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Free Speech, Due Process and Trial by Jury

Business Court's September 2026 Decisions: Who Gets In, and Who Gets Out Early

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The Texas Business Court spent September on gatekeeping. Four of its opinions turned on whether the court could hear the case at all: the court kept two removed cases, remanded a third and dismissed a fourth in deference to another court's long-running receivership. Three opinions decided Rule 91a motions, including one that left open whether Texas recognizes aiding and abetting.

Three themes emerged. First, the burden-shifting framework from *C Ten 31 v. Tarbox* keeps shaping amount-in-controversy disputes, and it cuts both ways. Second, the court's commitment to textualism drove the results. Third, Rule 91a remains a go-to early-disposition tool, but September showed its limits as well as its reach.

September also showed that the court's docket has matured enough to build its own body of precedent. The court relied on its own recent decisions — including *Kampmann*, *Brown*, *Yaun*, *Aspire*, *DrinkPAK*, *Enosis*, *Dallas Sports Group*, *Unimacts* and *Carrington* — and issued two opinions in the same case within the month.

Parker v. Lynzara-Austin Real Estate Management, 2026 Tex. Bus. 62 (4th Div.)

The Decision

The court granted the defendants' plea to the jurisdiction and dismissed the suit, holding that because the partnerships at issue were already in a receivership overseen by a Kendall County district

court, which sits outside the Business Court's current operating territory, that court retains exclusive jurisdiction over the partnerships for as long as the receivership lasts.

What Happened

The case arises from the breakdown of a long-running business relationship between Parker and Shalit concerning the operation of a resort and related real estate developments in Kendall County. Litigation between them began in Kendall County in 2012, and in 2018 the 451st District Court placed the relevant business entities in a receivership. The Kendall County court entered final judgment earlier this year, and a severed portion of that suit is now before the Supreme Court of Texas on a petition for review.

While the appeal was pending, the plaintiffs sent notice removing Shalit as general partner and asked the Kendall County court to convert the existing receivership into a liquidating receivership. That court declined and instead extended the existing receivership. The plaintiffs then filed this suit in the Business Court's Fourth Division, seeking the appointment of a liquidating receiver over three partnerships, along with their dissolution, winding up and termination. After jurisdictional briefing, the parties jointly asked the court to rule on written submission.

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Chapter 11 Is Jurisdictional

Chapter 11 of the Business Organizations Code vests sole jurisdiction to appoint a liquidating receiver and to order a partnership's winding up and termination in a district court in the county of the entity's registered office or principal place of business. And Section 11.401 provides that a receiver may be appointed for a domestic entity "only as provided for and on the conditions set forth in this code." The court rejected the plaintiffs' argument that Section 11.314 "is not jurisdictional," reasoning that the Code uses "jurisdiction" and "venue" dozens of times, and each term has a distinct meaning the Legislature is presumed to intend.

The Receiver's Court Holds the Keys

The dispositive rule came from a different subchapter. Under Section 11.408(b), "[a] court that appoints a receiver ... for the property or business of a domestic entity has exclusive jurisdiction over the domestic entity and all of its property, regardless of where the property is located." All parties agreed the Kendall County receivership remained in effect, the receiver retained broad powers over the partnerships' assets and operations, and the plaintiffs' own pleading placed the partnerships' principal place of business in Kendall County. Nor did the entry of final judgment impair that exclusivity, because a court may continue to exercise jurisdiction over a receivership during postjudgment and appellate proceedings.

The plaintiffs' alternative theories fared no better. The general receivership statute in Section 64.001 of the Civil Practice and Remedies Code must yield to the Business Organizations Code's specific receivership provisions, as courts have held since at least 1974. And the partnership agreements' designation of Bexar County as a place of performance invoked a permissive venue statute, which governs where suit may be brought — not whether a court has subject-matter

jurisdiction.

Concurrent Jurisdiction Does Not Reach a Receivership Res

The court acknowledged that Chapter 25A grants it concurrent jurisdiction over certain actions "in which a district court has exclusive jurisdiction." But unlike general grants of exclusive jurisdiction over types of "actions," Section 11.408 confers exclusivity on "a court that appoints a receiver" — any court — and attaches that exclusivity to the entities and their property. A receiver is "an arm or instrumentality of the court," the property is in custodia legis, and, quoting the Supreme Court of Texas, "[n]owhere is the doctrine enforced more stringently than when other courts attempt to interfere." In any event, because Kendall County lies outside the Business Court's operating divisions, the court could not derive concurrent jurisdiction from the Kendall County court.

