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Jurors on the Move, Contracts on Trial: October's Texas Business Court Decisions

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Juror pay of up to $250 a day, a courtroom swap mid-deliberations and another stack of opinions — October had it all. In Dallas, the Texas Business Court presided over a multiweek jury trial and made headlines for the generous supplemental pay its jurors receive. But the trial also exposed a growing pain for the court: Without courtrooms of its own, the jury had to decamp to a district judge's courtroom midway through deliberations. Meanwhile, the Court's opinions took on shareholder standing, the economic-loss rule and — of course — contract interpretation.

FSTI, Inc. v. PVS Minibulk, Inc., 2026 Tex. Bus. 69 (3rd Div.)

The Decision

"Production" means what the plant made, not what it might have made. Explaining its earlier grant of summary judgment against FSTI's claim that its customer, DPC, breached an output contract for bleach, the Court held that a promise to buy "100% of Seller's production" covers the seller's actual production, not its hypothetical capacity.

What Happened

In October 2021, FSTI and DPC signed a 10-year deal: DPC would buy all of the bulk bleach FSTI produced at its Greenville, Texas, facility, and both sides agreed it was an output contract under UCC Chapter 2. In February 2024, FSTI sold the facility to HASA but carved the bulk contract out of the sale — a move DPC alleges boosted the sale price by more than $15 million. DPC later learned that HASA would handle future deliveries, and HASA eventually refused to honor the contract price.

FSTI sought a declaration that the sale did not breach the contract. Then it switched positions: Its original petition admitted that DPC had bought the entire bulk output, but its amended petition claimed DPC failed to buy the facility's total output. The defendants moved for summary judgment on this claim.

"Production" Means Production

FSTI conceded that DPC bought every gallon actually produced. It argued instead that DPC had to buy "what FSTI *could* produce in good faith," because limited storage and bleach's short shelf life let DPC effectively control FSTI's output. The court rejected that argument based on the ordinary meaning of "production" — production is what the facility actually made; "capacity" is what it could have made. Nor does the good-faith requirement in UCC § 2.306(a) turn "production" into "capacity."

FSTI "got what it bargained for." With tens of thousands of gallons of storage space sitting unused throughout the contract term, the court refused to "assume a hypothetical breach."

No Elastic "Reasonable Time"

The court also rejected FSTI's argument that DPC had to buy the bleach

within whatever time FSTI needed to keep producing at full capacity. At signing, both parties knew the facility's historical average was about 19,178 gallons per day — and production under the contract consistently exceeded it.

The decision came from Judge Melissa Andrews of the Third Division.

Guillaume v. Armstrong, 2026 Tex. Bus. 70 (1st Div.)

The Decision

Reincorporating in Texas brought Coinbase under Texas' demand requirement for derivative suits filed after the move — even suits over pre-move conduct. The court sustained the defendants' special exceptions and dismissed a shareholder derivative suit against Coinbase's directors without prejudice, holding that Texas law governs a shareholder's standing and authority to bring a derivative action for a Texas corporation, "even if the asserted claims arise under — and are subject to — the laws of another state."

What Happened

Choice of law decided this case. Coinbase reincorporated from Delaware to Texas in December 2025. In April 2026, the plaintiff filed a derivative action over alleged misconduct from 2021 to 2023, when Coinbase was still a Delaware corporation. He made no pre-suit demand, instead pleading demand futility under Delaware law. That decision was dispositive: Texas requires a demand in every case, while Delaware lets a plaintiff plead futility instead.

The Internal Affairs Doctrine Applies at Filing

Assuming without deciding that Delaware law governs the merits, the court treated standing as a separate question and held that Texas law governs a shareholder's standing and ability to bring a derivative suit for a Texas corporation. Shareholders acquire no vested right to sue derivatively when a claim accrues, the court reasoned. Filing suit for the corporation is an exercise of authority, governed by the law of the state of incorporation on the date of filing. The court added that this bright-line rule brings clarity when claims straddle a reincorporation.

