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Texas Lawyer Newsroom Update

Mar 23, 2020

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Welcome to Texas Takeaways! In this weekly newsletter, we'll tell you what you need to know about challenges and opportunities arising in the Texas legal community and how you can capitalize on them to attract business, win cases and grow your practice.

We need your feedback to help ensure Texas Takeaways presents the information and insights most valuable to you and your practice. Let me know what you think at kartz@alm.com.

—Kenneth Artz, Texas Bureau Chief

From Disrupted to Bankrupted



What's Happening:

Civil litigation has grown at a healthy rate in the Dallas-Fort Worth district courts in the past five years, according to a recent [story](#) by Angela Morris.

For instance, Dallas County district courts saw a 25% increase in civil litigation from 2015 to 2019, while Tarrant County district courts saw a 28% gain, according to statistics from the Texas Office of Court Administration.

Some civil practice areas are enjoying larger upticks than others. In Dallas County, Morris reports, the booming areas are consumer debt, civil cases relating to criminal cases, and motor vehicle. In Tarrant County, large growth came to civil cases relating to criminal cases, contract, real property and motor vehicle practice areas.

But in the wake of the COVID-19 outbreak, attorneys said **bankruptcy litigation could be the next practice to spike.**

What It Means for You:

If you're bankruptcy attorney, the duration and extent of COVID-19-induced disruption to the marketplace could dictate your workload in the coming months and years.

[Stephanie D. Curtis](#), president and shareholder at Curtis Castillo in Dallas, says her firm has not seen a material uptick in bankruptcy cases as of yet, she anticipates the **filings going up dramatically in the next several months.**

In large part, this will be due to the effects of coronavirus-related company closures, payroll reductions, layoffs, dramatic drops in the market, and self-quarantine measure

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What You Should Do (If You're a Firm Looking to Capitalize):

Be ready.

Practitioners with bankruptcy expertise will need to be poised to handle difficult small business cases and individual reorganization cases, as well as large restructuring matters. Within this practice area, especially for smaller businesses, attorneys may need to be creative on client payments (within ethical bounds) to provide relief for those in need, said Curtis.

“Our firm is set up to take clients in through virtual interviews, including Skype, FaceTime and conference calls. Our firm also provides offsite login capabilities for all of our attorneys so that we can always provide assistance and be available to our clients 24/7 and can handle any potential quarantine or closure issues,” Curtis said.

Questions You Should Be Asking (If You're a Client Considering Filing for Bankruptcy):

Per Curtis:

- **Even if you have not yet felt the full impact of the current market drops and pandemic effects, do you have knowledgeable counsel right now?** They can guide you on asset protection, restructuring opportunities, and potential bankruptcy alternatives.

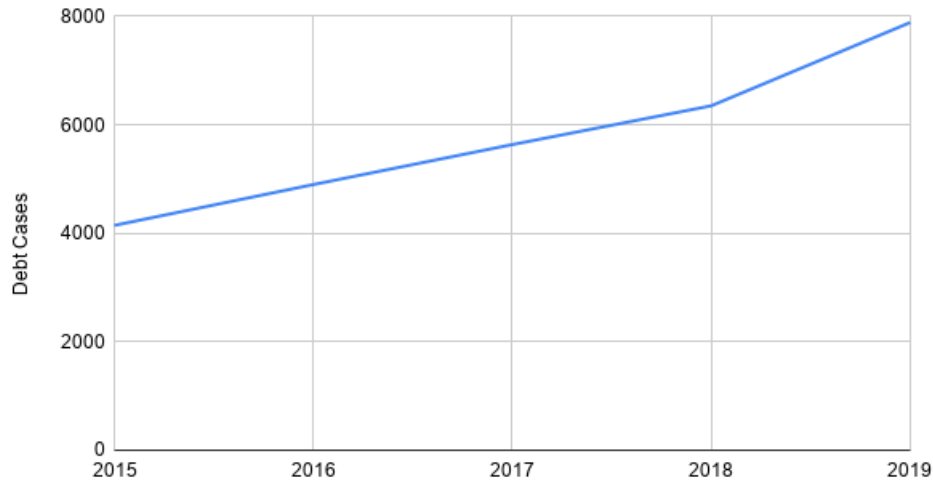
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Is your counsel well-positioned to assist by putting business and individual “financial survival strategies” in place right now? If so, relief can be obtained quickly and it can go smoother and cheaper than waiting to the very last minute.

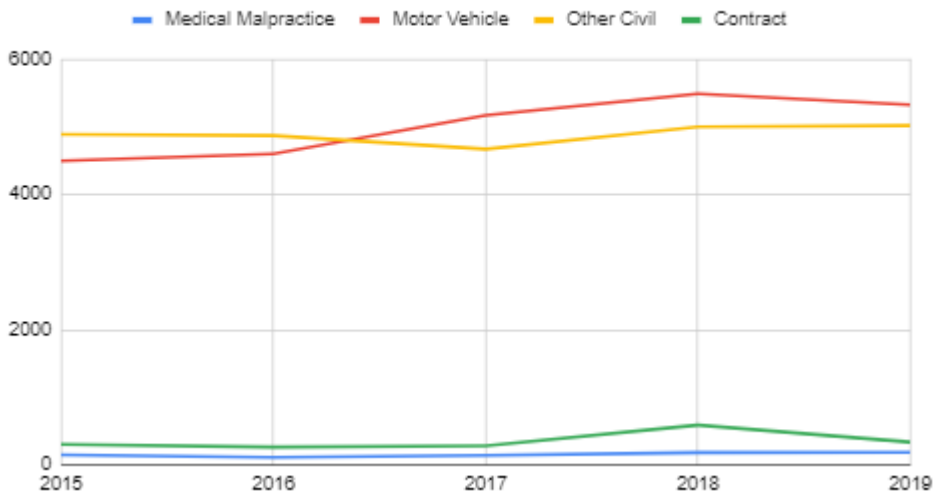
Lit Up

The infographics below show how civil litigation has grown in Dallas and Tarrant counties since 2015.