Because the plaintiffs never made the election Section 25A.006 requires — transfer to a court of proper venue or dismissal — despite the court's instruction to do so, the court dismissed without prejudice to refile. It did not reach the defendants' amount-in-controversy argument or their alternative plea in abatement based on dominant jurisdiction.

The decision came from Judge Stacy Rogers Sharp, Fourth Division.

Dhannani v. Batool, 2026 Tex. Bus. 61 (11th Div.) (mem. op.)

The Decision

The court denied the defendant's motion to remand, holding that the plaintiff's removal was timely because it was filed one day after the district court granted a temporary injunction and that the live petition adequately pleaded an amount in controversy exceeding \$5 million.

What Happened

Dhannani sued in Harris County district court, alleging that the defendants removed and converted approximately \$500,000 of company inventory, transferred \$36,772.23 from the company's operating account, seized or froze its social media accounts, removed business phones containing customer information and moved to form a competing business. She sought a temporary restraining order and temporary injunction and initially pleaded monetary relief of \$250,000 to \$1 million. Over the next two months, the plaintiffs amended three times — adding a plaintiff and defendant, reframing the suit as individual and derivative and alleging an amount in controversy exceeding \$5 million.

The district court entered a TRO April 6, an amended TRO April 22 and granted the temporary injunction in part May 28. The next day, 56 days after the original petition, Dhannani removed the case to the Business Court. The defendants moved to remand.

Removal After a Temporary Injunction Ruling

Section 25A.006(f)(2) and Rule 355(c)(2)(B) provide that if a temporary injunction application is pending when the removing party discovered, or reasonably should have discovered, facts establishing the Business Court's jurisdiction, the notice of removal is due within 30 days after the application is granted, denied or denied by operation of law. The defendants argued that the plaintiffs had filed "successive and indefinite" injunction applications "to thwart the spirit of the removal statute." The court disagreed, finding that the three iterations of injunctive relief reiterated the relief previously sought while the petitions added parties and claims. Because the temporary injunction had been granted just one day earlier, the removal was "punctual."

Amount in Controversy: Pleadings Control

On the amount in controversy, the court applied the now-familiar burden-shifting standard: a good-faith allegation controls unless the challenger shows the amount was pleaded as a sham or is readily established as outside the court's jurisdiction. The live petition alleged that the amount in controversy exceeded \$5 million and that the company's going-concern value before the defendants' conduct "far exceeded \$5 million," pointing to more than \$2.5 million in revenue over the prior 12 months and valuation multiples of two to three-and-a-half times seller's discretionary earnings for perfume stores. The defendants offered no verified affidavit or other evidence to contradict this.

The court also dispatched the defendants' forum-shopping argument in a footnote, observing that the risk of forum shopping "is not unique to the Business Court" and that the court "will not second guess the policy determinations made by the Legislature."

The decision came from Judge Sofia Adrogué, Eleventh Division.

Hinds v. Sandman Offshore, 2026 Tex. Bus. 63 (11th Div.) (mem. op.)

The Decision

In the first of two September opinions in this case, the court partially granted the defendants' Rule 91a motions, dismissing most of an expelled LLC member's claims, including his claims for breach of the implied covenant of good faith, fraud by nondisclosure, constructive fraud, conversion and tortious interference, along with contract and fiduciary-duty theories based on his removal and expulsion. But the court preserved his fiduciary-duty claims and his contract claim based on the company's refusal to hold a special meeting. The court declined to award fees to either side.

What Happened

Sandman Offshore is an oil and gas company with five members, each holding an equal interest, including Hinds and Wegner, who served as co-managers. In March 2026, Sandman’s members removed Hinds as co-manager, and the next month they expelled him as a member.

Sandman pleaded that the removal and expulsion were prompted by Hinds’ self-dealing, which Hinds disputed. Hinds contended that Wegner instead orchestrated his ouster out of animus and self-interest.

Fiduciary Duties Defined by the Agreement

The court first found that Wegner owed Hinds no fiduciary duty as a fellow member, because LLC members do not owe formal fiduciary duties to one another simply by virtue of their relationship, and the company agreement did not alter this. Wegner’s duties as manager depended on the agreement, which eliminated managers’ duties “[e]xcept for such duties as may be expressly set forth in this Agreement” — including the duty not to manage the company with gross negligence, willful misconduct or breach of the agreement.

