



## Episode 8 Transcript: “Texas on Trial: Jury Verdicts and What They Signal”

**Scott:** Welcome back to the Business Court Benches. This is episode eight, Texas on Trial: Jury Verdicts and What They Signal.

I’m Scott Barnard, a litigation partner in Akin’s Dallas office.

**Stephanie:** And I am Stephanie Lindemuth, a litigation partner in New York. In our recent episodes, we have spent a lot of time talking about developments in Delaware. The corporate law doctrine, proposed statutory changes, how companies are reassessing where to incorporate and litigate, and several recent decisions from the Delaware Supreme Court.

**Scott:** That’s right. But today we’re shifting the focus back to Texas for a moment because there have been some developments in the Texas courtrooms. Specifically, the Texas Business Courts has started having its very first jury trials.

**Stephanie:** Yes. But before we get into the Texas Business Court trials themselves, it’s worth noting what’s happening at the board level because we’re seeing more developments in that area where companies are continuing to consider making Texas their legal home.

**Scott:** That’s right. One of the largest companies in the world, ExxonMobil, had its board recently unanimously recommend moving the company’s legal domicile from New Jersey to Texas.

**Stephanie:** And what’s striking is that Exxon has been headquartered in the Houston area since the late 1980s. This isn’t about operations then. It’s really about aligning the company’s legal home with a state that has been actively reshaping its corporate statutes and courts.

**Scott:** It’ll be interesting to see if Exxon takes advantage of the relatively nascent Texas Business Courts. And it’ll be particularly interesting to see what other companies do now that the Texas Business Courts are starting to have their very first jury trials.

**Stephanie:** Right. Jury trials are a major point of divergence from Delaware. In Delaware’s court of Chancery, every case ultimately will be assessed through a bench trial. The judges are the ones who decide the facts, the law, and the remedies. That’s often touted as one of Delaware’s core strengths because it provides predictability, expertise, and consistency.

**Scott:** Texas has a different approach. The Texas Business Court preserves the constitutional right to a jury trial that’s found in the Texas Constitution, even in complex commercial cases. For a long time, that distinction was abstract.

**Stephanie:** But not anymore. Today we’re going to be talking about a few cases that are making waves in Texas, and speaking with one of the lawyers who litigated the first jury trial in Texas Business Court.

To start off, one of the Texas Business Court’s very first jury trials ended in a somewhat rare fashion—a directed verdict before the jury was even able to start any deliberations.



In that case, *Quintero v. Urban Infraconstruction, LLC*, the plaintiff claimed he was an equal owner based on an alleged oral partnership. But Judge Bouressa of the Texas Business Court in Dallas granted a directed verdict, holding as a matter of law that he was never a member of the LLC and that the supposed partnership agreement was too indefinite to enforce. So those claims never even made it to the jury.

**Scott:** That matters because it shows something important right out of the gate. Even with juries in the picture, the Texas Business Court judges are actively managing cases and are prepared to take the decisions out of the jury's hands when the legal standards require it.

**Stephanie:** And that is something that the Texas Business Court judges had been touting, namely the ability to move quickly and manage control over their cases. But right after this directed verdict, we finally did have our first jury trial in the Texas Business Courts. That was in *Powers v. Barry*, which tested not just the case, but the court's infrastructure.

The case involved a roughly \$200 million crude oil export project where the plaintiff said he was promised a 20% ownership stake for helping secure financing, and the defendant said no binding deal was ever formed, leaving the jury to decide whether an enforceable agreement existed at all.

**Scott:** That trial took place in Houston where the Business Court doesn't yet have a permanent jury-ready courtroom and was presided over by Judge Sofia Adrogué.

The parties had to build a temporary trial space at the Harris County Family Law Center that included installing monitors, working in tight quarters, and even renting basic courtroom furniture.

**Stephanie:** And after all that preparation, the courtroom was usable for exactly one day. Overnight, a pipe valve burst, flooding the building, shutting down elevators, and making the space unusable.

**Scott:** But rather than pause the trial, the court regrouped proceedings and resumed the next morning—only about an hour late—in new, borrowed courtroom. Over the rest of the jury trial, jurors heard testimony in three different courtrooms with the case moving from floor to floor as space became available.

