### CASE LAW UPDATE: A SURVEY OF RECENT TEXAS PARTNERSHIP AND LLC CASES

LLCs, LPs and PARTNERSHIPS 2021

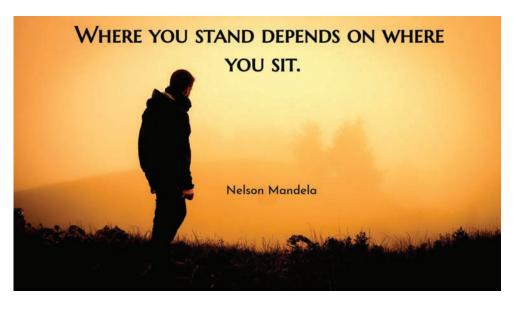
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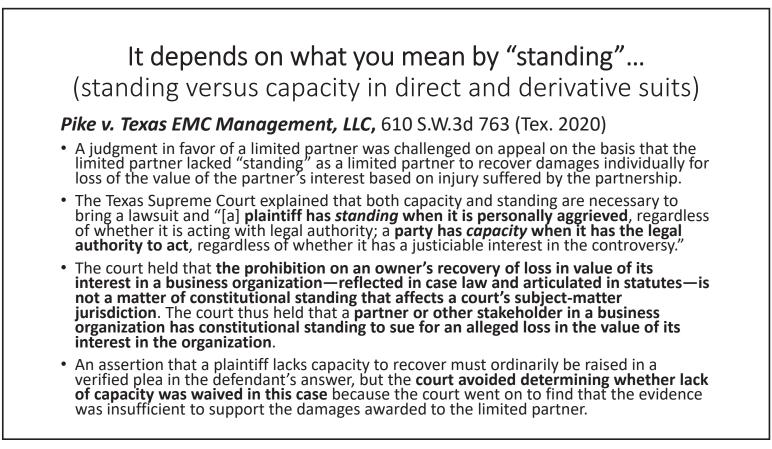
Elizabeth S. Miller M. Stephen and Alyce A. Beard Professor of Business and Transactional Law Baylor Law School

Douglas K. Moll Beirne, Maynard & Parsons, L.L.P. Professor of Law University of Houston Law Center



## It depends on what you mean by "standing"... (standing versus capacity in direct and derivative suits)





# If it walks like a duck... (inadvertent, informal, de facto general partnerships)



# If it walks like a duck... (inadvertent, informal, de facto general partnerships) Whether parties have created a general partnership (so as to result in duties among partners, buyout on withdrawal, personal liability of partner, or some other consequence of partnership relationship) has been a frequently litigated issue. Five statutory factors considered under TBOC: (1) receipt or right to receive a share of the profits; (2) expression of an intent to be partners; (3) participation or right to participate in control; (4) sharing or agreeing to share losses or liabilities; and (5) contributing or agreeing to contribute money or property. Proof of all factors not required, but proof of only one ordinarily insufficient. Totality-of-the-circumstances analysis, BUT "[a]n agreement not to be partners unless certain conditions are met will ordinarily be conclusive on the issue of partnership formation as between the parties." *Energy Transfer Partners, L.P. v. Enterprise Products Partners, L.P.*, 593 S.W.3d 732 (Tex. 2020)

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