

ALERT MEMORANDUM

New Home, New Rules: Texas Business Court Holds Texas Pre-Suit Demand Rules Apply to Shareholder Derivative Suit Alleging Pre-Reincorporation Misconduct

October 13, 2026

On October 2, 2026, in *Guillaume v. Armstrong*,¹ Judge Andrea K. Bouressa dismissed a shareholder derivative action against Coinbase Global, Inc. (Coinbase) and its directors, holding that Texas law, rather than Delaware law, governs a shareholder's standing and authority to bring derivative claims on behalf of a Texas corporation, even when the alleged misconduct occurred when the company was incorporated in Delaware.² The decision offers important guidance for companies that have reincorporated in Texas or are considering doing so, and clarifies how Texas courts will apply the internal affairs doctrine in this context.

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¹ No. 26-BC01A-0052, 2026 Tex. Bus. 70 (Tex. Bus. Ct. Oct. 2, 2026).

² *Id.* at ¶ 18.

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Background

Coinbase reincorporated from Delaware to Texas in December 2025.³ In April 2026, shareholder Gary Guillaume filed a derivative action in Texas state court alleging that Coinbase’s directors and officers had misrepresented the company’s regulatory risk and its ability to safeguard customer assets.⁴ He alleged that this occurred between April 2021 and June 2023, while Coinbase was still incorporated in Delaware.⁵

Guillaume did not make a pre-suit demand on Coinbase’s board before filing suit, a requirement for a shareholder to bring a derivative action under Texas law.⁶ Instead, he attempted to plead demand futility under Delaware law, a doctrine permitting shareholders to proceed without making a pre-suit demand by showing that at least half of the board was conflicted, faced a substantial likelihood of liability, or lacked independence from those who did.⁷ Although demand futility is a viable option for shareholders of Delaware corporations, it is not for shareholders of Texas corporations.⁸ Rather, under Texas law, a shareholder must make a written pre-suit demand on the corporation’s board and wait at least 91 days before commencing a derivative action. Although there are some exceptions to this 91-day waiting period, demand futility is not one of them.⁹

The Core Legal Question

The case presented a critical choice-of-law question: when a company reincorporates from another state to Texas, and a shareholder subsequently brings

derivative claims based on pre-reincorporation conduct, which state’s law governs the shareholder’s standing and authority to bring those claims?

The stakes were significant because, in the court’s words, Guillaume’s “suit must be dismissed if Texas law governs, but not if Delaware law governs.”¹⁰

The Decision

The court held that Texas law governs a shareholder’s standing and authority to bring a derivative suit on behalf of a Texas corporation, even if the asserted claims arise under the laws of another state or concern conduct that preceded the company’s incorporation in Texas.¹¹ Accordingly, the court dismissed Guillaume’s action because he had failed to make a pre-suit demand as required by Texas law.¹²

The court’s reasoning rested on two key analytical steps. *First*, the court distinguished between the substantive law governing the merits of the underlying claims and the law governing a shareholder’s standing and authority to assert those claims.¹³ The court assumed, without deciding, that Delaware law governed the merits of claims arising from pre-reincorporation conduct but concluded that this question was separate from the choice-of-law inquiry regarding standing and authority to bring derivative claims.¹⁴ Because the court determined that Texas and Delaware law conflict on standing and authority to bring derivative claims, the court turned to the “internal affairs” doctrine, which Texas courts apply as a conflict-of-laws principle.¹⁵

³ *Id.* at ¶ 6.

⁴ *See id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at ¶¶ 4–5 (citing *United Food & Commercial Workers Union v. Zuckerberg*, 262 A.3d 1034, 1047–48, 1059 (Del. 2021)).

⁸ *Id.* at ¶¶ 2–3 (citing Tex. Bus. Orgs. Code § 21.553; *Sneed v. Webre*, 465 S.W.3d 169, 184 (Tex. 2015)).

⁹ *Id.* at ¶¶ 2–3 (citing Tex. Bus. Orgs. Code § 21.553(a)).

¹⁰ *Id.* at ¶ 9 (“The importance of choice of law in the circumstances before the Court cannot be overstated: Plaintiff’s suit must be dismissed if Texas law governs, but not if Delaware law governs.”).

¹¹ *Id.* at ¶ 18.

¹² *Id.* at ¶¶ 23–24.

¹³ *Id.* at ¶ 10.

¹⁴ *Id.* (“This Court does not reach a contrary conclusion and assumes—without deciding—that Plaintiff is correct. However, Defendants’ special exceptions do not raise a choice-of-law question concerning the merits of the pleaded claims.”).