**Stephanie:** By the end, the two-week trial reached a verdict.

The jury decided in favor of the plaintiff agreeing that he did have a 20% ownership stake in the defendant's venture.

**Scott:** And today we have the opportunity to interview the lead plaintiff's attorney on the case, Roland Garcia from Greenberg Traurig, about his experience litigating the case and the huge victory for his client.

Roland, welcome to the podcast. Thank you so much for joining us today.

**Roland:** Thank you. It's a pleasure to be here.



**Stephanie:** We are excited to talk with you about a milestone moment for Texas. Your team tried the Texas Business Court's very first jury trial and won. Did it seem different to be trying a jury trial in business court, or did it seem like any other jury trial in your career?

**Roland:** It was similar, of course, as you would prepare for a jury trial, but different in several significant aspects because the business courts being new, you know, were still developing their local rules and procedures, and then of course the big challenge was the business court had no physical courthouse.

**Scott:** Right.

**Roland:** That was a major issue for us. It's, as you know, when you're preparing for a case, part of it is just, you know, getting set up with all the intangibles and logistics and technology and your war rooms and all the things that go behind the scenes. It was very hard for us to plan for any of that not knowing where we were gonna try the case from day to day. So that posed a significant, logistical challenge for us.

So it was not an easy thing to go from courtroom to courtroom.

**Scott:** It sounds like from a facilities perspective, there may still be some growing pains for the new business courts. On the procedural front, was it the same or were there any gaps in the business court rules or procedures that your team had to work through either before or during the trial?

**Roland:** Well, there, you know, there were really the court's preferences, you know, just essentially deadlines for filings, page limits, voir dire, timing orders for the witnesses. When were we going to have the charge conferences, when were we gonna actually have a final jury charge?

All these things were sort of on the fly developed as we went along since there was not any track record of past practices and no direct rules on it. And so, but what I thought was great was that because of the lack of any historical information, it really forced the parties and the attorneys to work collaboratively together.

And our judge, Judge Sofia Adrogué, was great. She encouraged collaboration. We all worked together to kind of hammer out these issues. So essentially coming to agreement on a lot of it. But again, it had to be sort of worked out as it came up.

**Scott:** That's interesting. You know, one of the things, speaking of the judge, that the judges for these Texas Business Courts have specialized business law backgrounds to handle these types of disputes. That was basically the whole purpose behind this court regime. How did that impact your trial, and did you feel like the judge's business law background mattered in your case?

And was there a time during the trial when you felt like her experience was different than what you had dealt with before?

**Roland:** Well, Judge Adrogué is well known in the legal community over here in Houston.



**Scott:** Mmhmm.

**Roland:** She's a very scholarly judge. She'd handled a lot of business and commercial disputes in the past. Very good, experienced lawyer. She's published CLE articles on various topics. I've actually been to some of her seminars, and so we all knew going in, she was a very thorough, very scholarly judge, and her approach proved that out.

She invited briefing on issues. One of the things that is unique about the business courts is that the courts have their own staff attorney dedicated to the courtroom. In addition to a case manager, they have other law clerks who work with the Judge. And so we would have a full complement of court staff with us at hearings and we got a lot of the Judge's time.

Judge Adrogué was very detailed oriented. She invited briefing. She gave the lawyers all the time they needed to argue their points. She allowed supplemental briefing. She had requested copies of the cases so we would actually put together notebooks with all the cases cited and for a complex business dispute like ours, that was welcomed actually for a detail-oriented judge to go through all the issues in our case and issue rulings. And that is a big difference from what we typically see in civil district court where you don't get as much time with the judge, you have limited time for the hearings, limited briefing opportunities. And in the business court, with the smaller docket, but yet more complex cases, that ends up that you can have a better and more efficient resolution.

**Stephanie:** Got it. So would you say that that's sort of the biggest difference between your experience in this matter before the Texas Business Court and your experience in other matters practicing throughout your career in Texas?

**Roland:** I think so. I thought it was a big difference from the civil district courts that you could get that much time and attention from a judge.