Drawing on the Supreme Court of Texas’ decision in *Pitts v. Rivas* and the Eighth Division’s 2025 decision in *Tall v. Vanderhoef*, the court held that Hinds’ fiduciary claims survived to the extent they alleged willful misconduct in managing Sandman, usurpation of corporate opportunities and diversion of Hinds’ royalty interest. But his claims based on Wegner’s orchestrating the expulsion, concealing the plan and appointing a replacement manager without notice contradicted an agreement that expressly permitted company action “without a meeting, without prior notice, and without a vote.” Quoting *Pitts*, the court explained that “[t]he freedom of contract includes the freedom to define the nature and scope of a business relationship in a way that forecloses

the imposition by courts of duties inconsistent with the parties’ agreement.”

No Informal Fiduciary Duty from a Long Friendship

Hinds also pleaded a “special relationship of trust and confidence” arising from a roughly 16-year business association “marked by mutual trust, reliance on one another’s judgment, and personal confidence.” Under *Pitts*, the court held, that relationship “came nowhere close” to an informal fiduciary relationship. Instead, according to his own pleading, Hinds knew he had a longstanding, trusting relationship with Wegner “but then chose to stringently restrict the obligations owed between them, reducing them to writing.” The absence of a special relationship also foreclosed his claim for breach of the implied covenant of good faith and fair dealing.

Expulsion Under the Agreement

Hinds’ contract claims based on procedural deficiencies fared no better. Both the Business Organizations Code and Sandman’s agreement permit action by written consent without notice or an opportunity to be heard, and the court, citing *Primexx* and *Dallas Sports Group*, reiterated that it “cannot impose a condition that the parties omitted from their agreements under the guise of construing their contracts.”

The court then dismissed Hinds’ claim that he was expelled without valid “cause.” Section 2.9 permitted expulsion only “for cause and only with a Majority Interest decision,” and Section 5.11 provided that conflicting business activity, “as determined by Majority Interest of the Members,” “shall be cause.” The court did not accept as true the written consent’s finding that Hinds engaged in conflicting business activity. But it held that the agreement vests that determination in the majority interest — “not any one LLC member or the court” — and Hinds pleaded no facts suggesting he was expelled without such

a determination. His claim based on his removal as manager failed because he conceded the agreement allowed removal “with or without cause.”

One contract theory survived. Hinds adequately pleaded that, as a 20 percent member, he delivered a request for a special meeting at least 10 days before the proposed May 11 meeting date, as the agreement required, and that Sandman refused to honor it.

Fraud, Conversion and Tortious Interference

Hinds’ fraud-by-nondisclosure and constructive-fraud claims hinged on a fiduciary duty to give him advance notice of the expulsion plan — a duty the agreement eliminated. A partial-disclosure theory raised only in briefing was not grounded in his pleading. Having found no duty, the court did not reach Wegner’s red-flags argument on justifiable reliance.

The conversion claim failed because Hinds did not plead that he was stripped of his membership interest. Under the agreement’s terms, expulsion forfeited his voting rights but preserved his ownership of the interest, which he may sell through a third-party appraisal process. And because Texas conversion law generally reaches only tangible property, and Sandman’s agreement is silent on certification, the claim fell outside the narrow merger exception.

Finally, the tortious-interference claim failed because Wegner was a party to, not a stranger to, Hinds’ business relationship with Sandman. Just as a party cannot tortiously interfere with its own contract, the court reasoned, “a party to a business relationship cannot interfere with his own relationship.”

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

The Bakery v. Naterra International, 2026 Tex. Bus. 64 (3d Div.)

The Decision

The court denied the defendant’s motion to remand, holding that presuit threats to assert counterclaims valued above the jurisdictional threshold do not, standing alone, establish the court’s jurisdiction over an action in which those counterclaims have not yet been pleaded.

What Happened

On May 19, the plaintiffs filed a suit on sworn account, alleging that Naterra owed \$1,350,507 for services provided. On July 1, Naterra counterclaimed, alleging more than \$60 million in damages. On July 29, the plaintiffs removed, asserting that the action arose out of a qualified transaction and, with the counterclaims, exceeded \$5 million in controversy. Naterra argued that the removal was untimely because, in response to a presuit demand letter, it had threatened counterclaims worth more than \$60 million — so the plaintiffs knew, or should have known, of the jurisdictional facts before they even filed suit.

