The Texas Lawbook

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August Business Court Docket Anchored by Mavs Ownership Fight, 70-Page Trust Ruling

SEPTEMBER 8, 2026 | **BY ZACK EWING & MICHAEL PATTON**

The Texas Business Court stayed hot throughout August, issuing six opinions as the Court's docket continued to mature with procedural and doctrinal opinions. Evident in several opinions is the familiar theme that has characterized the Court's growing resolution of complex commercial disputes: Documents mean what they say, and parties are held to the bargains they struck.

The Court continued to consider the meaning of "action" under its enabling statute while clarifying its jurisdictional reach in a marquee dispute between entities associated with the Dallas Mavericks ownership group. In *CAM Industrial Solutions* — a trade-secret spinoff from a district court trial — the Court applied the "first final judgment" rule to bar claims against one defendant while letting claims against another proceed.

Elsewhere, the Court added to its developing body of LLC governance case law in *Carrington*, rejecting a conversion claim over uncertificated membership interests. In *Clean Hydrogen Works*, the court dismissed a Louisiana antitrust claim but let unfair-trade-practices claims survive.

The Court faced a question of first impression in *Preston Hollow* about whether a corporate bond indenture created an express trust under the Texas Trust Code, which was resolved through the Court's now-familiar deployment of Rule 166(g) to decide threshold legal questions early. And the Court clarified protective order restrictions in a trade-secret dispute between manufacturers in *Unimacts Global.*

In re Radical Hoops, Ltd. and Radical Mavericks II, LLC, 2026 Tex. Bus. 55 (1st Div.)

The Decision

In a dispute between entities associated with the Dallas Mavericks ownership group, the Court held that a Rule 202 petition to take a pre-suit deposition is an "action" that can be removed to the Texas Business Court because an "action" under the Court's jurisdictional statute includes a proceeding where a party seeks to enforce a claimed right, such as a Rule 202 petition. The ruling is the Court's first to address whether its removal jurisdiction extends to pre-suit proceedings. The Rule 202 petition was later withdrawn.

What Happened

This action arose out of Mark Cuban's sale of his majority interest in the Dallas Mavericks to members of the Adelson family. According to the petitioners, two entities associated with Cuban, the deal included an arrangement allowing Cuban to participate in certain future business opportunities. In 2024, the Adelsons began to pursue a new arena to replace the American Airlines Center, the arena where the Mavericks currently play home games. In June 2026, a Delaware entity formed by the Adelsons, Arena Development Intermediate (ADI), entered an option agreement to purchase part of the Valley View Mall property located in North Dallas for a new arena. Cuban alleged he was not informed of the arrangement.

Cuban originally filed a Rule 202 petition in Dallas County district court seeking pre-suit discovery to explore how ADI's deal to purchase the Valley View Mall property may affect his contractual rights. After ADI removed the proceeding to the Texas Business Court, the petitioners moved to remand, arguing a Rule 202 petition is not a removable "action."

"Action" Is Broader Than "Lawsuit"

Relying on Texas Supreme Court precedent, the Court held that "action" is a broader term than "lawsuit" and includes any proceeding in which a party pursues enforcement or protection of a claimed right, such as a Rule 202 proceeding. And the Court determined this action was within the statutory subject matter jurisdiction of the Court because the anticipated claims arose from qualified transactions meeting the Court's statutory jurisdiction: the multibillion-dollar sale of Cuban's majority ownership of the Mavericks and the option agreement to purchase the Valley View Mall property.

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

Radical Hoops and Radical Mavericks II were represented by John Zavitsanos, Warren McCarty, Jason McManis, Emily Adler, Anders Huizenga, Justin Kenney and Matthew Micik of Ahmad, Zavitsanos & Mensing and Collin D. Kennedy and Hastings Hanshaw of Hanshaw Kennedy Hafen.

ADI was represented by James Bookhout, Megan McKennon and W. Reid Corbin of Katten Muchin Rosenman.

CAM Industrial Solutions v. Brown & Root Industrial Services, 2026 Tex. Bus. 56 (11th Div.)

The Decision

The Court granted Brown & Root's motion for summary judgment on claim-preclusion grounds but denied co-defendant Sidney Daley's parallel motion. The result: CAM's claims against its former competitor were barred by a prior district court jury verdict, but its claims against Daley, an individual defendant accused of stealing confidential information, survived because Daley was not a party to the earlier suit and failed to establish privity with Brown & Root.

What Happened

In 2023, ExxonMobil replaced CAM as its longtime maintenance contractor at its facility in Baytown, Texas. CAM alleged that a competitor, Brown & Root, obtained the work by recruiting CAM personnel and misusing its confidential information. Specifically, CAM alleged that Daley, its former Baytown site manager, photographed proprietary rate sheets, sent the images to Brown & Root, deleted the evidence, and received a $100,000 payment from Brown & Root to join the company.

