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Not-as-Risky Business

Texas's Business Court and Other
Alternative Litigation Strategies

*World-class legal advice at the intersection
of business, regulation, policy, and the courts*



Panelists



Hon. April Farris
Justice, Fifteenth Court of Appeals



Hector Chavez
Partner, Steptoe LLP



Allison Standish Miller
Partner, Steptoe LLP



Craig Smyser
Partner, Steptoe LLP

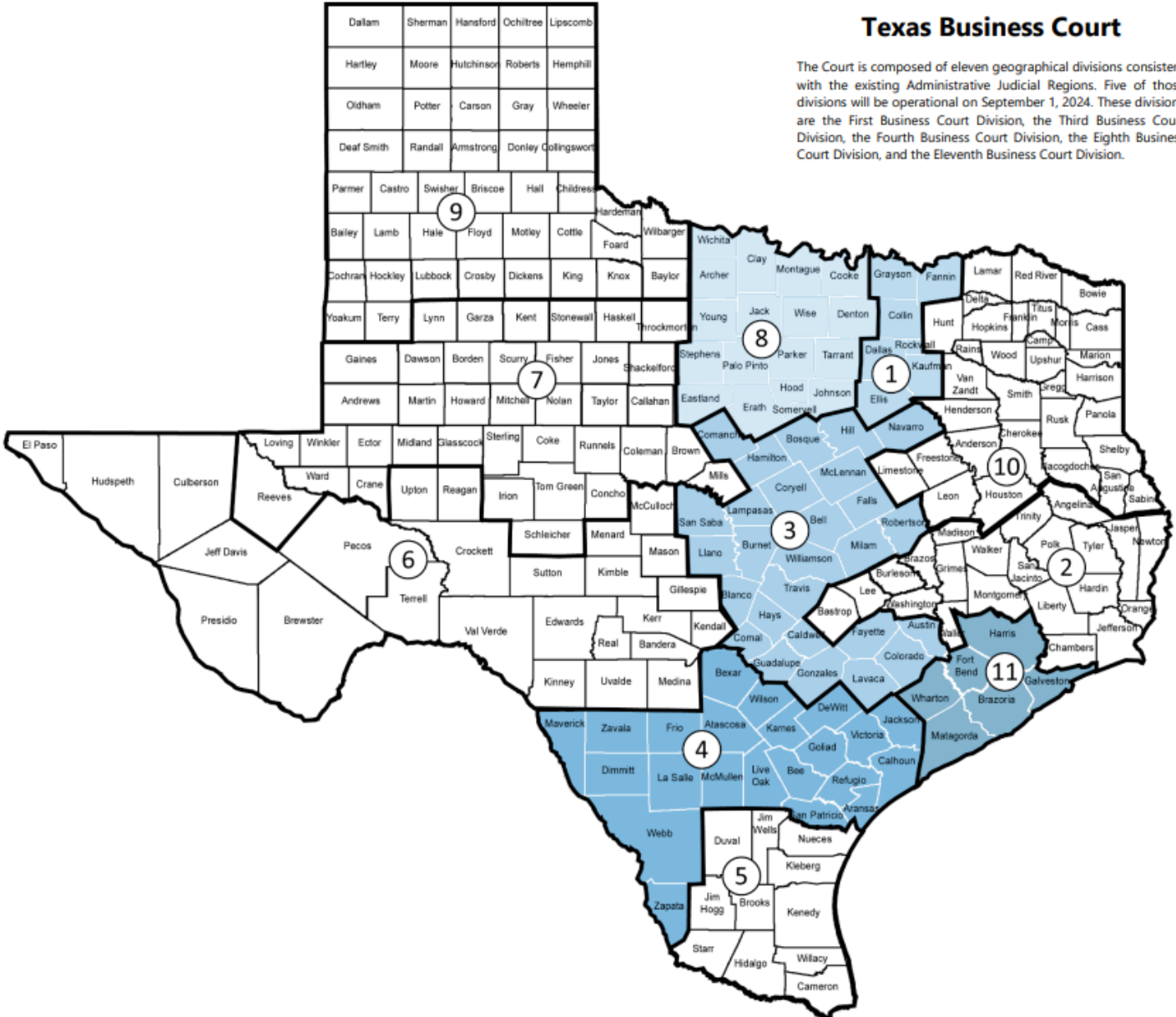
Texas's Business Court

Business Court Basics



Current Business Court Divisions

District	Location
1	Dallas
3	Austin
4	San Antonio
8	Ft. Worth
11	Houston



Fifteenth Court of Appeals



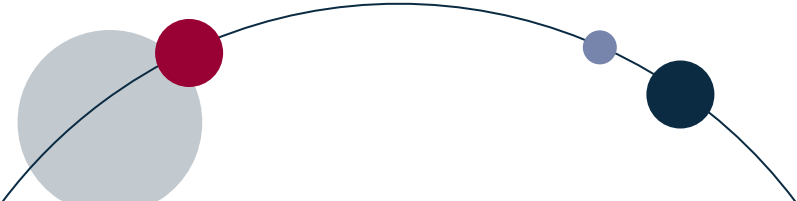
Justice April Farris



Chief Justice Scott Brister



Justice Scott Field



Business Court Jurisdiction

- ✓ Corporate governance disputes that exceed \$5 million
- ✓ Contract disputes that exceed **\$5 million** (new!)
- ✓ Injunctive or declaratory relief for any eligible claim
- ✓ Supplemental jurisdiction over claims related to eligible claims with agreement of the parties and the judge