**Stephanie:** Mmhmm.

**Roland:** And a judge who was very detail oriented.

**Scott:** Right.

**Roland:** And you could tell she read the case, she read the briefs, she asked a lot of good questions. She would issue opinions. And a lot of that, you just don't regularly see in the civil district courts.

Really because of the volume in those courts, it may take you years to get to trial in a civil district court. Whereas our case, we got to trial in a little over a year. And that's even considering we had a few continuances, it might even have been reached within one year. And that's a testament to the court itself, to the judge who focused a lot of time and attention on our case as well as her other cases. We would have hearings that would go late into the evening.

And the judge, you know, gave us all the time we needed. And so that was a welcome addition to us in the case.



**Scott:** You know one of the things that the new Texas Business Courts have been promoting is their speed and accessibility. And Roland, it sounds like that was your experience in this first jury trial. Another difference between the Texas Business Courts and the Delaware Courts of Chancery is the existence of a jury trial.

As you know, the requirement for a jury trial is actually in the Texas State Constitution. Treating the jury trial is sacrosanct. I'm wondering, what's your take on this? Should the business courts have juries? Should they not have juries? What do you think?

**Roland:** Well, I'm a big believer of the jury system. I've tried a lot of jury cases. I've tried bench trials, but ultimately I think when you have issues on credibility of witnesses and multiple documents, and multiple depositions and experts, I think a jury looking at these issues at a high level is the way to go.

We had a very attentive, a very good, very smart jury in our case. We were fortunate. But that's fairly typical, at least here in the Harris County courtrooms. And so I'm a big proponent of that. If there's fact questions I like using a jury, the judge could always take another look at it and with motions. Our case also had a lot of legal issues so in addition to the fact questions, you know, we're proposing several conclusions of law to be entered as part of our post-trial papers. But at the end of it, I do think the jury system in Texas is a good system, particularly where you have lots of issues of credibility of witnesses and things of that nature.

**Stephanie:** Roland, is there anything that you think the Texas Business Court needs to work out or should consider going forward that maybe you didn't see or that you didn't have for your, you know, this first jury trial?

**Roland:** Well, there's no doubt that the Texas Business Court is a great court of specialized courts. It's a needed court, but it definitely needs a home. And our trial was a two-week jury trial, but I can only imagine if it had been a six-week jury trial.

**Scott:** Mmhmm.

**Roland:** Having to get bumped from courtroom to courtroom to courtroom is a logistical challenge that really detracted from the preparation of the case and the presentation of the case, and just added a layer of difficulty that, you know, could have been avoided if there had been a dedicated courtroom.

**Scott:** That's interesting to hear. I've also heard there's been some talk about potentially providing the Texas Business Courts with a permanent courtroom, maybe even on the campus of some of the law schools in Texas. That would give a home to the Texas Business Courts, but it also could maybe provide a great learning classroom for some of the law school students.

**Roland:** Well, you know, that could be an interim measure. But ultimately I do think, for consistency, you know, the business courts ought to have their own dedicated courtroom, ought to have their own dedicated set of technology, equipment, ready rooms, work rooms, all the things you need that we didn't have, and we had to sort of develop it on the fly.

**Stephanie:** Well, in closing, what do you think Roland, the Texas Business Courts will mean for jurisprudence and parties in Texas going forward?



**Roland:** Well, I think they're well on their way to being great courts for these types of complex business disputes, particularly dealing with governance issues. With a lot of documents, with a lot of witnesses, like our case was.

**Scott:** Mmhmm.

**Roland:** I think all the elements are there. You've got good sophisticated judges.

You've got staff attorneys assigned to the court, similar to what you would see in a federal court. The judges are attentive. You have more time, more flexibility in the business court. All that is great for business. It's great for companies who wanna do business in Texas to know you have that type of forum. Or expediency. But again, the last piece would be a dedicated courtroom to bring it all together.

**Scott:** Mhm.

**Roland:** That's what I think would be the glue to make it a great set of courts, which would put Texas in a special place nationwide.

**Scott:** That sounds good. Well, Roland, thank you so much for joining us today on the podcast. We really appreciate learning and hearing about your experience in the very first jury trial of the Texas Business Court. Thank you so much.

