offers and negotiations, did not prevent it from considering pre-suit demand letters to determine when the defendants discovered the Business Court's jurisdiction. The Court clarified that the letters were not being used to prove liability or the damages, but to show the defendants' knowledge for purposes of the removal deadline.

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

Meredith Knudsen, Mallory Williams and Shauna Wright of Kelly Hart & Hallman represented DrinkPAK.

PR III/Crow Building C and Trammell Crow Company were represented by Robert Hancock Jr. and Weston Light of Womble Bond Dickinson.

Camino Real Developers, LLC v. RivenRock, LLC, 2026 Tex. Bus. 28 (8th Div.) (mem. op.)

The Decision

The Business Court granted summary judgment for Camino Real, holding that RivenRock's 50 percent membership interest remains governed by the company agreement — including its capital-contribution and dilution provisions. The Court rejected RivenRock's attempt to claim ownership benefits while disclaiming the contractual obligations that define

the interest, explaining that an LLC membership interest “is a creature of contract” inseparable from the agreement that created it. The Court also overruled RivenRock’s res judicata defense, finding the prior appellate reversal eliminated any preclusive effect and the present dispute arose from different operative facts.

What Happened

Jack Dyer and Dan Addante formed Camino Real in 2017 to develop a luxury RV park. Camino Real’s company agreement established JLR Mansions as a 50 percent member and Addante and Dyer as 25 percent members. The agreement assigned JLR Mansions the role of sole capital provider, making it responsible for additional capital contributions and debt-service funding. The agreement also provided that, if JLR Mansions failed to fund the Company, the remaining members could admit a new capital provider and proportionally dilute JLR Mansions’ interest.

RivenRock acquired JLR Mansions’ 50 percent interest in 2018. During negotiations, RivenRock received copies of the company agreement, which provided that every transfer of a membership interest was subject to its terms. RivenRock nevertheless later contended that it owned the 50 percent interest but was not bound by the company agreement’s dilution provisions.

In earlier litigation between the parties, a trial court declared that RivenRock was not bound by the company agreement, but the Court of Appeals reversed that declaration and rendered a take-nothing judgment against RivenRock on its claims. According to the Business Court, the appellate ruling left RivenRock without any judicial decree excusing its performance under the Company Agreement.

Following the appeal, RivenRock halted funding to Camino Real and again asserted that it was not bound by the company agreement or subject to dilution. Camino Real filed the Business Court action to confirm the validity of the dilution.

Preclusion

The Court rejected RivenRock’s res judicata and collateral-estoppel arguments. The Court held that the prior litigation did not finally decide that RivenRock was free from the company agreement because the Court of Appeals reversed the only contrary declaration. The Court also found that the present dispute arose from later-occurring operative facts, which made the current suit materially different from the prior litigation.

LLC Membership Interests

The Court examined whether RivenRock could acquire a 50 percent LLC membership interest while discarding the contractual obligations that gave the interest meaning. The Court held that it could not, explaining that “[a] membership interest is not a free-standing asset, untethered from the framework that created it.” “It is a creature of contract: a bundle of rights, obligations, and conditions that exists only through the Company Agreement.” The Court rejected what it described as RivenRock’s attempt to treat a membership interest like “a cafeteria plan from which a transferee may pick and choose,” claiming a right to 50 percent of the profits while rejecting the duty to fund capital calls.

The Court found that the company agreement created two functionally distinct categories of ownership: a 50 percent capital-provider interest and the remaining noncapital-provider interests. The capital-provider interest carried both the obligation to fund the Company’s capital needs and the risk of dilution if those obligations were not met. Because RivenRock acquired the same 50 percent interest previously held by JLR Mansions, the Court held that RivenRock acquired that interest as it existed, including its exposure to dilution.

Dilution

The Court concluded that the dilution mechanism properly applied to the facts at hand. After RivenRock stopped fund-

ing, Camino Real defaulted on its mortgage and faced capital needs exceeding \$6.3 million. RivenRock then refused to fund the capital call. At that point, the Court held, Camino Real’s managers were authorized to admit a new capital provider and proportionally dilute the existing capital-provider interest.

The Court held that RivenRock’s interest itself remained subject to the agreement’s terms regardless of whether RivenRock separately signed the company agreement or could be personally liable for breaching it. The Court also rejected RivenRock’s assertion that it owned an undivided 50 percent interest in Camino Real’s assets, holding that RivenRock owned only a membership interest in the entity and not a fractional interest in the company’s underlying property.

The decision came from Judge Brian Stagner of the Texas Business Court, Eighth Division.

Kyle Fonville, Michael Noel and Rhett Warren of Warren Fonville represented Camino Real Developers.