Coinbase's Reincorporation Disclosures Did Not Help the Plaintiff

The plaintiff pointed to Coinbase's statement that reincorporation would not "adversely affect" shareholders' derivative standing. The court rejected that argument for three reasons: (1) the disclosures said Texas law would govern after the conversion; (2) the plaintiff showed no adverse effect from the change in governing law; and (3) Texas' demand requirement has no exceptions, and the plaintiff offered no basis for contracting around it.

The decision came from Judge Andrea K. Bouressa of the First Division.

Exeter Denton Land, L.P. v. Ariat International, Inc., 2026 Tex. Bus. 71 (8th Div.)

The Decision

Ariat's counterclaims survived, but its damages model took a big hit. Granting in part and denying in part the landlord's motion for summary judgment, the court kept alive all four of the warehouse tenant's counterclaims — constructive eviction, breach of contract, breach of the implied warranty of suitability and breach of quiet enjoyment — but used the lease's limitation-of-liability clause to cut large parts of Ariat's damages model.

What Happened

Ariat leased about 600,000 square feet from Exeter for a warehouse and distribution center. In 2024, the floor slab curled and shifted. Ariat sent a notice of

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constructive eviction, moved out in June 2025, stopped paying rent and demanded its security deposit back. Exeter sued for breach of the lease; Ariat counterclaimed for constructive eviction, breach of contract and breach of warranty. Exeter argued that the lease's "as-is" provision and the economic-loss rule defeated all four counterclaims.

The "As-Is" Clause Has Limits

The as-is clause contained its own exception: "Tenant accepts the Premises, Building and Common Areas 'AS IS,' without relying on any representation, covenant or warranty by Landlord other than as expressly set forth in this Lease." That carve-out preserved Exeter's promise to maintain the foundation in good condition and its express covenant of quiet enjoyment.

The implied warranty of suitability required more work. Gym-N-I left open whether an as-is clause without express disclaimer language waives that warranty, so the court followed Parts Industries and Gober: where the landlord retains responsibility for repairing a component, an as-is clause does not waive the warranty for that component. A fact question remains, however, over whether the slab repairs fell within Exeter's repair obligations.

Economic-Loss Rule Rejected

The economic-loss rule did not bar the constructive-eviction or warranty claims. The implied warranty of suitability exists separately from the lease obligations, the court reasoned, and every constructive-eviction claim arises from a lease — so if the rule applied as Exeter suggested, no such claim could ever survive. Because Ariat pleaded quiet enjoyment under an express covenant, that claim sounds in contract, but that limits the remedy; it does not defeat the claim. The quiet-enjoyment claim cannot support tort remedies such as exemplary damages, and because it overlaps with constructive eviction, Ariat cannot recover twice for the same injury.

Section 24 Limited Some Damages

Section 24 provided that "In no event shall Landlord be liable to Tenant for any loss of business or profits of Tenant or for consequential, punitive or special damages of any kind." The court rejected Exeter's argument that "of any kind" wiped out Ariat's entire damages model and held that direct damages remain recoverable. But it excluded as consequential certain relocation and storage costs, Ariat's added costs to fill customer orders, its idle-crew retention charges and any replacement-lease losses tied to an expansion and extension that were never signed. Left for trial are items such as improvement costs, investigation costs and the market-rent differential through the end of the lease.

The decision came from Judge Brian Stagner of the Eighth Division.

FSTI, Inc. v. PVS Minibulk, Inc., 2026 Tex. Bus. 73 (3rd Div.)

The Decision

Boilerplate yielded to the deal's negotiated terms. In a companion to its output-contract opinion, the court explained why it denied FSTI's motion for summary judgment on DPC's breach-of-contract counterclaim and, for the same reason, granted the defendants' motion on FSTI's termination defense. A boilerplate clause requiring the buyer to send monthly "shipping instructions" did not apply, the court held, because the contract's negotiated first page required DPC to pick up the bleach and made DPC responsible for all shipping.

What Happened

As covered above, DPC agreed in October 2021 to buy all the bulk bleach FSTI produced at its Greenville, Texas, facility, and in February 2024 FSTI sold the facility to HASA while keeping the bulk contract out of the sale. DPC counterclaimed that the sale repudiated and breached the contract. FSTI's defense rested on two boilerplate provisions:

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Section 3 required the buyer to send written shipping instructions by the 20th of each month, and Section 19 let the seller cancel "without demand or notice of any kind" if the buyer defaulted. Because DPC never sent monthly shipping instructions, FSTI argued, DPC breached every month, giving FSTI a right to cancel that it exercised by selling the plant.

