



## BELL NUNNALLY PARTNER BEN RIEMER IN DBA'S HEADNOTES TRACES LEGAL HISTORY OF EARLY DALLAS ROCK SONG "THUNDERBIRD"

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**Bell Nunnally Partner Benjamin L. Riemer authored the Dallas Bar Association (DBA) *Headnotes* article "Dallas Rock N' Roll Lore at the Fifth Circuit." The piece traces copyright litigation surrounding the 1961 song "Thunderbird" by Dallas rock band the Nightcaps. "Thunderbird" was later performed by the band ZZ Top and included as part of its 1975 album *Fandango*. Writing credits were given to ZZ Top and not the Nightcaps. Riemer notes, "The case's factual history uncovers a fascinating look into the history of rock and roll in Dallas." He then breaks down what happened next:**

*Nothing happened for nearly two decades when, in 1992, members of the Nightcaps filed suit against ZZ Top in the Northern District of Texas. There was no dispute that ZZ Top's version of the song Thunderbird was, "musically and lyrically identical to the version originally written and performed by the Nightcaps." However, the court dismissed the case on summary judgment based on the statute of limitations.*

The Fifth Circuit later affirmed the lower court's holding, adding lyrically, "[T]he waltz was over by the time the Nightcaps filed suit."

In citing the statute of limitations, the courts rejected the Nightcaps' "continuing tort theory" that every time *Fandango* was sold actionable conduct occurred.

Riemer updates the readers that the Nightcaps band played on, despite the legal drama, "By all accounts, the members of the Nightcaps lived happy lives with their friends and families around Dallas. In the 1990s, the band would reunite to play monthly gigs at the Knights of Columbus, reliving their teenage glory. In 2009, the Nightcaps were honored by the Texas State Senate for their musical contributions. Billy Joe Shine passed away in 2015. He never received a penny in royalties for the song he wrote with his high school buddies."

To read the full article, please click [here](#).

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