RivenRock was represented by John Nelson, Andrew Alvarado and Payne Keinarth of Dickinson Wright.

Cobalt Falcon, LLC v. AXS Investments, LLC, 2026 Tex. Bus. 30 (1st Div.)

The Decision

The Court construed a transaction agreement under Rule 166(g), holding that the contractual obligation for AXS Investments to make monthly payments to Cobalt Falcon “in perpetuity (unless otherwise agreed)” is unambiguous and requires the continuation of such payments even after the closure of the high yield ETF fund involved in the transaction.

What Happened

Cobalt Falcon sold assets relating to the management, administration and operation of a high yield ETF fund to AXS Investments pursuant to a transac-

tion agreement. The agreement provided that AXS would compensate Cobalt Falcon “for all calendar months following the Closing, in the monthly amounts determined by the formula set forth in Schedule 2.4,” with such payments to be made “in perpetuity (unless otherwise agreed).” Following the fund’s closure, Cobalt Falcon contended “in perpetuity” means that payments continue regardless of the fund’s existence, while AXS argued the provision only required payments while the fund was operating.

Plain Meaning of ‘In Perpetuity’

Applying Delaware law, the Court found that “in perpetuity” is not inherently ambiguous — it means “forever; without end.” Cobalt Falcon’s reading was reasonable because the parties’ use of “in perpetuity” must be given effect, and the contract’s requirement of payments “for all calendar months following the Closing” similarly indicated no end date.

AXS’s Counterarguments

AXS advanced two counterarguments. First, AXS argued Cobalt Falcon’s interpretation rendered Section 6.9(b)’s maintain-and-operate clause meaningless, reasoning it would be “pointless for AXS to use best efforts to maintain the Fund” if the payment obligation survived closure. The Court rejected this, finding no contractual connection between the consideration in Schedule 2.4 and Section 6.9 and agreeing with Cobalt Falcon that the maintenance obligation benefits a component of the compensation formula that has meaning only if the fund is maintained.

Second, AXS argued that a perpetual payment obligation was absurd, characterizing the result as AXS “agree[ing] to pay more than a trillion dollars” for rights “worth approximately 40% less than \$3.1M.” The Court found this unpersuasive, noting that trading a revenue-generating asset for a perpetual obligation is not inherently absurd. More importantly, AXS’s interpretation would give AXS unilateral control over the consideration

by simply closing the Fund—itsself an absurd outcome rendering AXS’s reading unreasonable.

Holding

The Court held that there were not two or more reasonable interpretations of “in perpetuity” in the agreement. Because the agreement is unambiguous, its plain language applies: The payments are to continue forever unless otherwise agreed to by the contracting parties. The Court emphasized that it “cannot rewrite the consideration obligations simply because AXS may have been mistaken as to their duration or otherwise regrets the bargain it struck.”

The decision came from Judge Andrea K. Bouressa of the Texas Business Court, First Division.

Leo Park and Chris Schwegmann of Lynn Pinker Hurst & Schwegmann represented Cobalt Falcon.

AXS Investments was represented by David Miller and William Sandy Snyder of Bradley Arant Boult Cummings and Douglas Hirsch and Jennifer Rossan of Sadis & Goldberg.

DK Trading & Supply, LLC v. Wink to Webster Pipeline LLC, 2026 Tex. Bus. 33 (11th Div.)

The Decision

The Court ruled on cross-motions for summary judgment concerning two contracts for crude-oil storage and pipeline transportation, holding both agreements unambiguous and construing them as a matter of law. The Court granted summary judgment for DK Trading on two key issues: First, that the terminal services agreement grants DK Trading exclusive use of two designated storage tanks; and second, that the transportation agreement’s “ship or pay” clause allows DK Trading to include all crude oil actually shipped — including shipments paid with credits earned from past billing periods — to reduce its deficiency payments. The Court also granted summary judgment for Wink, dismissing DK Trading’s

breach-of-contract claims as to six disputed invoices for failure to deliver timely written notice, which the Court enforced as a condition precedent to bringing suit.

What Happened

This case arises from two agreements the parties executed concerning crude-oil storage at, and pipeline transportation from, a multi-tank terminal facility. Under the terminal services agreement, Wink agreed to provide DK Trading with specified “Storage Capacity” for its crude oil, maintain connection to the pipeline, and stage deliveries. Under the transportation agreement, Wink agreed to receive DK Trading’s nominated volumes and deliver equivalent volumes at specified destination points, while DK Trading committed to ship its volume commitment each true-up period or pay a deficiency payment.