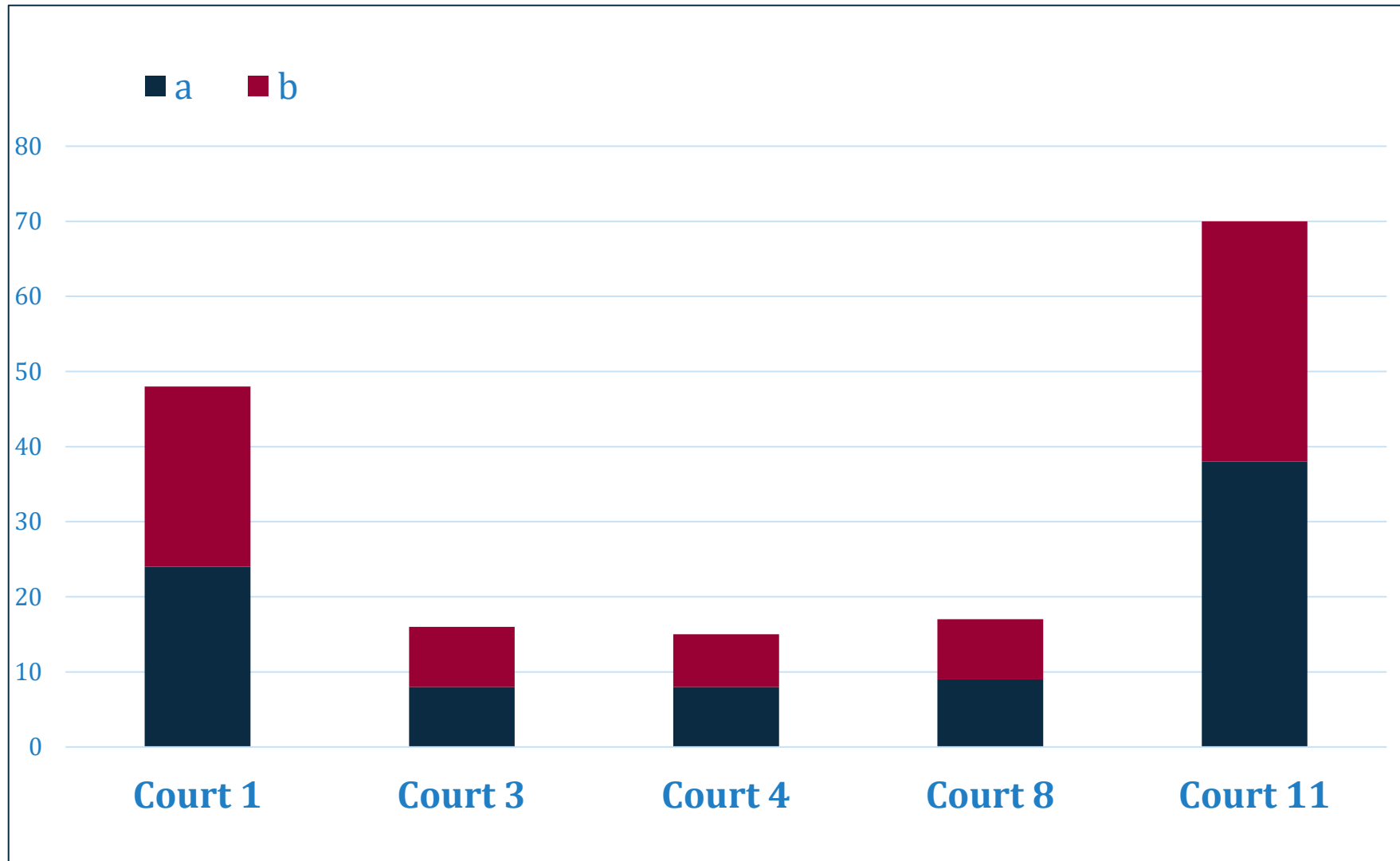
Excluded from Jurisdiction

- ⊘ Medical and legal malpractice claims
- ⊘ Personal injury claims for bodily injury or death
- ⊘ Claims related to certain consumer transactions
- ⊘ Unless within the Court's supplemental jurisdiction:
 - ⊘ Claims by or against the government; claims to foreclose on property; certain statutory claims; and claims related to insurance policies.