DPC Was the Shipper

The contract's first page unambiguously made DPC responsible for shipping. It set the F.O.B. point at FSTI's Greenville facility, put freight on the buyer's account and allowed DPC to park up to three trailers at the plant — shipping terms that made up roughly half of the negotiated first page. FSTI argued that it "shipped" the bleach by loading it onto DPC's trailers, but the court found that the ordinary meanings of "F.O.B." and "ship" both pointed to DPC. So did the parties' conduct. Over years of performance, DPC never sent monthly shipping instructions and FSTI never asked for them. One FSTI witness testified that she "never knew that was a thing."

Section 3 Could Not Set the Quantity

FSTI also read Section 3 to require DPC to tell FSTI each month how much bleach to produce. The court found that reading irreconcilable with an output contract, in which FSTI — not DPC — controlled how much bleach was produced and sold. Section 3 could apply only if FSTI became the shipper, and to the extent it conflicted with the first-page shipping terms, the negotiated, deal-specific terms controlled over boilerplate "cut and paste[d]" from earlier contracts. Because DPC did not breach Section 3, the termination defense failed. The court did not reach DPC's alternative argument that FSTI never properly cancelled the contract.

The decision came from Judge Melissa Andrews of the Third Division.

Crain v. Northern, 2026 Tex. Bus. 72 (8th Div.)

The Decision

Crain's individual claims are gone. In the latest chapter of this business partner dispute, the court explained its earlier grant of Northern's combined traditional and no-evidence summary judgment motion and dismissed those claims with prejudice. It refused to consider Crain's late response and held that the claims belonged to the parties' LLCs, if to anyone —n ot to Crain.

What Happened

As covered in earlier installments, Crain and Northern formed a trio of LLCs in 2020, and their relationship broke down over a real estate deal involving the Woodhaven Country Club. The court later dismissed Crain's derivative claims for lack of standing. Northern then moved for summary judgment on everything left: breach of contract, quantum meruit, conspiracy, misappropriation of confidential information and several fraud and misrepresentation theories. Crain filed his response late without seeking leave or showing good cause, so the court struck it.

No Contract, No Claim

The only contracts in the record were the LLC agreements, and Northern was not individually a party to them. Crain admitted in his deposition that he personally had no contract with Northern. Any duties Northern owed under those agreements ran to the LLCs, and so did any remedy. Quantum meruit failed for a similar reason: Crain's "time, expertise, and connections" went to the LLCs, not to Northern. And the company agreements barred member compensation without written, unanimous consent, which never came.

Derivative Claims in Disguise

The remaining claims fell the same

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way. As pleaded, the misappropriation claim alleged that Northern took the LLCs' confidential information, not Crain's, making it an impermissible derivative claim. The fraud and negligent-misrepresentation claims failed because Crain showed no material false representation made to him, and any injury would have fallen on the LLCs. The fraud-by-nondisclosure claim failed because the court had already held that the two men had no formal fiduciary relationship, and any duty to disclose ran to the LLCs. The civil conspiracy claim did not even identify a co-conspirator or an overt act.

The decision came from Judge Jerry D. Bullard of the Eighth Division.

ESI Incorporated of Tennessee v. Orion Engineered Carbons, LLC, 2026 Tex. Bus. 74 (11th Div.)

The Decision

A general contractor's delay claims against a subcontractor it never contracted with stayed in contract territory. In this construction-delay dispute, the court granted the subcontractor summary judgment and dismissed the general contractor's tort claims with prejudice. The economic-loss rule barred the general contractor's negligent-misrepresentation claim against the subcontractor, a contractual stranger and months of pre-contract collaboration did not create the fiduciary relationship needed for constructive fraud.

What Happened

In August 2021, Orion hired ESI to build emissions-reduction systems at its carbon-black plants, with Redecam serving as Orion's subcontractor. Redecam and ESI had no contract with each other.