**Stephanie:** Yes, thank you, Roland.

**Roland:** You're welcome. My pleasure.

**Stephanie:** Okay. It was really great to have Roland join us today. Having him recount his experience as one of the first attorneys trying a case before a jury in his new court is really insightful. But I would be remiss not to mention that Roland's victory in the first Texas Business Court verdict has not been the only one in Texas as of late.

We had another one right on its heels.

**Scott:** Yeah, a Texas Business Court jury awarded approximately \$49 million dollars in a trade secrets jury trial that was held right after Roland's case that we just talked about.

**Stephanie:** Mmhmm. And it helps to put some specifics around that. The plaintiff was ES3 Minerals, LLC, an Austin-based mineral acquisition and advisory company. ES3 sued several former senior employees with their competing venture Liberty Mineral Partners, alleging that they took ES3's proprietary systems and information to launch a rival mineral brokerage.

**Scott:** The core issue centered around alleged misappropriation of trade secrets, including an integrated business and technology system, and ES3 also pursued related theories like breach of fiduciary duty, and willful and malicious misconduct.

**Stephanie:** Procedurally, it was tried in the Texas Business Court Third Division in Austin in a two-week trial before Judge Sweeten.



**Scott:** And the outcome was a verdict for ES3. The jury valued the alleged trade secret system at more than \$40 million dollars and awarded about \$9 million dollars in exemplary or punitive damages, bringing the total of almost \$50 million dollars.

**Stephanie:** And with that combination, complex commercial claims, expert valuation evidence, and a high dollar jury verdict, a business court still let the jury decide this sophisticated business dispute with very real financial consequence. It's a substantial verdict by any standard, but particularly notable as one of the earliest jury verdicts to come out of this new business court system.

**Scott:** And the case itself was not simple. This isn't some sort of car accident or simple contract dispute. It involved trade secrets, valuation issues and expert testimony. The kind of case that some critics might argue shouldn't be in front of a jury, but is better suited for a decision by a business court judge.

**Stephanie:** Right. Yet the jury did decide it, and it will be interesting to see how the Texas jury issue impacts the way parties, especially companies looking to incorporate in Texas, view the Texas Business Courts going forward.

**Scott:** That's right. You know, it was interesting to hear today about Roland's experience with juries in the new Texas Business Court. Stephanie, what do you think this means for the broader Delaware-Texas comparisons that are going on?

**Stephanie:** Well, at a high level, it really underscores that Texas is making a deliberate policy choice. By preserving jury trials in business courts, Texas is offering something fundamentally different from Delaware.

**Scott:** For some companies, I think that might be attractive. Juries can be unpredictable, but they can also be sympathetic, especially in cases involving perceived unfairness like exclusion from a deal, or misuse of confidential information.

**Stephanie:** Yes, but for others, it's really uncomfortable. Many boards and funds prefer knowing that a sophisticated judge, not a lay jury, will decide nuanced questions of fiduciary duty, contract interpretation, or valuation.

**Scott:** I think that's right. And so that's where incorporation decisions and forum selection and governing law clauses are really gonna start to matter a lot.

**Stephanie:** Right.

**Scott:** So what should companies, boards, and funds, what should they all be thinking as they watch these cases develop?

**Stephanie:** Well, first, Texas is no longer hypothetical. It's not a future experiment. Cases are being tried, juries are being impaneled, and real money is being awarded.

**Scott:** And I think second, the structural differences with Delaware are not academic. Jury trials alone can dramatically change settlement dynamics, discovery strategy, and risk tolerance for companies.



**Stephanie:** Yes. And finally, these developments don't just affect corporations. They're especially relevant for subsidiaries, joint ventures, private equity vehicles, and fund structures that often rely on LLCs and limited partnerships.

**Scott:** We will continue tracking on how the Texas Business Court evolves and how these early trials, especially these early jury trials, shape perceptions of Texas as an alternative to Delaware.

**Stephanie:** As always, the right forum depends on the business, the stakeholders, and the types of disputes you're most concerned about, but ignoring Texas at this point would be a mistake.

**Scott:** Thanks so much for listening to the Business Court Benches today.

**Stephanie:** And we'll catch you next time.