

Mesches, Pitts, Beaty and Proler in The Texas Lawbook: Fifteenth Court Holds, with Caveats, that Pleading Amendments May Defeat Business Court Jurisdiction

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PRACTICES Litigation, Appellate, Texas Business Courts Task Force

Haynes Boone Partners [Ben Mesches](#), [Ryan Pitts](#), [D.J. Beaty](#) and Counsel [Shayna Proler](#) authored an article for *The Texas Lawbook* after the Texas Court of Appeals for the Fifteenth District held that a plaintiff may amend a petition after removal to eliminate the Texas Business Court’s jurisdiction, but only by permanently waiving the claims or theories that created that jurisdiction in the first place.

Read an excerpt below.

The Texas Court of Appeals for the Fifteenth District has issued an opinion deciding an issue of first impression on the Texas Business Court’s jurisdiction that will prove important for commercial litigation in Texas over: Can a plaintiff amend its petition so as to defeat the Business Court’s jurisdiction after removal?

The Fifteenth Court answered, “Yes,” but at the cost of permanently waiving the claims, theories or requests for relief that created jurisdiction. The opinion in *In re ColossusBets Ltd.*, authored by Chief Justice Scott Brister, further confirmed by mandamus review that the Business Court has inherent authority to reconsider its prior decisions — including on the propriety of removal — and that jurisdictional allegations are not necessarily fixed at the time of removal.

The rule announced in the opinion will bear prominently on pleading and removal practice for the Business Court, and it raises further questions for consideration, as discussed below.

The underlying case arose on a unique fact pattern. The plaintiff won a \$7.5 million Lotto Texas jackpot in May 2023. He sued a series of defendants alleging that they “rigged” and won \$95 million in the Lotto drawing a month before “by purchasing nearly all 25.8 million number combinations,” thus reducing his subsequent jackpot. The petition asserted, among other things, that the defendants formed a legal entity for the purpose of rigging the lottery and misrepresented its formation date.

Relying on those governance-related allegations, two defendants removed the case to the Business Court from the district court in Travis County. The Business Court, with Judge Melissa Andrews presiding, initially denied remand, holding that the case implicated its jurisdiction over actions “regarding the governance, governing documents, or internal affairs of an organization.”

The plaintiff then amended his petition to expressly disclaim “any allegation, legal theory, or request for relief” that would implicate the Business Court’s jurisdiction and renewed his request for remand. On reconsideration, the Business Court concluded that the amendments eliminated jurisdiction and remanded the case.

The defendants petitioned for writ of mandamus in the Fifteenth Court. Writing that the mandamus petition presented an “important question” applicable “to many Business Court cases,” the court agreed that mandamus review was warranted but denied relief.

First, the Fifteenth Court explained, the Business Court has the inherent authority to reconsider prior decisions — including decisions pertaining to jurisdiction and whether to remand a case following removal.

Second, the Fifteenth Court held that the express disclaimer of any ground supporting Business Court jurisdiction in the plaintiff’s amended petition amounted to an “implied waiver,” which sufficed to negate jurisdiction. This waiver “cannot be taken back later,” the Fifteenth Court said, and the defendants “are not harmed by [the plaintiff’s] decision to abandon some of his claims as the cost of returning to Travis County district court.” An implication of this reasoning is that the Business Court’s jurisdiction is not necessarily determined from the plaintiff’s allegations at the time the defendant removes the case.

The opinion in *In re ColossusBets* raises further questions. While the court made clear that an express disclaimer of the grounds for Business Court jurisdiction will suffice to negate jurisdiction, this holding may not encompass amendments that — for instance — simply omit what previously formed the basis for Business Court jurisdiction. Is a mere omission enough, or need there be an affirmative disclaimer? If so, how express need the disclaimer be? Moreover, is an “implied waiver” finding a prerequisite to negating jurisdiction?

To read the full article from *The Texas Lawbook*, click [here](#).