TURMOIL FOR TEXAS LLCS: WHY THE TEXAS SUPREME COURT SHOULD ADOPT THE *STRAEHLA* RULE

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I. INTRODUCTION

Over the past several years, limited liability companies (LLCs) have become a popular entity form.[1] Part of their popularity stems from the flexibility to describe the parties' relationship by contract—including the scope of fiduciary duties.[2] However, as LLCs become more popular, more uncertainty has arisen as to whether and to what extent members of LLCs owe fiduciary duties to each other.[3]

Though the Texas Business Organizations Code suggests that the duties of care and loyalty exist, the Code is somewhat vague and a little cryptic.[4] Furthermore, Texas courts' fact-intensive approach to informal fiduciary relationships has only accentuated this uncertainty.[5] Accordingly, this Article urges the Texas Supreme Court to adopt a clear rule for Texas LLCs: a presumption that all LLC managers and members owe fiduciary duties of care, loyalty, and good faith to the company unless the company agreement says otherwise.[6]

Part II will provide background on the legal landscape of Texas LLCs, highlighting relevant Code provisions and summarizing key cases on the subject. Next, Part III will urge the Texas Supreme Court to adopt the *Straehla* rule, a presumption of fiduciary duties for LLCs. Part IV will discuss any potential alternative solutions and their feasibility. Finally, Part V will briefly summarize this Paper and conclude with a call to action.

II. THE LEGAL LANDSCAPE OF TEXAS LLCS

Though several states set out the fiduciary duties applicable to LLCs through statutes, the Texas Business Organizations Code simply infers that these duties exist.[7] Accordingly, there is some uncertainty within this area of the law.[8] Specifically, there is uncertainty as to whether and to what extent LLC members owe fiduciary duties to one

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1. *Fiduciary Duties: LLCs (TX)*, Practical Law (West), W-015-7451 (2025).
2. *Id.*
3. L&S Pro-Line, LLC v. Gagliano, No. 09-21-00178-CV, 2024 Tex. App. LEXIS 4590, at *87 (Tex. App.—Beaumont June 28, 2024, pet. filed) (stating that fiduciary duties in the LLC context are an "unsettled area of Texas law").
4. *See generally* TEX. BUS. ORGS. CODE ANN. CH. 101 (2025).
5. *Fiduciary Duties: LLCs (TX)*, *supra* note 1.
6. *See infra* Part III (explaining why the Texas Supreme Court should adopt the *Straehla* rule).
7. *See, e.g.*, 805 ILL. COMP. STAT. 180/15-1 (2024) (codifying fiduciary duties for Illinois LLCs). *See generally* TEX. BUS. ORGS. CODE ANN. (suggesting that LLC members or managers owe a duty of care and a duty of loyalty).
8. Elizabeth S. Miller, *Overview of Fiduciary Duties, Exculpation, and Indemnification in Texas Business Organizations*, 49 TEX. J. BUS. L. 1, 1 (2020).

another.[9] This Part seeks to compile all of the relevant background information regarding Texas LLCs.[10] To begin, Section II.A will highlight some key features of Texas LLCs. Section II.B will examine the Texas Business Organizations Code. Finally, Section II.C will dissect the key cases analyzing fiduciary duties amongst LLCs.

A. The LLC: A Hybrid Entity

LLCs are a hybrid entity that possess qualities of both corporations and partnerships.[11] Because LLCs combine aspects of other entities, they are very flexible when it comes to how the entity is structured.[12] An LLC may have centralized management—similar to a corporation—or it may be managed by the owners—comparable to a general partnership.[13]

In the company agreement, the applicants can choose between two different management models: manager-management or member-management.[14] When an LLC is member-managed, its management is comparable to a general partnership.[15] However, an LLC that is manager-managed looks more like a corporation.[16] The applicants have the power and flexibility to choose what management structure best suits their company.[17]

