



BELL NUNNALLY PARTNER BEN RIEMER ON TEXAS LAWYER EXPLORES HOW TX COURTS INTERPRET CONSPIRACY TO BREACH FIDUCIARY

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Bell Nunnally Partner Benjamin L. Riemer authored the *Texas Lawyer* article “Conspiracy to Breach Fiduciary Duty: Recent Caselaw Boldy Explores the Outer Reaches of the ‘*Punctilio*,’” delving into how fiduciary duty to an employer in Texas has been viewed by courts in Texas – from the Supreme Court of Texas’ precedent-setting 1937 decision in *Kinzbach*, to the Court of Appeals of Texas, Fourteenth District’s 2020 opinion in *Klinek*, where some of the outer reaches of a claim were considered.

Riemer details the stakes at hand for businesses on the fiduciary duty issue:

In modern-day complex commercial litigation matters, direct claims for breach of fiduciary duty against the fiduciary can be complicated enough—oftentimes involving highly intensive factual inquiries simply to determine whether the defendant did, in fact, owe a fiduciary duty at all, let alone breach such duty. Expanding fiduciary liability to third parties who may or may not have participated in the breach is even more complicated, and conspiracy-type claims for breach of fiduciary duty remains a muddled area in Texas. In addition to conspiracy to breach fiduciary duty, Texas courts have discussed at least two different theories allowing for joint liability—knowing participation in breach of fiduciary duty and aiding and abetting breach of fiduciary duty. It is not clear whether these are different terminologies for the same claim or if there are distinctions.

Riemer closes by commenting:

The takeaways here are striking. When a Texas businessperson is conducting business with a party located out-of-state, the Texas party may be required to have knowledge that the out-of-state party owes a fiduciary duty to some third-party pursuant to the laws of a different state, and that by conducting business with the out-of-state party, the Texas party may be conspiring with the out-of-state party to

breach those duties to the third-party. It may be that the Texas judiciary or legislature should promulgate a more clearly defined and streamlined cause of action to address these issues. In the meantime, claims for conspiracy to breach fiduciary in Texas will continue to give rise to intensely complex legal and factual scenarios.

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

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