DK Trading moved for summary judgment on three issues: that the terminal agreement granted it exclusive use of two tanks, that its deficiency payments should be calculated based on all crude oil actually shipped regardless of how the shipment was paid for, and that Wink’s improper invoicing constituted an event of default. Wink cross-moved, seeking dismissal of DK Trading’s breach claims relating to six of the deficiency payment invoices for failure to timely dispute them.

Exclusive Use of Two Tanks

A central issue was whether Wink was required to allocate two tanks exclusively for DK Trading’s use or could instead satisfy its obligation by providing a volumetric promise of storage space in any combination of shared tanks across the terminal. The Court, giving the contract’s terms their ordinary meaning and reading the agreement in its entirety, concluded that Wink agreed to provide crude-oil storage in two tanks for DK Trading’s exclusive use.

The Court emphasized that the agreement repeatedly treats “Storage Capacity” as comprising tangible facilities rather than an intangible amount of space. Also,

Wink could use different tanks only by “substitution,” and specifying conditions for tank substitution would have been unnecessary if the contract had always allowed Wink to simply disseminate DK Trading’s crude across as many tanks as it wished. The agreement also guaranteed that DK Trading’s use would be “exclusive,” a term the Court found would have little meaning if the agreement were merely for a specified volume in shared tanks.

The Court also noted that Wink’s proposed construction led to an absurd result: upon the agreement’s termination, DK Trading would be obligated to empty and clean every tank containing even a gallon of its crude.

Deficiency Payment Calculation

The parties also disagreed over the method for calculating deficiency payments under the transportation agreement. Under the agreement, DK Trading committed to ship a specified volume of crude oil each true-up period, and if it fell short, it owed a deficiency payment calculated as the difference between its volume commitment and its actual shipments, multiplied by a confidential rate. After paying a deficiency, DK Trading could apply that payment as a credit against future excess-shipping charges.

DK Trading argued it could satisfy its volume commitment with all shipments, even those paid for with previously accrued deficiency credits. Wink disagreed, contending that the credits would then effectively reduce both DK Trading’s monthly shipment costs and its subsequent deficiency payments.

The Court sided with DK Trading, finding that the agreement’s express terms unambiguously deducted all “Actual Shipments” from DK Trading’s volume commitment, and that “Actual Shipments” was defined plainly as “the number of Barrels of Product that [DK Trading] actually shipped on the Pipeline during a True-Up Period.” Nothing in the agreement required DK Trading to pay a higher deficiency based on its choice to use credits.

Though Wink argued that DK Trading’s reading threatened the parties’ “ship or pay” bargain by reducing DK Trading’s payments in subsequent periods, the Court observed that this compromise was the bargain the parties struck, noting that “the court will not retrade their bargain for them.” The Court also rejected Wink’s claim of ambiguity, finding the clause had only one reasonable meaning and that Wink improperly relied on extrinsic evidence, which cannot be used to create an ambiguity.

Condition Precedent

Wink prevailed on its motion concerning the Transportation Agreement’s notice clause for deficiency payment billing. Under the agreement, if DK Trading had a good faith dispute over a deficiency payment invoice, it was required to provide written notice to Wink no later than the invoice’s due date; the parties would then have 10 business days to attempt resolution before either could pursue its legal remedies.

The Court held this provision created a condition precedent to bringing suit. The Court explained that the provision’s conditional language established a specific condition for pursuing rights and remedies as to deficiency payment billing disputes.

DK Trading raised two defenses. First, it argued that Wink’s erroneous invoicing was a prior material breach that excused DK Trading from the notice requirement. The Court rejected this, noting that DK Trading presented no evidence supporting the materiality factors and that the contract itself showed the parties reasonably expected improperly calculated invoices to be handled through the notice-and-cure process — not that an improper calculation would discharge the parties from that process.

Second, DK Trading contended that the notice clause was void because it impermissibly altered the statute of limitations under Section 16.070 of the Texas Civil Practice and Remedies Code. The Court disagreed, holding that the clause placed no limit on the “time in which to

bring suit” but instead limited only the time to provide written notice of a dispute — and providing written notice to a carrier is not, and does not have the effect of, bringing suit.

Because DK Trading’s first notice of any deficiency payment dispute was served months after the timely notice period ran for the six oldest disputed invoices, the Court dismissed those claims with prejudice.

Evidentiary Rulings

The Court also partially granted each party’s motion to strike. The Court sustained DK Trading’s objections to a supporting declaration from Wink’s service provider, striking his subjective statements interpreting the contracts and associated course-of-performance evidence. However, the Court overruled DK Trading’s objections to portions of the declaration offered to prove the timing of invoices and DK Trading’s untimely notice as it went to DK Trading’s failure to satisfy the contract’s notice provision rather than to the validity of a claim. The Court likewise sustained Wink’s objections to unauthenticated figures and demonstratives in DK Trading’s briefing.

