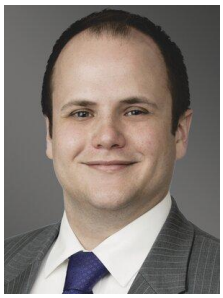
Tracking Texas: When Counterclaims Start The Removal Clock

By **Alan Hersh and Sarah Winslow** (October 30, 2026)



Alan Hersh



Sarah Winslow

In Bakery LLC v. Naterra International Inc., decided on Sept. 15, Judge Melissa Andrews of the Texas Business Court's Third Division addressed an important timing question: When does the 30-day removal deadline begin if counterclaims — rather than the claims in the original petition — first bring an action within the business court's $5 million amount-in-controversy threshold?

The court held that the deadline began when the counterclaims were filed, not when the defendant had earlier threatened to bring them. The ruling may provide useful guidance for businesses and practitioners assessing removal timing, particularly when a case's potential value changes as the pleadings develop.

Its reasoning, however, turns on the circumstances before the court: The original claims did not meet the jurisdictional threshold, and the counterclaims were the first claims actually pled that brought the total amount in controversy above it.

Background and Key Facts

The case began as a collection dispute. In May, Bakery and Ken Media LLC sued Naterra International on sworn account, alleging that Naterra owed approximately $1.35 million for services. That amount, standing alone, was below the Texas Business Court's $5 million amount-in-controversy minimum.

On July 1, Naterra filed counterclaims alleging more than $60 million in damages. The plaintiffs removed the action to the business court on July 29 — within 30 days of the counterclaims' filing. They argued that the action arose from a qualified transaction and that, with the counterclaims included, the amount in controversy exceeded $5 million.

Naterra moved to remand, arguing that the removal was too late. Before the lawsuit was filed, Naterra had responded to the plaintiffs' demand letter by threatening to assert counterclaims and valuing them at more than $60 million.

Naterra argued that this communication meant the plaintiffs knew — or reasonably should have known — before filing suit that the amount in controversy would exceed the jurisdictional threshold. It therefore contended that the removal clock had begun earlier.

The Court's Analysis

The court denied the motion to remand. Under Texas Government Code Sections 25A.006(f)(1)(A) and (B), and Texas Rule of Civil Procedure 355(c)(2)(A), a party generally must file a notice of removal within 30 days after the later of service or the date it discovered, or reasonably should have discovered, facts establishing the business court's jurisdiction over the action.

The question was whether Naterra's presuit $60 million threat established jurisdiction over this lawsuit before the counterclaims were filed. The court concluded that it did not.

The amount in controversy is determined by the total amount of the claims joined in the action. Before Naterra filed its counterclaims, the only claims in the suit were the plaintiffs' claims for approximately $1.35 million. The counterclaims, though threatened and assigned a substantial value, had not yet been pled.

As the court explained, a party may threaten claims before suit but later choose not to bring them, assert only some of them or plead different claims. Their eventual value may also differ from an earlier estimate.

For that reason, the court treated the threatened counterclaims as hypothetical future claims, not claims already part of the action. The amount in controversy before July 1 was based on the claims then pled, and no party contended that those claims alone met the business court's minimum.

The court therefore found no basis to conclude that it had jurisdiction over the action before Naterra filed its counterclaims, or that the plaintiffs had previously discovered facts establishing that jurisdiction.

This decision does not mean presuit communications are irrelevant. The court noted that a demand or other communication may be compelling evidence of the value of claims that are actually pled when an evidentiary inquiry into amount in controversy is required.

The distinction is between using a communication as evidence of the value of an existing claim and treating a threatened, unfiled claim as though it were already part of the lawsuit.

The Court's Distinction of DrinkPAK

Naterra relied on the Texas Business Court, Eighth Division's May 14 decision in DrinkPAK LLC v. PRIII/Crow Building C LP, but the court found that case distinguishable.

In DrinkPAK, the claims in the plaintiff's original petition already exceeded the jurisdictional threshold. The defendants knew, or reasonably should have known, that the action qualified for the business court when those claims were filed or served, yet still failed to remove within 30 days.

The court agreed with DrinkPAK that filing a counterclaim does not create a new action or restart a removal deadline for claims that were already within the business court's jurisdiction. But that principle did not decide this case.

Here, the original claims did not meet the amount-in-controversy minimum. The later counterclaims did not restart an existing deadline; rather, they were the first pled claims that brought the total amount in controversy above the threshold.

The court also rejected an approach that would start the removal deadline upon a presuit threat when the threatened claims are not filed until much later. Under that approach, a defendant could threaten large counterclaims, wait more than 30 days after the plaintiff filed suit and then file them — potentially leaving other parties without a timely opportunity to remove. The court considered that result unworkable.

Practical Takeaways for Businesses and Practitioners

Track the claims actually pled.

The decision emphasizes the importance of reviewing the live pleadings when assessing whether an action meets the business court's amount-in-controversy requirement.

A presuit demand or threat may signal that significant claims are possible. But it did not, on these facts, make those claims part of the lawsuit before they were filed.

Assess jurisdiction as the case develops.

A case that begins below the $5 million threshold may later exceed it when counterclaims are asserted. Parties should reassess jurisdiction and removal timing when pleadings change, rather than assuming that the amount in controversy is fixed at the outset.

Do not assume every counterclaim opens a new removal window.

The Bakery decision rests on the conclusion that the original claims did not independently satisfy the jurisdictional minimum. If the claims already pled bring the action within the business court's jurisdiction, DrinkPAK indicates that a later counterclaim does not necessarily restart the deadline.

The timing analysis depends on when the facts establishing jurisdiction over the action became known or reasonably discoverable.

Preserve and evaluate presuit communications.

Although threats of unfiled claims will not trigger the clock, presuit communications may still help establish the value of claims that are later pled. Parties should retain those communications and consider how they may bear on the amount-in-controversy analysis.

Check all jurisdictional requirements.

The amount in controversy is not the only issue. In Bakery, the plaintiffs also asserted that the action arose from a qualified transaction.

Parties evaluating removal should assess the applicable statutory requirements as a whole, including the relevant deadline.

Conclusion

The Bakery ruling clarifies that, when the original claims do not meet the business court's amount-in-controversy threshold, a presuit threat to bring high-value counterclaims does not itself make those unfiled claims part of the action. On the facts presented, the 30-day removal period began when the counterclaims were filed and first brought the total amount in controversy above $5 million.

The decision underscores the need to monitor both the pleadings and the timing of jurisdictional developments.

Alan W. Hersh is of counsel and Sarah Winslow is an associate at Greenberg Traurig LLP.

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