¹⁵ *Id.* at ¶ 9. Ultimately, the court did not answer the question of whether Texas’ pre-suit demand requirement is a component of standing, because it found that the “internal affairs doctrine supports only one conclusion regarding governing law as to the pre-suit demand requirement,

Second, the court applied the internal affairs doctrine, which provides that questions of corporate formation and internal affairs (such as questions regarding shareholder voting rights and director fiduciary obligations) with respect to a Texas corporation are governed substantively by Texas law.¹⁶ The court reasoned that a shareholder's authority to bring derivative claims presents the same question as whether a director had authority to take a particular action.¹⁷

The court emphasized that while a claim may accrue to a corporation, its shareholders acquire no vested right at the time of accrual to assert that claim later in a derivative suit.¹⁸ The right of action in a derivative suit belongs to the corporation; the shareholder merely "steps into the shoes" of the corporation.¹⁹ Because the shareholder must maintain its relationship to the corporation throughout the litigation, the court found "no logical reason to conclude that the law applicable to the corporation at the time of claim accrual applies to a shareholder's later act of filing suit."²⁰ Thus, just as a director's authority is governed by the law of the state of incorporation at the time the director acts, a shareholder's authority to institute derivative litigation should be governed by the law of the state of incorporation at the time the shareholder purports to exercise that authority by filing suit.²¹

The court also rejected Guillaume's argument that Coinbase's regulatory filings created an enforceable commitment to apply Delaware law.²² In its proxy materials, Coinbase had stated that the reincorporation would not "extinguish or adversely affect the standing or ability" of shareholders to initiate derivative actions regarding pre-reincorporation conduct.²³ The court

found this language did not—nor could it—amount to a commitment to have Delaware law govern standing or authority to bring derivative claims post-reincorporation.²⁴ Moreover, the court noted that Guillaume had failed to demonstrate any actual adverse effect from the application of Texas law—he did not argue that making a pre-suit demand as required by Texas law would be impossible, harmful, or even prejudicial.²⁵

Key Takeaways

The *Guillaume* decision reflects that, at least in Texas, shareholder standing and the authority to bring derivative claims are governed by the law of the state of incorporation at the time the action is filed, not the law that applied when the underlying conduct occurred.²⁶ This provides a procedural advantage for companies that have reincorporated in Texas, as shareholders must comply with Texas's mandatory pre-suit demand requirement regardless of when the alleged wrongdoing took place.²⁷ The 91-day waiting period following a demand gives boards time to evaluate claims and potentially resolve matters before litigation commences.²⁸ Companies considering reincorporation should consider weighing this as one factor among many in their analysis.

Further, the decision emphasizes that disclosure language is not a substitute for governing law. Coinbase's disclosure that reincorporation would not "adversely affect" shareholder derivative rights did not prevent the court from applying Texas law.²⁹ Companies should be precise in their reincorporation disclosures, but this decision also reflects that disclosure language will not waive or override the

regardless of whether it is considered a component of standing (and therefore jurisdictional) or not." *Id.* at ¶ 14.

¹⁶ *Id.* at ¶ 9 (citing Tex. Bus. Orgs. Code §§ 1.101, 21.002).

¹⁷ *Id.* at ¶ 17.

¹⁸ *Id.* at ¶ 16.

¹⁹ *Id.* (citing *In re Crown Castle Int'l Corp.*, 247 S.W.3d 349, 355 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding)).

²⁰ *Id.*

²¹ *Id.* at ¶ 17.

²² *Id.* at ¶¶ 19–22.

²³ *Id.* at ¶ 19.

²⁴ *Id.* at ¶ 20 ("Plaintiff's exhibits do not—either expressly or impliedly—state that Delaware law will continue to govern any person's standing or ability to bring a derivative suit.").

²⁵ *Id.* at ¶ 21.

²⁶ *Id.* at ¶ 18.

²⁷ *Id.* at ¶ 23 (citing *In re Schmitz*, 285 S.W.3d 451 (Tex. 2009)).

²⁸ *Id.* at ¶ 2 (citing Tex. Bus. Orgs. Code § 21.553(a)).

²⁹ *Id.* at ¶¶ 19–21.

statutory requirements of the new state of incorporation.³⁰

Although the Texas Business Court is relatively new and still developing its corporate law jurisprudence, this decision shows its readiness to engage with complex corporate law questions and develop a coherent body of Texas corporate law. The ruling arrives amid a small wave of high-profile reincorporations to Texas—including the reincorporations of Tesla, Coinbase, Dell Technologies, and SpaceX.³¹ As more companies consider Texas as an alternative to Delaware, decisions like *Guillaume* will help define the contours of Texas corporate law.

Finally, the court’s holding addressed only the threshold issues of standing and the authority to bring derivative claims. It expressly declined to decide whether Delaware law would govern the merits of claims arising from pre-reincorporation conduct.³² Future cases may present opportunities for the Texas Business Court to address this separate choice-of-law question.

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³⁰ See *id.* at ¶ 22 (noting that plaintiff offered “no argument that Texas law would allow a party to contract around Texas’ pre-suit demand requirement”).

³¹ DExit Trends: Tracking Reincorporations Away from Delaware, Analysis Group (Feb. 19, 2026)

<https://www.analysisgroup.com/Insights/ag-feature/dexit-trends-tracking-reincorporations-away-from-delaware/>

³² *Guillaume* at ¶ 10 (“This Court does not reach a contrary conclusion and assumes—without deciding—that Plaintiff is correct.”)