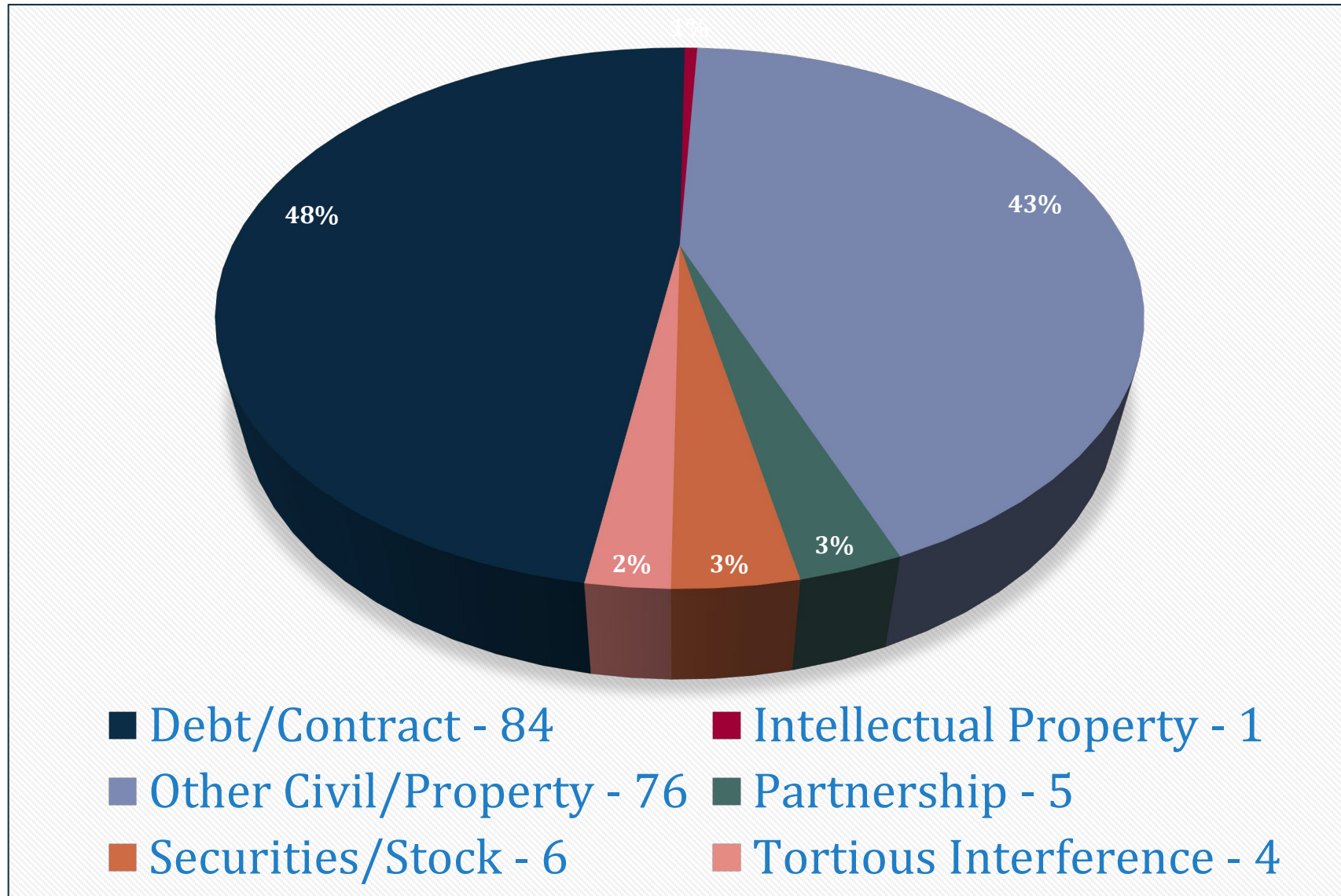
Legislative Update

HB40 Business Court	SB29 Bus. Org. Code	SB1057 Bus. Org. Code
<ul style="list-style-type: none">• Effective 09/01/2025• Broadens jurisdiction• Streamlines procedures	<ul style="list-style-type: none">• Effective 05/14/2025• Codifies business judgment rule	<ul style="list-style-type: none">• Effective 09/01/2025• Aims to combat proxy abuse in public companies

Cases Filed per Court, September 2024 - Present



Filings by Case Type, September 2024 - Present



Cases Filed Quarterly, Q3 2024 - Present



Rules Update

Hon. Andrea K. Bouressa, First Business Court Division
Hon. Bill Whitehill, First Business Court Division
Hon. Melissa Andrews, Third Business Court Division
Hon. Patrick K. Sweeten, Third Business Court Division
Hon. Marialyn Barnard, Fourth Business Court Division



Hon. Stacy Sharp, Fourth Business Court Division
Hon. Jerry D. Bullard, Eighth Business Court Division
Hon. Brian Stagner, Eighth Business Court Division
Hon. Sofia Adrogué, Eleventh Business Court Division
Hon. Grant Dorfman, Eleventh Business Court Division

LOCAL RULES OF THE TEXAS BUSINESS COURT *Effective June 1, 2025*