When the project fell behind, ESI sued both. It alleged that late equipment, along with Redecam's disorganized shipments and design errors, drove more than $10 million in added costs, and that Redecam's representations about delivery timing induced ESI to commit to the project's milestones and pricing.

The Economic-Loss Rule Applies

LAN/STV controlled. There, the Texas Supreme Court held that the economic-loss rule barred a contractor's negligent-misrepresentation claim against the owner's architect for delay damages. ESI argued the rule did not apply because it had no contract with Redecam and Redecam made its representations directly to ESI. The court rejected both arguments: The rule applies because contractual protection was *available* to ESI, whether or not ESI obtained it, and ESI's losses arose from its contract with Orion.

No Informal Fiduciary Duty

The constructive-fraud claim failed too. ESI argued that Redecam owed it an informal fiduciary duty based on nine months of close pre-contract collaboration, during which Redecam selected ESI's vendors and prepared the project schedule. Applying the Texas Supreme Court's decisions in *Pitts v. Rivas* and *Meyer v. Cathey*, the court held that collaborating on a commercial deal does not establish the "special trust and confidence" an informal fiduciary relationship requires.

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

Passco Companies, LLC v. Rim WP Apts, LLC, 2026 Tex. Bus. 75 (4th Div.)

The Decision

An "as-is" purchase agreement doomed most of a buyer's fraud claims. In this dispute over the purchase of an apartment complex, the court granted partial summary judgment for the developer, the management company, an affiliated seller entity and two executives, dismissing the buyer's fraud, conspiracy and declaratory-judgment

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claims, along with a contract claim. The buyer had disclaimed reliance on certain representations underlying its fraud claims, the court held, and the one remaining representation was not false.

What Happened

In 2019, Passco bought Tribute at the Rim, a San Antonio apartment complex developed by Kairoi Development and managed by Kairoi Management, from Rim. The purchase agreement gave Passco a due-diligence period to investigate the property and included an emphatic "as-is" disclaimer-of-reliance clause, which excepted only certain warranties of title and the seller's representations in two paragraphs of the agreement. In 2021, Passco discovered severe water penetration caused by construction defects. It sued, alleging that the defendants knew about the defects and failed to disclose them. Five of the six defendants — the Kairoi entities, Rim and two executives — moved for partial summary judgment. Rim did not join the motion.

The Disclaimer Holds

Applying the factors from Forest Oil and *IBM v. Lufkin*, the court enforced the disclaimer. Its language was clear and specific; the agreement recited that Passco was a "sophisticated purchaser," Passco was represented by counsel in an arm's-length deal and the agreement stated that the parties and their counsel had "reviewed and revised" its terms. The disclaimer defeated the fraud and fraudulent-inducement claims based on a separate pre-sale questionnaire, in which the seller reported no significant building-envelope deficiencies. It also defeated the fraud-by-nondisclosure claim based on the seller's failure to produce certain due-diligence documents, particularly because the same provision requiring those documents disclaimed any representation about their accuracy or completeness.

'Written Notice' Means Written Notice

One representation fell outside the disclaimer: The seller's statement that it had not received written notice that the property violated any building code. Passco read that statement to cover any written notice from which a violation could be inferred, such as reports of unresolved leaks. The court disagreed. The provision referred to a notice stating that the property was in violation, and the record contained none. With every fraud theory gone, the conspiracy claim and alter-ego theory — both dependent on an underlying fraud — also fell.

Contract Claims

Passco's claim for breach of the pre-acquisition management agreement between Rim and Kairoi Management failed because Rim terminated that agreement on closing day and never assigned it to Passco. The court also rejected Passco's argument that the purchase agreement's transfer of "other similar intangibles" included causes of action, noting that the parties expressly used "claims" or "causes of action" elsewhere when they meant those terms. Passco's declaratory-judgment claims — seeking declarations that it had performed its contracts and that service was effective — failed because they merely duplicated issues already before the court. Passco's fraud and purchase-agreement claims against Rim and its claim under a separate post-sale management agreement remain pending.

The decision came from Judge Marialyn Barnard of the Fourth Division.

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