LLCs are becoming increasingly popular in Texas for many different reasons.[18] To be specific, LLCs combine two very desirable attributes: limited liability for all owners and a choice in tax treatment for federal income tax purposes.[19] Though there are a lot of benefits associated with this type of entity, this area of the law is still evolving.[20] The next few Sections will dive into this ever-changing area of the law.[21]

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9. L&S Pro-Line, LLC v. Gagliano, No. 09-21-00178-CV, 2024 Tex. App. LEXIS 4590, at *87 (Tex. App.—Beaumont June 28, 2024, pet. filed) (stating that fiduciary duties in the LLC context are an "unsettled area of Texas law").

10. *See infra* Section II.A (providing background information on Texas LLCs).

11. Elizabeth S. Miller & Robert A. Ragazzo, *Basic Differences Between Limited Liability Companies and Other Business Entities*, *in* 19 TEX. PRAC. SERIES § 1:9 (3d ed. Dec. 2023).

12. *Id.*

13. *Id.*

14. Elizabeth S. Miller & Robert A. Ragazzo, *Flexibility in the Management of Limited Liability Companies (Manager-Management or Member-Management)*, 19 TEX. PRAC. SERIES § 18.6 (Dec. 2023).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Fiduciary Duties: LLCs (TX)*, *supra* note 1.

19. Miller & Ragazzo, *supra* note 11 at §3:7.

20. *Fiduciary Duties: LLCs (TX)*, *supra* note 1.

21. *See infra* Sections II.B–C (discussing Texas LLC law).

B. *Opening Pandora's Box: The Texas Business Organizations Code*[22]

To fully understand the scope of these fiduciary duties, it is important to start with the definition of a "governing person" for a Texas LLC.[23] The Texas Business Organizations Code defines a "governing person" as any "person serving as part of the governing authority of an entity."[24] Digging deeper into this definition, a governing person for a manager-managed LLC is obviously the manager.[25] Moreover, the governing person for a member-managed LLC is a member who is entitled to manage the company.[26]

The Code implies that these governing persons could potentially owe the duty of care.[27] Specifically, section 3.102 states that "[i]n discharging a duty or exercising a power, a governing person, including a governing person who is a member of a committee, may, in good faith and with ordinary care, rely on . . ." certain third-party information *unless* that person has knowledge making "the reliance unwarranted."[28] Overall, these Code provisions essentially impose a duty of care on these governing persons because it requires them to be fully and adequately informed—and act with care—when making decisions or acting for the LLC.[29]

The Code further suggests that the governing person could also owe a duty of loyalty.[30] Section 101.255 is entitled "Contracts or Transactions Involving Interested Governing Persons or Officers," and provides the circumstances in which an LLC's contract is valid and enforceable.[31] Particularly important to this Paper, section 101.255(e) states:

If at least one of the conditions of Subsection (b) is satisfied, neither the company nor any of the company's members will have a cause of action against any of the persons described by Subsection (a) for breach of duty with respect to the making, authorization, or performance of the

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22. It is important to note that the Texas Business Organizations Code has been amended during every legislative session in response to new cases and other statutory changes. *Critical Distinctions Between Texas and Delaware LLC Law*, JACKSON WALKER (July 12, 2022), https://www.jw.com/wp-content/uploads/2022/07/32729774_2_CSC_Egan_Critical_Distinctions_Between_Texas_and_Delaware_LLC_Law_July12_2022.pdf.

23. *See generally* TEX. BUS. ORGS. CODE ANN. § 1.002(37) (defining "governing person").

24. *Id.*

25. TEX. BUS. ORGS. CODE ANN § 1.002(35)(A)(iii).

26. TEX. BUS. ORGS. CODE ANN § 1.002(35)(A)(iv).

27. *See* TEX. BUS. ORGS. CODE ANN. § 3.102.