Unpleaded Counterclaims Are Not Part of the “Action”

The court disagreed. The amount in controversy is determined by “the total amount of all joined parties’ claims,” and counterclaims that have not been pleaded generally are neither “claims in the suit” nor part of what has been joined, even if a party has threatened to bring them. A party that threatens counterclaims may later elect to forgo them, bring different ones or revalue them.

DrinkPAK Distinguished

The court rejected Naterra’s reliance on the Eighth Division’s May decision in *DrinkPAK v. PRIII/Crow Building C*. In *DrinkPAK*, the claims the plaintiff originally pleaded already exceeded the threshold, and the defendants — who

knew as much — failed to remove within 30 days. The court agreed with *DrinkPAK* that “[f]iling a counterclaim does not create a new action” and therefore does not restart the clock for previously filed claims. But filing counterclaims can bring an existing action within the Business Court’s jurisdiction when the previously filed claims did not satisfy the amount-in-controversy requirement on their own. That did not happen in *DrinkPAK*; it did here. The court added in a footnote that presuit demands can be “compelling evidence” of an amount in controversy — but only as “evidence of the value of claims actually pleaded in the action.”

The court also noted a practical problem with Naterra’s position: A defendant that threatened counterclaims before suit could simply wait more than 30 days after the petition to file them, depriving every other party of any timely opportunity to remove.

The decision came from Judge Melissa Andrews, Third Division.

Beard v. Perot, 2026 Tex. Bus. 65 (1st Div.)

The Decision

The court’s opinion followed its grant of the defendants’ Rule 91a motion to dismiss a former Perot Jain partner’s claims to a 3 percent carried interest in Access Healthcare, a portfolio company later sold in a multibillion-dollar deal. The court held that the broad releases in the plaintiff’s separation agreement, together with the no-reliance and merger clauses in both his separation and later release agreements, defeated his fraud and contract claims based on an alleged oral “handshake agreement.”

What Happened

Joseph Beard joined Perot Jain, an early-stage venture capital firm founded by Henry Ross Perot Jr. and Anurag Jain, in September 2015 as its first partner. Beard was eligible for a 3 percent promote based on his involvement in the firm’s portfolio companies. His most

time-consuming and valuable assignment was Access Healthcare, where for more than four years he functioned as an employee, served as its U.S.-based senior vice president of corporate development and, by his account, created at least \$128 million in value.

When Beard left amicably in July 2020, the parties signed a separation agreement granting him a vested carried interest applicable “only to the companies identified in Schedule A.” Schedule A listed 37 companies. Access Healthcare was not among them. According to Beard, the defendants said they excluded Access Healthcare in exchange for a separate, later payment to avoid a difficult valuation, and, based on the parties’ trust, he orally agreed to the exclusion.

More than two years later, the parties executed a release agreement in which Perot Jain bought out Beard’s Schedule A interests for \$270,000. Beard alleges that both Perot Jain’s lawyer and his own counsel confirmed that the buyout did not affect his Access Healthcare interest. When Access Healthcare sold in January 2025, the defendants refused to pay, denied that the handshake agreement ever happened and said Beard had disclaimed any interest. Beard sued for fraud, promissory estoppel, quantum meruit, breach of the oral agreement and his employment agreement, and rescission.

The Releases

The court first held that the separation agreement’s release independently barred most of Beard’s claims. The release covered all claims “in any way related to” Beard’s employment or separation, including claims for “profit participations” and “compensation of any nature other than wages,” whether “actual and potential.” And it expressly named Access Healthcare, Perot and Jain as released parties. The court held that a release need not identify each potential claim, and the Access Healthcare claim fell squarely within the categories released. Because the parties had discussed Access Healthcare before

signing, the claim was not “unknown.” Only a claim that Beard was fraudulently induced into signing the agreements themselves could escape the release.

Three Paths to Negating Justifiable Reliance

The court synthesized the Supreme Court of Texas’ recent justifiable-reliance jurisprudence into three analytical lines under which reliance on extracontractual promises may be unjustifiable as a matter of law — the red-flags doctrine, the direct-contradiction rule and reliance disclaimers — and explained that they “may operate independently or together depending on the facts.” Walking through *Roxo Energy v. Baxsto*, *National Property Holdings v. Westergren*, *JPMorgan Chase Bank v. Orca Assets*, *Mikob Properties v. Joachim* and the Supreme Court’s 2026 decision in *Maya Walnut v. Ly*, the court observed that the two parts of *Roxo* could have been decided under either doctrine. Here, the court concluded, “all three lines apply.”