Significant Rulings



The Business Court of Texas,
1st Division



The Business Court of Texas,
Third Division



The Business Court of Texas
Fourth Division



The Business Court of Texas
Eighth Division



The Business Court of Texas,
Eleventh Division

Strategic Considerations and Other Alternatives

Strategic Considerations

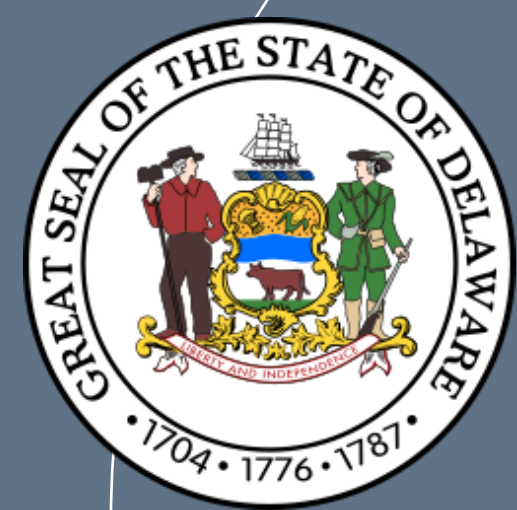
- Pros and cons
- Amendment of bylaws
- Contracting for jurisdiction
- Counterclaiming into jurisdiction
- Adding related claims



Other Alternatives



- ✓ **Arbitration**
 - ✓ Contracting for appeal
 - ✓ New AAA rules
- ✓ **CPRC Ch. 151**
 - ✓ No jury
 - ✓ Maintain right to appeal



WHY THE TEXAS BUSINESS COURT?

Texas v. Delaware: A Comparative Case Study

Tornetta v. Musk (Del.Ch. Jan. 30, 2024)



The Delaware Chancery Court

- Equitable court created in the 18th century as Delaware's court of equity rather than money damages
- Business-focused
- Historically, the nation's pre-eminent business court



The Delaware Chancery Court

Types of matters

- Shareholder derivative suits
- Fiduciary duty cases
- Corporate governance disputes