CAM had previously sued Brown & Root, but not Daley, in district court in 2024. After deposing Daley as a nonparty witness, CAM amended its petition but did not join Daley as a defendant. At trial, CAM presented the rate-sheet and payment evidence and requested jury questions on Daley's alleged breach and Brown & Root's knowing participation. The trial court declined because Daley was not a party, and the jury rejected all of CAM's claims. CAM filed this action one day before the district court's final judgment was signed.

The "First Final Judgment" Rule

In granting Brown & Root's motion of summary judgment, the Court applied the "first final judgment" rule: when parallel actions proceed simultaneously, it is the first final judgment that controls preclusion. CAM could not evade claim preclusion by filing its Business Court petition a day before the district court judgment was signed. The Court's determination that the date of filing is immaterial to which judgment carries preclusive effect was fatal to CAM's claims against Brown & Root because they arose from the same transaction and were nearly identical to its district court pleadings.

Daley Could Not Establish Privity

Daley's separate motion fared differently. Because Daley was never a party to the district court suit, to establish a claims preclusion defense he had to prove privity with Brown & Root. The central inquiry for the Court in determining whether privity existed was whether the relationship between the party (Brown & Root) and the nonparty (Daley) was sufficiently close that the party represented the same legal right.

The Court determined that the cases' shared facts and Daley's shared interest with Brown & Root in defeating CAM's claims, without more, was not enough to establish a legal relationship required for privity. Texas courts generally find legal relationships sufficient for privity in claim preclusion only if (i) the nonparty controlled the prior action, (ii) the nonparty's interests were fully represented by the party, or (iii) the nonparty is a successor-in-interest to a party — all connections that were not present in Daley's case. And the Court determined that Daley was not entitled to issue preclusion because the prior district court jury findings explicitly did not consider Daley's separate contractual or fiduciary duties.

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

CAM Industrial Solutions and CAM Plant Services were represented by Kathryn Ergenbright, Kirsten Krebs, Mackenzie Ward and Rafe Schaefer of Norton Rose Fulbright.

Brown & Root was represented by Joseph Y. Ahmad, Anders Huizenga, Brittanie Zinsmeyer, Davis Metzger and Weining Bai of Ahmad, Zavitsanos & Mensing.

Sidney Daley was represented by George Shepherd of Shepherd Prewett.

Carrington v. Corsi, 2026 Tex. Bus. 57 (11th Div.)

The Decision

The Court granted the defendants' Rule 91a motion to dismiss LLC limited investors' conversion claim, while denying dismissal of all other claims, determining that Texas conversion law does not recognize an alleged transfer or dilution of uncertificated LLC membership interests as conversion of property. The Court's opinion reinforces that Texas law generally requires tangible personal property to support a conversion claim.

What Happened

In 2011, Duncan C. Carrington became an early investor in Heady Brewing Company, LLC, which owned and operated a brewery, investing $50,000 and receiving 50,000 Class A units in the LLC. He later bought additional A-1 units. Co-plaintiff Zachary Hiller invested $25,000 and received 25,000 A-1 units. Both sets of units carried economic and distribution rights but no voting rights.

In May 2023, Heady's managers and other investors entered a Contribution and Exchange Agreement whereby rollover members received shares in a new "Bayou City Hemp Company" entity. As part of the Agreement, Carrington and Hiller were allocated interests in a $1.125 million convertible promissory note, which they alleged was worth approximately 7% of the value of their membership interests. The note was later converted into non-voting Bayou City stock. Carrington and Hiller brought suit alleged conversion of their Heady LLC membership interests.

The Merger Exception Does Not Apply

The threshold question the Court considered was whether LLC units are the kind of property that can be converted and therefore support a conversion claim. The Court determined that generally under Texas law, a conversion claim exists only for tangible person property, though an intangible right falls within the narrow "merger exception" only when that right has been merged into a physical document and the document itself is converted.

The Court held that Carrington's and Hiller's Heady LLC units did not fall into the "merger exception" that would support their conversion claim. Under Texas law, LLC membership interests are presumptively uncertificated unless the entity's governing documents provide otherwise. Heady's operating agreement stated that units "may, but need not be certificated," and it was not alleged that Heady's managers authorized or issued physical certificates, or that any party ever exercised dominion over any certificate. The Court determined that the rollover transaction concerned only intangible interests, not any physical document embodying that interest needed to support a conversion claim. The Court, dismissing the conversion claim, emphasized that its holding was limited in this instance, and explicitly did not rule that LLC interests could *never* support a conversion claim.