The Forest Oil Factors

The court found all three reliance disclaimers — one in the separation agreement and two in the release agreement, including an express acknowledgment that Beard was “precluded from bringing any fraud, fraudulent inducement or similar claim” — clear and unambiguous. It then worked through each of the Forest Oil factors, each of which it found favored the defendants:

- *Negotiated terms*: Access Healthcare’s exclusion was discussed during both transactions, and Beard personally negotiated changes to the release agreement with opposing counsel.
- *Representation by counsel*: The separation agreement gave Beard 45 days to consult counsel of his choosing, and he did consult his own counsel before signing the release agreement.

- *Arm’s-length dealing*: Terminating employment is “an inherently adversarial transaction,” and the release agreement came more than two years later as part of a buyout.
- *Sophistication*: The court found this factor weighed heavily in favor of defendants, noting that Beard’s counsel agreed at the hearing that the pleaded facts describe “a highly sophisticated and successful investor.”
- *Clear language*: “Both contracts were short. A person of Beard’s experience, sophistication, and abilities could not have missed or misunderstood what he was signing.”

The court therefore held that the *Forest Oil* factors alone supported enforcing the disclaimers “without directly resorting to red flags and direct contradiction analyses.”

Red Flags and Direct Contradiction, Too

For good measure, the court held that the alleged oral promise directly conflicted with the separation agreement’s limitation of carry “only” to Schedule A companies, its merger clause, the no-reliance clause and the release. Drawing on *Roxo*, it held that the absence of the promised term from the writing was itself a red flag, and that the defendants’ failure ever to admit Beard to the partnership or to reduce his carry to a definite agreement was an additional red flag. The court rejected Beard’s argument that a long relationship of trust transformed the transactions. The court was careful to note that it was not holding that a merger clause alone negates a fraud claim, consistent with *Italian Cowboy*.

The Individual Defendants

Because justifiable reliance is an element of fraud, not an affirmative defense, the court held that the conclusions as to Perot Jain applied equally to Perot and Jain individually,

noting that the Supreme Court in *Mercedes-Benz USA v. Carduco* did not distinguish between the corporate signatory and its agents. And in any event, the release expressly named them.

Contract and Equitable Claims

The remaining claims fell in turn. The separation agreement’s merger clause superseded the employment agreement’s promote-eligibility language. The handshake agreement was barred by the parol evidence rule, and the collateral-agreement exception could not apply to an oral promise that contradicted the writing’s “only” limitation. The promissory estoppel claim failed because reliance was negated, the promise was covered by contract and Beard sought expectancy rather than reliance damages. The quantum meruit claim failed because his employment agreement covered his Access Healthcare work and, as to Perot and Jain, because he pleaded that he worked for and expected payment from the firm. And rescission failed because it is a remedy and Beard had neither tendered nor offered to tender the consideration he received.

The decision came from Judge Bill Whitehill, First Division.

Hinds v. Sandman Offshore, 2026 Tex. Bus. 66 (11th Div.) (mem. op.)

The Decision

Ten days after its first opinion, the court denied Hinds’ and EnviroCore’s Rule 91a motions to dismiss Sandman’s counterclaims for fraud by nondisclosure, tortious interference with an existing contract, civil conspiracy, knowing participation in breach of fiduciary duty and aiding and abetting. The court also overruled the movants’ alternative special exceptions.

What Happened

Sandman’s amended counterclaims fleshed out its self-dealing theory. Sandman had a purchase and sale

agreement requiring Wyotex to pay \$1 million Oct. 16, 2025. According to the counterclaims, in June 2025 Hinds, acting as Sandman’s manager, recommended that Wyotex accept EnviroCore’s \$777,204 drilling bid — the lowest received — without disclosing that he owned EnviroCore. In August, Wyotex told Hinds that paying EnviroCore’s invoice would hinder its ability to make the upcoming \$1 million payment to Sandman, but it paid EnviroCore anyway. In October, Hinds granted Wyotex a deferral of part of its payment to Sandman without his co-manager’s or the other members’ approval. In November, Hinds made no disclosure in response to the members’ request for disclosure of any consulting arrangements with Wyotex. And in December, after Wegner learned of the deferral and insisted on payment, Wyotex paid the balance within days. Before the hearing, Wegner nonsuited his counterclaims and Sandman amended its pleading.

