



## Texas Fiduciary Litigation Update: 2020-2021

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## I. Introduction<sup>1</sup>

The fiduciary field in Texas is a constantly changing area. Over time, statutes change, and Texas courts interpret those statutes, the common law, and parties' documents differently. This paper is intended to give an update on the law in Texas that impacts the fiduciary field from a period of mid-2020 to mid-2021. The author has a blog, the Texas Fiduciary Litigator ([www.txfiduciarylitigator.com](http://www.txfiduciarylitigator.com)), wherein he regularly reports on fiduciary issues in Texas.

## II. Trust-Related Litigation

### A. Texas Court Does Not Have Personal Jurisdiction Over A Trustee Of A Trust With Texas Timber Rights

In *JPMorgan Chase Bank, N.A. v. Campbell*, a member of a limited partnership sued other partners, including a trustee of a trust, to dissolve the partnership. No. 09-20-00161-CV, 2021 Tex. App. LEXIS 5001 (Tex. App.—Beaumont June 24, 2021, no pet. history). The trustee was listed as a nominal defendant, and the trustee filed claims seeking declaratory relief regarding it not having to participate in an arbitration proceeding. The plaintiffs then filed additional claims against the trustee including breach of fiduciary duty and for modification of the trust. The trustee filed a special appearance regarding those new claims, which the trial court denied. The trustee appealed.

The court of appeals first held that the trustee did not waive its right to objection to personal jurisdiction by answering the original suit and seeking declaratory relief. The court noted that “Rule 120a allows a party to file a special appearance in any severable action of a lawsuit.” *Id.* The court held: “the trust modification claim is a severable action, and that JPMorgan did not waive its challenge to the trial court’s exercise of personal jurisdiction over it by appearing in and seeking declaratory relief in the underlying arbitration suit.” *Id.*

The plaintiff did not rely on general jurisdiction to establish personal jurisdiction over the trustee and only asserted specific jurisdiction. The plaintiff has alleged that the trustee would not maintain the timber rights in the trust and would liquidate them. The court held that that fact did not support jurisdiction as it did not show how the trustee did business in Texas. The court then reviewed additional facts in the response to the objection to personal jurisdiction:

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In its response, Foster argues that JPMorgan has benefitted from the sale of timber located in Texas as a trustee. JPMorgan solicited business from the beneficiaries stating it would “maximize the value of the Texas property,” and holds the “responsibilities of an owner[.]” Foster states that JPMorgan participated in business meetings of Foster Management and sent representatives to Texas on “nearly half a dozen occasions[.]” meeting with Christy in her Conroe home.

*Id.* The court concluded that the pleadings alleged sufficient facts that required the trustee to file a sworn denial or its equivalent responding to its allegations that the trustee “does business” in Texas. But the court held that even though the plaintiffs alleged facts that overcame the first prong of the analysis, “that is not necessarily enough to satisfy due process as required under the long-arm statute.” The court held:

Asserting personal jurisdiction comports with due process when (1) the nonresident defendant has minimum contacts with the forum state, and (2) asserting jurisdiction complies with traditional notions of fair play and substantial justice.... For a Texas court to exercise specific jurisdiction, the nonresident defendant must have made minimum contacts with Texas by purposefully availing itself of the privilege of conducting business here, and its liability must have arisen from or be related to those contacts. “[T]here must be a substantial connection between those contacts and the operative facts of the litigation.” A “purposeful availing” inquiry involves three parts: (1) consideration of the defendant’s contacts with the forum, but “not the unilateral activity of another party or a third person[;]” (2) “the contacts relied upon must be purposeful rather than random, fortuitous, or attenuated[;]” and (3) the defendant must seek a benefit, advantage, or profit by availing itself of the jurisdiction. *Id.* at 575 (citations omitted). “In contrast, a defendant may purposefully avoid a particular forum by structuring its transactions in such a way as to neither profit from the forum’s laws nor subject itself to jurisdiction there.”

*Id.* The court agreed with the trustee’s position:

JPMorgan argues that it did not purposely avail itself in Texas because the Trust was not created or modified in Texas, it administers the Trust in Illinois and never in Texas, the beneficiaries live in California, and one beneficiary’s move to Texas does not demonstrate that it is doing business in Texas. JPMorgan also contends that although the timber is located in Texas, JPMorgan does not hold legal title to the land, but that “an interest in a partnership for the benefit of third parties does not constitute ‘purposeful activity.’”

*Id.* The court held that just because a trust beneficiary lived in Texas, and received distributions here, that did not establish jurisdiction over the trustee. The

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First appeared as part of the conference materials for the  
18<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trusts session  
"Fiduciary Litigation Update 2020-2021"