28. *Id.*

29. *See id.*; Elloway v. Pate, 238 S.W.3d 882, 890 (Tex. App.—Houston [14th Dist.] 2007, no pet.) ("[T]he director's duty of care requires the director, before voting . . . to inform himself and his fellow directors of all material information that is reasonably available to them.").

30. *See* TEX. BUS. ORGS. CODE ANN. § 101.255.

31. *Id.*

contract or transaction because the person had the relationship or interest described by Subsection (a) or took any of the actions authorized by Subsection (d).[32]

This provision—in conjunction with the rest of the Code section—basically states that the governing person must act in good faith and in the best interests of the corporation, rather than their own self-interest.[33] Therefore, this section infers that an LLC's governing person may owe a duty of loyalty.[34]

Finally, there is another Code provision that affects the fiduciary duties within Texas LLCs.[35] Section 101.401 is titled "Expansion or Restriction of Duties and Liabilities," and states: "The company agreement of a limited liability company may expand or restrict any duties, including fiduciary duties, and related liabilities that a member, manager, officer, or other person has to the company or to a member or manager of the company."[36] The following Section will elaborate on these fiduciary duties by summarizing important caselaw.[37]

C. Texas Courts Tackle LLC Fiduciary Duties

Texas courts recognize two different types of fiduciary relationships: formal and informal.[38] In formal fiduciary relationships, fiduciary duties arise as a matter of law.[39] In contrast, informal fiduciary relationships—especially in the LLC context—are much more unpredictable.[40] Here, when a person claims a breach of fiduciary duty, the court must take a very fact-dependent approach, analyzing whether a relationship giving rise to a fiduciary relationship exists.[41] Subsection II.C.1 will provide two examples of formal fiduciary relationships, and Subsection II.C.2 will analyze key cases discussing informal fiduciary relationships.[42] However, Subsection II.C.3 will summarize a case offering a new perspective on the issue.[43]

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32. TEX. BUS. ORGS. CODE ANN. § 101.255(e).

33. *See id.*; Red Sea Gaming, Inc. v. Block Invs. (Nev.) Co., 338 S.W.3d 562, 567 (Tex. App.—El Paso 2010, pet. denied) ("A partner's duty of loyalty includes . . . refraining from competing with the partnership or dealing with the partnership in a manner adverse to the partnership.").

34. *See* TEX. BUS. ORGS. CODE ANN. § 101.255; *Red Sea Gaming, Inc.*, 338 S.W.3d at 567.

35. *See* TEX. BUS. ORGS. CODE ANN. § 101.401.

36. *Id.*

37. *See infra* Section II.C (explaining fiduciary relationships).

38. *Fiduciary Duties: LLCs (TX)* (2024*)*, *supra* note 1; *see also* Robert Wood, *Texas LLC Law—Breach of Fiduciary Duty*, WOOD EDWARDS LLP (last updated Aug. 3, 2015), https://www.texasnoncompetelaw.com/articles/texas-llc-law-breach-of-fiduciary-duty/.

39. Bazan v. Munoz, 444 S.W.3d 110, 118 (Tex. App.—San Antonio 2014, no pet.).

40. *Fiduciary Duties: LLCs (TX)*, *supra* note 1.

41. *Id.*

42. *See infra* Subsection II.C.1 (explaining formal fiduciary relationships); *infra* Subsection II.C.2 (discussing informal fiduciary relationships).

43. *See infra* Subsection II.C.3 (summarizing *Straehla*).