Features

- Bench trials
- Appointed judges



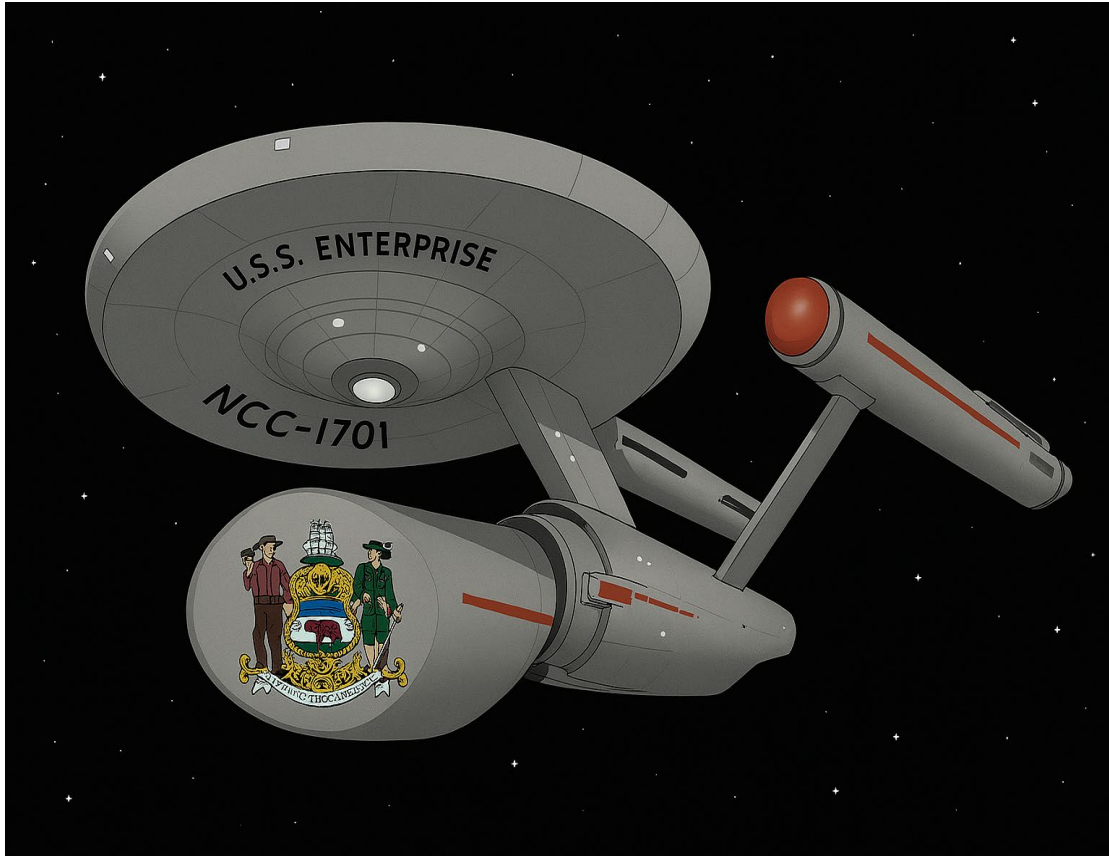
Elon Musk Gets Paid . . . And Then Sued

- Per the company's governing documents, the Board established an independent committee to set Musk's 2018 compensation package (as it had done when setting Musk's last goal-oriented compensation package)
- After several months of consideration, including alleged input from Musk through Tesla's GC, the committee approved a performance-based package featuring twelve tranches of stock options pegged to various price and production metrics, worth up to US\$55.8 Billion (~12 % of Tesla)
- A shareholder derivative suit then challenged the pay package and its approval by the board and shareholders

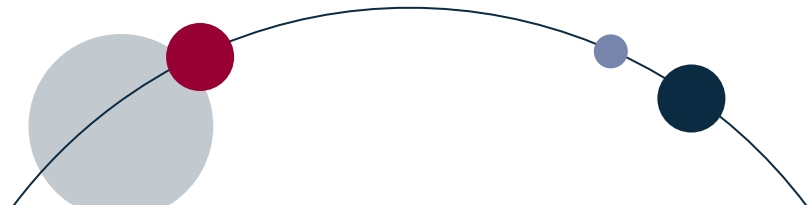
The Delaware Court Begins: Was the Richest Man in the World Overpaid?

- “A board of directors’ decision on how much to pay a company’s chief executive officer is the quintessential business determination subject to great judicial deference.”
- “At least as to this transaction, Musk controlled Tesla. The primary consequence of this finding is that the **defendants bore the burden of proving** at trial that the compensation plan **was entirely fair.**”

The Delaware Court Sets a New Course



- “This decision dares to **‘boldly go where no man has gone before,’** or at least where no Delaware court has tread.”