The decision came from Judge Stacy Rogers Sharp of the Texas Business Court, Fourth Division, sitting by assignment in the Eleventh Division.

DK Trading and Supply was represented by Thomas Donaho and William Ray Whitman of BakerHostetler.

Wink to Webster Pipeline was represented by Persis Dean, Andrew Hicks and Gabriel Slater of Hicks Johnson.

Energy Founders Fund v. Daskevich, 2026 Tex. Bus. 34 (11th Div.)

The Decision

In a third opinion arising from this ongoing corporate governance dispute, the Court granted Energy Founders Fund’s cross-motion for partial summary judgment and denied Daskevich’s motion, holding that GW Allen was not an “affiliate” of EFF within the meaning of the

company agreement. The Court declared that EFF validly triggered its drag-along rights because the buyer, GW Allen, was owned and controlled exclusively by an independent third party — PJC Investments — before the transaction closed. The Court concluded that the company agreement’s definition of “affiliate” requires actual, present control, not contingent future rights that materialize only after closing.

What Happened

EFF held Class A membership interests in Gage Western, while Phillip and Cris Daskevich held substantial minority interests. In mid-2024, EFF entertained an offer from PJC to acquire Gage Western for \$4.5 million. PJC formed GW Allen as a special-purpose acquisition vehicle.

In August 2024, EFF issued a notice of transfer and later a formal drag-along notice to compel the Daskeviches’ participation in the sale, though they refused to execute the closing documents. Daskevich argued that GW Allen was EFF’s affiliate because EFF had negotiated substantial post-closing governance rights — including board seats and veto authority — in the company agreement. EFF countered that affiliate status must be measured by existing control at the time of the transaction, not future rights contingent on closing.

‘Affiliate’ Definition

The Court’s analysis centered on three features of the company agreement’s definition of “affiliate,” which turned on whether a person “controls, is controlled by or is under common control with” the specified person.

First, the Court highlighted that the definition is framed entirely in the present tense — not a future or contingent entitlement. Second, the definition focuses on actual operational governance, not on who had negotiating leverage during the transaction. Third, the Court found that the catch-all phrase “by contract or otherwise” expands the methods by which control may be established, but it

does not eliminate the requirement that control must presently exist.

PJC’s Exclusive Pre-Closing Control

Reading the transaction documents together, the Court found that every stage reflected PJC’s unbroken ownership and command. The undisputed testimony of both PJC’s COO and Donovan confirmed that EFF held no equity, no voting rights, no authority to appoint or remove managers and no power to bind or direct GW Allen before closing.

The Court noted that the pre-closing emails and draft governance agreements reflected arm’s-length negotiation, which it described as “difficult to reconcile with the notion that EFF already controlled GW Allen”.

Daskevich’s Retroactivity Theory

Daskevich’s “most textually grounded argument” relied on the agreement’s “in connection with” language, contending it required the Court to view the transaction as an integrated whole and look past individual documents to the final destination of the deal. The Court agreed that the phrase sweeps in related documents for interpretive context but held it does not authorize declaring a pre-closing entity to be an Affiliate based on rights that spring into existence only after consummation.

The Court further rejected Daskevich’s chronology argument — that Donovan’s Aug. 17, 2024, written consent referenced GW Allen before the entity was formed on Sept. 3, 2024 — reasoning that EFF could not have exercised governance authority over an entity that did not yet exist, and once formed, GW Allen was exclusively controlled by PJC.

Commercially Unreasonable Results

Finally, the Court observed that Daskevich’s interpretation would produce commercially unreasonable results. Rollover equity and post-closing board participation are ubiquitous features of modern M&A transactions; under

Daskevich’s theory, the mere negotiation of such post-closing rights would transform an otherwise independent buyer into an affiliate, nullifying the drag-along rights the parties expressly bargained for. The Court noted that Daskevich’s theory “provides no principled stopping point” and would “cast doubt on virtually any drag-along transaction involving a newly formed acquisition vehicle”.

The decision came from Judge Brian Stagner of the Texas Business Court, Eleventh Division, sitting by assignment.

Energy Founders Fund was represented by Matthew Allen and K. Knox Nunnally of Allen & Nunnally.

Chris Curnutt Daskevich and Phillip Daskevich were represented by Craig Dillard, Michael Rahmn and Brittany Ruppel of Nelson Mullins.

Zack Ewing is a litigation partner at Kirkland & Ellis in Austin. He regularly appears in the Texas Business Court, in addition to serving as trial counsel in state and federal courts across the country.

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