Fraud by Nondisclosure: Reliance Through Inaction

Hinds did not challenge the existence of a duty to disclose, instead attacking reliance and causation. The court found that Sandman adequately pleaded facts sufficient to support an inference concerning its inaction-based fraud theory and rejected Hinds’ “temporal impossibility” argument — that the deferral preceded his November nondisclosure—because Sandman alleged nondisclosures dating back to June 2025. Unlike the question of duty, which the court noted in its earlier opinion is a matter of law readily addressed at the pleading stage, causation is typically a fact question.

Tortious Interference

EnviroCore argued that “chronology defeats causation” because each alleged act preceded Wyotex’s payment obligation. The court was unpersuaded, stating that “an act of interference necessarily occurs before the breach,

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not afterwards, to influence the breach.” Because Sandman alleged EnviroCore knew of Wyotex’s obligation throughout its June-through-October conduct, “[t]he chronology here works in Sandman’s favor, not EnviroCore’s.”

Conspiracy

Hinds and EnviroCore invoked the rule that an entity cannot conspire with its own agents. But that principle does not apply where the agent is simultaneously involved with another entity with conflicting interests — and “[a]s applied to this suit as pleaded by Sandman, the exception swallows the rule.” Sandman alleged that Hinds acted as Sandman’s manager while EnviroCore acted through him in its independent corporate capacity, and Hinds conceded he was not asking the court to disregard EnviroCore’s separate identity. The court noted in a footnote that Texas intermediate appellate courts are divided on whether a corporation can conspire with its wholly owned subsidiary.

Knowing Participation and Imputed Knowledge

For the knowing-participation claim, the court looked back to its first opinion: Hinds owed Sandman a fiduciary duty “albeit limited in scope under the parties’ contract” with express carve-outs for willful misconduct and conflicting business activity. Knowledge was adequately pleaded through imputation, because Hinds was EnviroCore’s president. Although imputed knowledge creates a presumption rather than evidence, the court observed that “this suit is not at the evidentiary stage of the proceedings.”

Aiding and Abetting

The opinion’s most notable holding concerns aiding and abetting. EnviroCore argued that Texas does not recognize the claim. But the Supreme Court of Texas “has not expressly decided” the question, and under *In re First Reserve Management*,

a claim lacks a basis in law under Rule 91a only if it is barred by “an established legal rule.” When the Supreme Court has not expressly addressed the discrete legal question, the court reasoned, “[t]he answer is ‘undecided.’” EnviroCore’s authority, including the First Division’s 2025 *Primexx* decision, disposed of aiding-and-abetting claims under Rule 166, not Rule 91a. The court therefore declined to hold that an established legal rule barred the claim at the pleadings stage.

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

Runner Runner v. BLPP Holdings, 2026 Tex. Bus. 67 (1st Div.) (mem. op.)

The Decision

The court granted the plaintiff’s motion to remand, holding the removing defendant failed to rebut the plaintiff’s evidence that the amount in controversy did not exceed \$5 million.

What Happened

Defendant Miller removed this derivative action, brought on behalf of FM 900, LLC against the company’s other members, to the Business Court July 17. The plaintiff also sought dissolution of the company and an accounting. To establish the amount in controversy, Miller relied on the plaintiff’s own second amended petition, which alleged that FM 900 “owns and operates a ranch property with an estimated fair market value of approximately \$5,000,000,” along with “other damages” consisting of improper expenditures of company funds.

The court walked through the familiar three-step burden-shifting framework. At step one, it found that Miller’s allegations, taken as true, met his initial burden. At step two, the plaintiff came forward with an affidavit from its sole member, Kaplin, and supporting loan documents showing that the ranch was encumbered by approximately \$1.74 million in debt as of the removal date. Kaplin clarified

that the “\$5 million figure ... was an estimate of the Ranch’s possible gross market value,” did “not account for the indebtedness secured by the Ranch” and “was not a valuation of FM 900 as an entity.” The petition’s other alleged irregularities, including roughly \$82,000 transferred to Exolux LLC (of which about \$80,000 had been returned), about \$23,900 in checks to a former manager, a member’s underfunding of more than \$360,000 and a disputed default notice of about \$28,040, did not close the gap. At step three, Miller “relie[d] solely” on the plaintiff’s live pleadings and “offer[ed] no competing proof,” which the court found could not “outweigh Runner Runner’s evidentiary record.”

**The decision came from Judge
Andrea K. Bouressa, First Division.**