The decision came from Judge Sofia Androgué of the Texas Business Court, Eleventh Division.

Duncan C. Carrington and Zachary Hiller were represented by Kirsten Krebs, Mackenzie Ward, Rafe Schaefer and Ta'Chelle Jones of Norton Rose Fulbright.

Defendants BCHC Merge, Bayou City Hemp Company, BC Infinity and Benjamin Meggs were represented by Parker Jennings and Robert Wilkins of Lightfoot, Franklin & White.

Defendant Aaron Corsi was represented by Andrew Daniel Weisblatt and Dylan Clewis of Daw & Ray.

Defendant Sean M. Rosenbaum was represented by Christine Kirchner, Emelia Forbau, and Likun Chen of Chamberlain Hrdlicka.

Defendant Ryan Soroka was represented by Simon W. Hendershot and Matthew Buschi of Hendershot Cowart.

Clean Hydrogen Works LLC v. Denbury Carbon Solutions LLC, 2026 Tex. Bus. 58 (11th Div.)

The Court dismissed Clean Hydrogen Works's antitrust claim under the Louisiana Monopolization Act but allowed its Louisiana Unfair Trade Practices Act claims to proceed. The Court applied the Texas precedential *Coca-Cola* case's interstate-comity bar to the antitrust claim but declined to extend it to unfair trade practices.

What Happened

In 2021, Clean Hydrogen formed a Louisiana subsidiary to develop a clean hydrogen and blue ammonia facility in Ascension Parish, Louisiana. The project depended on Denbury's CO2 pipeline, which Clean Hydrogen alleged was the only operating Gulf Coast pipeline capable of transporting carbon dioxide. Denbury agreed to build a pipeline connection and handle the project's carbon-dioxide requirements, investing $20 million and becoming a minority member of the project entity.

Clean Hydrogen alleged that after ExxonMobil acquired Denbury in November 2023, Denbury reversed course, terminating the services agreements on allegedly pretextual grounds, demanding the sale of a critical land option, and halting pipeline work. Clean Hydrogen alleged the campaign was designed to free Denbury's pipeline capacity and impair a competitor to Exxon's own blue ammonia facility in Baytown, Texas.

Interstate Comity Bars the Antitrust Claim

Under Texas Supreme Court precedent in *Coca-Cola*, Texas courts will not apply another state's antitrust laws when the alleged competitive injury is confined to that state. The Court found that the monopolization claim involved a Louisiana pipeline, a Louisiana project, and Louisiana competitive harm — exactly the kind of policy-laden questions Coca-Cola reserved for Louisiana's own courts.

LUTPA Claims Survive

The Court, however, declined to extend *Coca-Cola* to unfair trade practices statutes, noting that Texas courts have continued to adjudicate sister-state UTPA claims after the *Coca-Cola* decision. The Court also determined that Clean Hydrogen alleged more than a contract dispute, sufficiently pleading a claim under LUPTA. Specifically, it alleged that Denbury and Exxon consented to an option extension, concealed any objection for more than a year, and then used a previously approved extension as a pretextual termination ground to kill the project. The Court concluded those allegations described deceptive conduct that could support a LUTPA claim, not mere contractual nonperformance.

The decision came from Judge Sofia Androgué of the Texas Business Court, Eleventh Division.

Clean Hydrogen Works was represented by Charles Seely, Kevin Garland and Shane McDonald of Foley & Lardner.

Denbury Carbon Solutions and ExxonMobil were represented by Benjamin Betner, Collin J. Cox, Kylie Calabrese and Lloyd Steven Marshall of Gibson Dunn and Adam M. Dinnell, Andrew Gould, Andrew S. Hicks, Daniel J. Scime, Gabe Slater, Marc S. Tabolsky and Persis Dean of Hicks Johnson.

Preston Hollow Capital, LLC v. Truist Bank, 2026 Tex. Bus. 59 (1st Div.)

The Decision

In a sweeping 70-page opinion, the Court held that the Texas Trust Code did not govern Truist Bank's relationship with the bondholders under the operating bond documents and accordingly dismissed Preston Hollow's breach-of-trust claim. The Court found that the documents did not create an express trust because they never transferred full legal title to Truist, and the arrangement did not reflect an intent to create a fiduciary relationship.

Before Truist received written notice of a default, the Court determined that its duties were limited to those the documents expressly required, with no implied duty to monitor compliance or investigate potential defaults. After default and the required written notice was issued, the Court concluded that Truist owed a higher, contract-based "reasonably prudent" standard of care. But that duty was contractual, and not fiduciary under the Trust Code.

