



Episode 7 Transcript: “Texas Allows Elimination of Fiduciary Duties in LLCs”

Scott: Welcome back to Akin’s podcast series, the Business Court benches: Delaware and Texas Compared where we discuss the evolving corporate law battleground between Delaware and Texas. I’m co-host Scott Barnard, a litigation partner in Akin’s Dallas office.

Stephanie: And I’m your co-host Stephanie Lindemuth, a litigation partner in New York. This is episode seven, Texas Allows Elimination of Fiduciary Duties in LLCs. In our recent episodes, we’ve spent a lot of time on corporate law developments, especially changes affecting stockholder rights.

Scott: That’s right Stephanie. Most of our discussion so far has been squarely in the corporate world, boards, stockholders, fiduciary duties in the corporate context.

Stephanie: Exactly. But today we’re shifting gears because while corporations have been getting most of the attention, Texas has also been making meaningful changes in the alternative entity space. LLCs, LPs, and other structures that are often used for subsidiaries, joint ventures and investment funds.

Scott: And those changes may end up being just as significant, if not more so. For private equity sponsors, fund managers, and minority investors.

Stephanie: So let’s start with what actually changed. In May of 2025, Texas Amended Section 101.401 of its LLC statute.

Scott: Before that amendment, Texas, LLC agreements could expand or restrict fiduciary duties, but the statute didn’t clearly say you could eliminate them altogether.

Stephanie: Right there was flexibility but not express authorization to wipe fiduciary duties off the map.

Scott: The amendment changes that. It now explicitly states that an LLC agreement may quote, eliminate any duties including fiduciary duties. End quote.

Stephanie: That’s a big deal. It means parties can now contractually eliminate fiduciary duties entirely and leave it solely to the operating agreement to define what obligations, if any, remain.

Scott: And it wasn’t accidental. This amendment was part of Senate Bill 29. Part of the broader legislative effort aimed at making Texas more attractive as a potential business law jurisdiction.

Stephanie: The legislature didn’t exactly hide the ball. It described the bill as a bold step toward making Texas the corporate law capital of America. So this is very much about competition, particularly with Delaware.



Scott: On the surface, this amendment makes Texas look a lot like Delaware. Delaware's LLC Act also allows parties to eliminate fiduciary duties in an LLC agreement.

Stephanie: That's true, but this is where things get interesting because the similarity only goes so far.

Scott: Yeah, the key difference is the implied covenant of good faith and fair dealing.

Stephanie: Exactly. Delaware's LLC Act expressly preserves the implied covenant even when fiduciary duties are eliminated.

Scott: And in Delaware that implied covenant isn't just theoretical. The court of chancery regularly invokes it as an equitable backstop. When a contract leaves a gap and one party exploits it in a way that undermines the bargain.

Stephanie: In other words, even if fiduciary duties are gone, there's still a judicially enforced baseline of good faith.

Scott: But Texas in contrast, takes a very different view.

Stephanie: It does. Texas does not recognize a general implied covenant of good faith and fair dealing in every contract. In fact, Texas courts have repeatedly rejected the idea that such a covenant automatically exists.

Scott: And that ends up putting Texas almost at the opposite end of the spectrum from Delaware.

Stephanie: Mm-hmm. And now to be clear, Texas isn't saying good faith never exists.

Scott: That's right. There are circumstances where an implied duty of good faith can arise. But they're pretty limited.

Stephanie: Yes, typically you need either a formal or informal fiduciary relationship or what Texas courts call a special relationship.

Scott: And that special relationship concept has been interpreted, fairly narrowly.

Stephanie: Yes. It often involves situations with a significant imbalance of bargaining power or a heightened level of trust, like the insurer insured relationship.

Scott: Yeah, and that's very different from a typical LLC agreement that's negotiated between two sophisticated parties.

Stephanie: Exactly. So, here's the practical question. If an LLC agreement eliminates all duties and there's no general implied covenant, what's left?

Scott: That's right. I mean, what stops a manager or a controlling member from taking actions that disadvantage minority members? As long as those actions don't violate the literal text of the party's agreement.



Stephanie: That's where we're likely to see future litigation. Minority members may find themselves bound by agreements that provide very little recourse.

Scott: And disputes may end up looking like straight commercial contract cases without the equitable overlay that you see in Delaware courts.

Stephanie: Which makes drafting absolutely critical. If an LLC agreement eliminates common law duties, parties may want to build an express contractual standards, for example, a requirement to act in the best interest of the company or in good faith.

Scott: Because in Texas you may not have a court supplying that protection later. And this isn't just theoretical. In practice, many investors are members, but not managers, especially in joint ventures or minority investments.

Stephanie: And as litigators, we know that no contract anticipates every future dispute.

Scott: That's exactly when Delaware's implied, covenant tends to show up to address unanticipated circumstances that may threaten the original bargain.

Stephanie: In Texas, without that broad backstop, the allocation of risk can look very different even if the operating agreement appears similar on paper.

Scott: Right. I mean, so you could have two LLCs with nearly identical language that could operate very differently depending on whether they're governed by Delaware law or Texas law.

Stephanie: Yes. And that difference can materially affect how minority protections play out in real life.

Scott: Right. So, I mean, looking ahead, there's a few questions, Stephanie. First, the statute allows eliminations of quote any duties, including fiduciary duties end quote. That's broader than just fiduciary concepts. So, what other duties might parties try to disclaim, and how far are the courts gonna let them go?

Stephanie: Right. And another question is, how will Texas Courts respond over time? If cases arise where minority members appear to have no meaningful remedy? Will courts expand the implied duty doctrine or will they stick closely to the legislature's contract first approach?

Scott: Right. I mean, that could create tension between the legislative intent and judicial instincts and a kind of a classical separation of powers dynamic.

Stephanie: Yes. And another big question is, as similar fact patterns emerge in both states, will Texas Jurisprudence converge with Delaware's, or will it deliberately move further away?

Scott: All interesting concepts and interesting ideas for sure.

Stephanie: Yes. So, stepping back, this amendment reinforces a broader theme we've been discussing throughout this series. Texas is trying to compete aggressively, and it's competing on different terms.



Scott: And at the same time, Delaware continues to preserve equitable guardrails through the implied covenant and through the court of Chancery's oversight.

Stephanie: Texas, by contrast, is leaning heavily into contractual freedom and statutory clarity, even if that means fewer built-in protections at the margins.

Scott: So, for investment funds, joint ventures and company structuring subsidiaries, or even affiliates, those differences aren't academic. They directly affect the risk allocation.

Stephanie: And as always, the takeaway is simple choice of law matters and so does careful drafting.

Scott: That's right, Stephanie. Thanks to our listeners for joining us today on the Business Court Benches: Delaware and Texas Compared this has been episode seven, Texas Allows for Elimination of Fiduciary Duties in LLCs. I'm your co-host, Scott Barnard, a litigation partner in Akin's, Dallas office.

Stephanie: And I'm your co-host, Stephanie Lindemuth in Akin's New York office. We'll continue tracking developments in this Texas, Delaware competition in future episodes. Thanks for listening. We'll catch you next time.