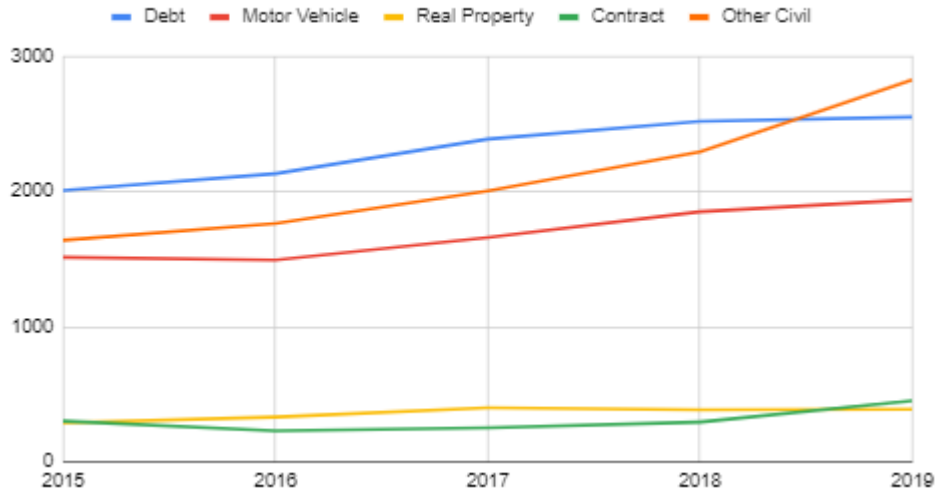
Debt cases in Dallas County district courts



Other Growing Practices in Dallas County



Growing Practices In Tarrant County District Courts



Source: Texas Office of Court Administration. Graphics: Angela Morris/ALM

Here Come the Lawsuits



What's Happening:

COVID-19 is affecting supply chains and causing event cancellations like South by Southwest (SXSW), the annual film, interactive media, and music festival that takes place in mid-March in

Austin. Lawyers say affected businesses will start looking to their insurance providers to make up their losses.

But while companies losing money are likely to file claims, lawyers expect insurance providers to argue that COVID-19 disruptions aren't covered by the policies. With so much money on the line, this could spark litigation by the policyholders against their insurers, according to a [recent story](#) by Angela Morris.

The fallout will hit the bottom lines of businesses so hard that attorneys on the front line predict litigation to follow. The potential scope of future litigation is enormous, according to [another recent story](#) by Morris.

What It Means for You:

Commercial litigators are going to be fielding a lot of calls.

Like Stephanie Curtis, [Richard G. Grant](#), a partner and bankruptcy chair at Culhane Meadows in Dallas, said he anticipates that **the supply chain disruptions caused by the coronavirus outbreak will be huge for corporate bankruptcy attorneys.**

"People are not going to be able to meet their debts and they're going to be looking for solutions," Grant said.

"And if there are enough zeroes involved, Chapter 11 can help everybody. I think bankruptcy is really about letting everybody face economic reality, and I think we have a new economic reality coming," Grant added.

But first will come the breach-of-contract battles, Grant said.

What You Should Do (If You're a Commercial Litigator):

Prepare to fight over "force majeure" clauses.

SXSW cancelled and they're not giving any refunds. This is one of the first big event closures in Texas that will affect hundreds of vendors and small businesses, said Grant.

"I'm working on the presumption that they're relying on their force majeure clause because it's an overt act of God, and they had to cancel it, and therefore they believe they don't owe any penalties for not refunding your money," Grant explained.

"On the litigation side, I think force majeure issues are going to be at the core of it. It's human nature that when you can't pay a bill that rather than admit the problem is with you and you're struggling and need to find new streams of revenue and ways to improve your business model, people tend to litigate it because that's the only choice they have," Grant said.

"If someone thinks they're owed, you sue them, they countersue, and you start arguing about who did what to whom. It's kind of like trying to decide who has the coronavirus instead of trying to work on the vaccine," Grant added.

Questions You Should Be Asking (If You're Considering Filing a Breach of Contract Suit):

Per Grant:

- **Have you brought out your contract and read it? If so, have you looked at the big picture of why you are not getting paid as opposed to breach of contract?** If they're an insurance company, that's one thing if you're suing them for breach of contract because the reality is they shouldn't have breached it. In a perfect world, nobody breaches a contract.
- **Have you thought about what the core issue is?** For instance, did the other side breach because they wanted to and were intentionally trying to harm you or are they in the same pickle as you are in?
- **Will suing somebody yield any cash flow?** Damage is being done to the country and we all have to deal with it.

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