Business Judgment Rule Out; “Entire Fairness” In

- Under Delaware law, the presumptive standard of review for conflicted-controller transactions is entire fairness.
- “The defendants were thus left with the unenviable task of proving the fairness of the largest potential compensation plan in the history of public markets.”
- “The concept of fairness calls for a holistic analysis that takes into consideration two basic issues: process and price.”

The Court Found the **Process** “Deeply Flawed”

- Musk effectively controlled Tesla
- Negotiations with Musk were “cooperative” not adversarial
- Musk did not prove committee’s independence
- The compensation committee avoided using objective benchmarking data
- Testimony adduced “came as close to admitting a controlled mindset as it gets”

Process Flawed But the **Price** Was No Better

Musk's pay package details:

- 6% increase in stock ownership (21.9% to 28.3%) if:
- Tesla's market cap rose from \$50 to \$600 billion and
- Musk hit operational milestones tied to Tesla's revenue and growth

“At a high level, the “6% for \$600 billion” argument has a lot of appeal.”

The Journey Continues...

BUT: “...the board never asked the \$55.8 billion question: Was the plan even necessary for Tesla to retain Musk and achieve its goals?”

Answer: “This question looms large in the price analysis, making each of the defendants’ efforts to prove fair price seem trivial.”

Result: The World's Richest Man Loses

- Court orders rescission of the entire compensation package
- Court found that **“rescission is reasonable, appropriate, and practicable.”**

The Texas Business Court



The Texas Business Court: A Different Approach?



- Texas aims to create a business-oriented environment to encourage Texas incorporations and relocations
- Texas law might deliver a different analysis and outcome of a Musk-like dispute

Texas Enshrines the Business Judgment Rule

- Tex. Bus. Org. Code §21.418 provides **business judgment rule safe harbor**
- New Tex. Bus. Org. Code § 21.419 (SB 29, 2025) codifies a '**strong presumption**' to apply the business judgment rule for public corporations (and private corporations that opt in)
- Rule of decision: **business judgment rule**, not entire fairness
 - **Burden shifts to plaintiff** to prove transaction violated the rule
- Plaintiffs must rebut presumptions to prove breach and prove that acts were committed ultra vires or with fraud, intentional acts, or a knowing violation of law

Texas Business Court Can Pre-Approve an Independent Committee

Texas corporations can now petition the business court **pre-transaction** to determine that its board committee is independent.

- The Court supervises an expedited process to rule on the independence of a committee. After petition and notice, the business court will:
 - Hold a preliminary hearing within 10 days;
 - Hold a full hearing within 45 days; and
 - Issue a ruling on the independence of the committee within 75 days.
- Once approved, directors are determined to be independent and disinterested absent new facts.

See Tex. Bus. Org. Code § 21.4161 (new).

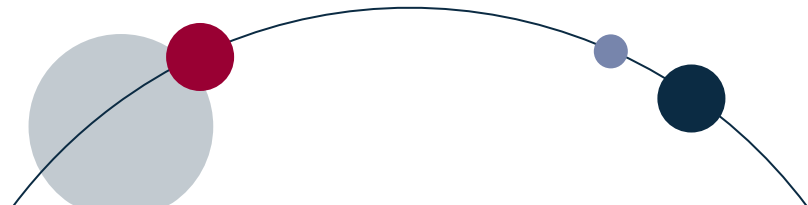
How Might a Musk-Like Case Turn Out in Texas?

Tex. Bus. Org. Code § 21.418(b) provides a **safe harbor** – the transaction is “valid and enforceable” - for interested person transactions if **one of three** conditions is met:

1. The deal is approved by a majority of disinterested directors **or a board committee** after full disclosure; **or**
2. Informed shareholder voting approval; **or**
3. The deal is fair to the corporation after approved.

How Might a Musk-Like Case Turn Out in Texas?

Texas	Delaware
<ul style="list-style-type: none">• Tex. Bus. Org. Code § 21.419 provides a statutory high bar business judgement rule shield• Plaintiffs bear the burden to establish statutory misconduct, and poor process is not enough	<ul style="list-style-type: none">• Judge-made common-law approach• Plaintiffs can rebut presumption with proof of gross negligence in the decision-making process• ‘Entire fairness’ standard is inherently subjective



Conclusion: Texas > Delaware

Bottom line: 21.418's procedures
(disinterested approval, fairness)
bolster 21.419's business judgment rule
presumption.

The combination of the two, along with
use of the pre-decision determination of
independent directors and committees
make liability harder to establish than
in Delaware.





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