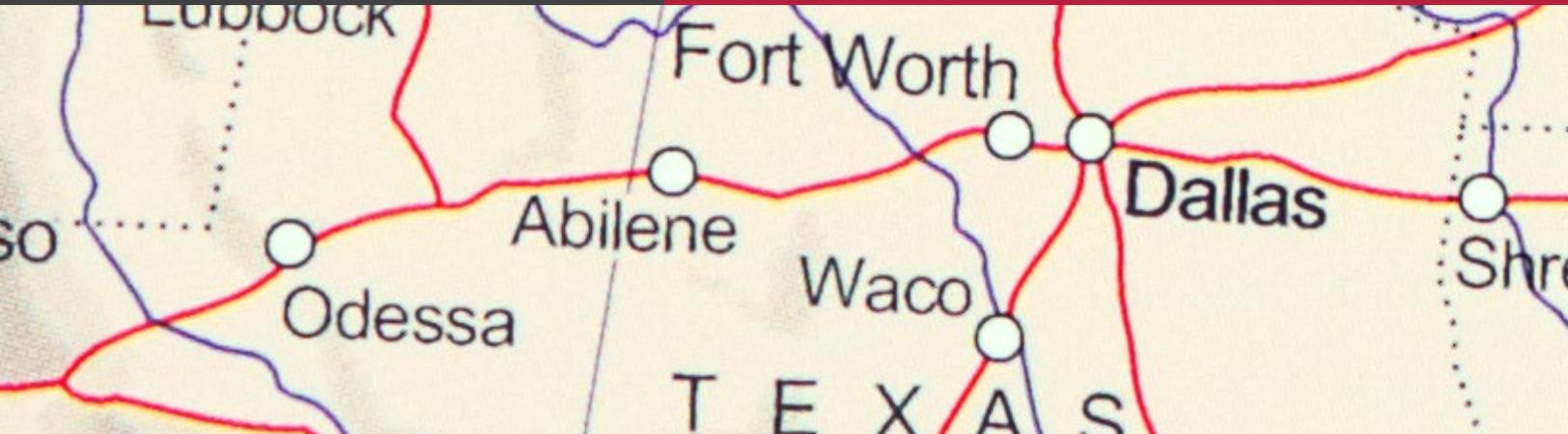




DALLAS COURT OF APPEALS CLARIFIES WHERE TO BRING INJUNCTION SUITS

by Ralph Perry-Miller and Bill Drabble
February 6, 2019



The Dallas Court of Appeals recently held that employers can choose where to sue former employees who have breached their covenants not to compete. *In re Ross*, No. 05-18-01052-CV, 2018 WL 6695596 (Tex. App.—Dallas Dec. 20, 2018, orig. proceeding). Regrettably, many businesses provide training, access to confidential information, and introductions to clients to an employee who then abruptly quits and either establishes his own business or starts working for a competitor, notwithstanding a covenant not to compete. And that former employee may take more than his skill and experience, stealing client lists and other proprietary information as he leaves. In those circumstances, the employer often sues for damages and seeks injunctive relief to enforce the non-compete and to prevent the employee from using its information.

Where should the employer file suit? Texas's general venue statute gives plaintiff a choice between suing in the county in which a defendant resides, the county in which a defendant has its principal office, or a county in which "all or a substantial part of the events giving rise to the claim occurred." Texas, however, has multiple mandatory-venue statutes, one of which states that "a writ of injunction against a party who is a resident of [Texas] shall be tried in the district or county court in the county in which the party is domiciled." Does that statute apply every time an employer sues and seeks a permanent injunction to enforce a covenant not to compete?

In *In re Ross*, the Dallas Court of Appeals answered that question "no." It held that the mandatory venue statute is not read literally; it applies only when the relief sought is purely or primarily injunctive. Clarifying an ambiguous prior decision, the court stated that "[t]he inclusion of a request for permanent injunction as one of multiple requests for relief" does not make a lawsuit primarily injunctive. Rather, the employer's request for injunctive relief to prevent future violations of the covenant not to compete was ancillary to its request for "substantial damages" against the former employee. Accordingly, the mandatory venue statute did not apply, and the employer had a choice of courts in which to sue.

In re Ross brings the Dallas Court of Appeals' precedent in line with two older Houston Court of Appeals opinions. The Courts in *Shuttleworth v. G & A Outsourcing, Inc.* and *Hoggs v. Professional Pathology Associates, P.A.* held that when a former employer sues for a breach of a covenant not to compete and seeks both damages and an injunction against future breaches, damages are the primary relief sought, and the mandatory venue provision does not apply.

Bottom Line for Employers and Companies Seeking Injunctive Relief

Choosing the court in which to sue is a key strategic decision in any lawsuit. Several factors must be weighed, including the parties' convenience, any prejudice for or against a party, and the judge's temperament and workload. *In re Ross* now provides the opportunity to make that calculation and choose the most advantageous of the legally available courts since the employer is no longer restricted to the county in which the defendant resides.



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Bill Drabble focuses his practice on representing property owners, landlords, tenants and developers in real estate litigation before courts throughout North Texas, including disputes over land sales, breaches of lease agreements, premises-liability claims and other disputes involving commercial and residential properties. He also handles a wide variety of intra-company disputes, such as prosecuting and defending claims for breaches of shareholder or company agreement, breach of fiduciary duty claims against directors and officers, and contests for control over the company. Bill's practice also includes appeals. He was the principal author of briefs filed in the Fifth Circuit, intermediate appellate courts and the Texas Supreme Court. He earned his law degree from Baylor University School of Law.