What Happened

In January 2017, Truist's predecessor BB&T agreed to serve as trustee for a bond offering financing Inspired Living at Sugar Land, a senior-living facility developed by Senior Care. Preston Hollow purchased and was issued over $21 million in senior bonds to finance the facility. The bonds were secured by most of Senior Care's assets, and the deal required Senior Care to deposit all project revenues into accounts Truist controlled. The project was substantially completed by late 2017.

In 2019, Preston Hollow learned that Senior Care failed to pay its general contractor and property taxes and directed Truist to issue default notices and accelerate the debt. Later, Preston Hollow discovered that Senior Care had never deposited revenues into the Truist-held account as required. Preston Hollow sued Truist for breaches of fiduciary duties, trust, and contract in district court in May 2023 and the parties later agreed in July 2025 to re-file in the Business Court.

The Trust Code Does Not Apply

The Court ultimately held that Title 9 of the Texas Property Code — the Trust Code — did not govern the relationship. Applying the Poole factors, the Court found no express trust existed because Senior Care never transferred full legal title to Truist. The arrangement instead functioned as security for a debt, not a trust, as Senior Care retained possession and responsibility for the property. Truist could sell only after a default, while Senior Care could recover the property by repaying the debt. The Court determined that the documents' repeated use of "trust" and "trustee" did not overcome the overall purpose of the arrangement or show an intent to create a fiduciary relationship.

Pre-Default and Post-Default Duties

The Court drew a distinction between Truist's pre-default and post-default obligations. Before Truist received written notice of a default, its duties were limited to those the bond documents expressly stated. The Court found that Truist therefore had no implied duty to monitor Senior Care's compliance or investigate potential defaults.

After written notices of default were issued, Truist owed a heightened, contractual "reasonably prudent" standard — similar in substance to a fiduciary duty, but a contractual rather than statutory duty. Notably, the Court held that written notice was required to trigger these heightened post-default duties even if Truist had actual knowledge of the default, because the documents' use of "[Truist] shall not be deemed to have knowledge" in the notice provision prevented triggering absent written notice. The Court determined that the parties' use of "actual knowledge" elsewhere in the documents, but not in the notice provision, illustrated that the omission was intentional.

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

Unimacts Global LLC v. Ayr Energy Inc., 2026 Tex. Bus. 60 (11th Div.)

The Decision

In this trade-secret misappropriation case between rival manufacturers, the Court denied BTG Advaya, an India-based law firm representing the plaintiffs in other litigation but not counsel of record in this matter, access to discovery materials produced by Ayr Energy that were marked confidential or attorneys' eyes only.

What Happened

Unimacts and Zetwerk Manufacturing are suing Ayr Energy for alleged misappropriation of trade secrets, among other claims. The Court's March 2026 protective order restricts access for two tiers of discovery: confidential information and materials marked attorney's eyes only. The protective order allowed for access for "Outside Counsel Working on this Lawsuit." The plaintiffs' counsel sought to share Ayr Energy's protected materials with BTG Advaya attorneys in India who are advising them on this and other litigation, but are not the counsel of record.

Risk Outweighs Need

The protective order allowed access for "Outside Counsel Working on this Lawsuit," which Unimacts argued included BTG Advaya. The Court found the plain language ambiguous. Read alongside a separate provision referencing "signing contractors," which connoted counsel of record, the provisions did not clearly cover BTG

Advaya. The Court therefore turned to a balancing test used when considering protective orders in trade secret cases, considering the risk that counsel would inadvertently disclose or misuse the protection information against the need for counsel to have access to the information.

The Court determined the risk of sharing the materials with BTG Advaya was concrete and non-theoretical. In fact, one BTG Advaya attorney had already received attorneys'-eyes-only materials by mistake and discussed them with Zetwerk's Director of Marketing and Sales, a corporate decision-maker. That prior breach, combined with BTG Advaya's involvement in related litigation (including a separate case in India against one of Ayr Energy's principals) and its location beyond the court's subpoena power, tipped the balance decisively. On the other side of the scale, the plaintiffs could not show concrete prejudice given that multiple competent counsel of record were already handling the case.

The decision came from Judge Marialyn Barnard of the Texas Business Court, Eleventh Division.

Unimacts Global and Zetwerk Manufacturing were represented by Brent Hanson, Conor Tucker, Craig Smyser, David Isaak, Drew Padley and Karima Maloney of Steptoe.

AYR Energy was represented by Alexander R. Ades, Julia C. Risley and R. Paul Yetter of Yetter Coleman and Alison Siedor, Arsh Raince, Christine V, Sama, Huiya Wu, Ishika Desai, Samuel A. Kunzman and Timothy Keegan of Goodwin Proctor.