1. Formal Fiduciary Relationships: Allen and Cardwell

In *Allen v. Devon Energy Holdings, L.L.C.*, the court recognized a "formal fiduciary duty owed by a majority owner and sole manager of an LLC. . . ."[44] In this case, Robert Allen and Trevor Rees-Jones were involved with a company called Chief Holdings, L.L.C. (Chief).[45] Rees-Jones was Chief's manager and majority owner, while Allen had a minority interest in the company.[46] Eventually, Allen redeemed his minority interest in Chief.[47] Two years later, the company sold for approximately twenty times the value utilized in the redemption price.[48] Because Allen believed that Rees-Jones fraudulently convinced him to redeem his shares, Allen sued for breach of fiduciary duty.[49]

The court determined that Rees-Jones owed Allen a formal fiduciary duty in the context of redemption.[50] However, it is important to note that the court declined to recognize a *broad* formal fiduciary duty between majority and minority shareholders.[51] Here, the court recognized this formal relationship in the context of redemption because Rees-Jones had special insider information.[52] In fact, Rees-Jones was the only person with intimate knowledge of the company's daily affairs and plans.[53] In contrast, Allen "rarely if ever received any kind of 'status update' or financial information."[54] Therefore, the court compared this relationship to a general partner and a limited partner in a limited partnership to hold that the nature of the relationship created a formal fiduciary duty.[55]

Additionally, in *Cardwell v. Gurley*, the court recognized a formal fiduciary relationship between a managing member and a member of an LLC because the LLC only had two members.[56] In this case, Donald Cardwell and Bill Gurley formed 121 Investments, LLC.[57] After Cardwell

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44. Allen v. Devon Energy Holdings, L.L.C., 367 S.W.3d 355, 391 (Tex. App.—Houston [1st Dist.] 2012, pet. granted, judgm't vacated w.r.m.).

45. *Id.* at 366.

46. *Id.*

47. *Id.*

48. *Id.* at 367.

49. *Id.*

50. *Id.* at 391.

51. *Id.*

52. *Id.* at 392–93.

53. *Id.* at 393.

54. *Id.*

55. *Id.*

56. Cardwell v. Gurley, No. 05-09-01068-CV, 2018 WL 3454800, at *5–6 (Tex. App.—Dallas July 18, 2018, pet. denied); *see also* Wade L. McClure & Courtney M. Kenisky, *Full Disclosure: Best Policy for Transactions Between Members of a Texas Limited Liability Company*, MAYER LLP (July 2021), https://www.mayerllp.com/blog/full-disclosure-best-policy-for-transactions-between-members-of-a-texas-limited-liability-company.

57. *Cardwell*, 2018 WL 3454800, at *1.

made some misrepresentations regarding the LLC's property, Gurley sued Cardwell for breach of fiduciary duty.[58] On appeal, Cardwell asserted that the trial court erred by determining that he owed Gurley any fiduciary duty.[59] Though the court did not specifically address the reasoning behind the finding of a formal fiduciary relationship, it ultimately upheld the trial court's decision that Gurley and Cardwell owed each other certain fiduciary duties as a matter of law.[60]

It is also important to note that Texas courts—with the exception of the unique circumstances in *Cardwell*—have declined to hold that a formal fiduciary relationship exists between LLC members.[61]

In sum, both *Allen* and *Cardwell* present two instances in which the court has recognized a formal fiduciary relationship in the context of LLCs.[62] However, this is a fairly unique outcome for these types of cases.[63] The next Subsection will address a much more common approach to fiduciary duty issues for LLCs.[64]

2. Informal Fiduciary Relationships: Bazan

In *Bazan v. Munoz*, the court found that an informal fiduciary relationship existed between managing members of an LLC and a member.[65] There, a married couple—Carlo and Denise Bazan—formed an LLC with Luis Muñoz.[66] A few years later, Muñoz sued the Bazans for breach of fiduciary duty, alleging they stole money from the business.[67] In its analysis, the court stated that "[s]uch informal fiduciary relationships may arise when one person trusts and relies upon another, whether the relationship is moral, social, domestic or merely personal."[68] Because this is a question of fact, the court looked to whether there was more than a scintilla of evidence to support the jury's finding.[69] Ultimately, based on the evidence of the parties' close relationship, the court upheld the jury's finding.[70]

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58. *Id.* at *1–4.

59. *Id.* at *4.

60. *Id.* at *5–6.

61. *See* Higher Perpetual Energy, LLC v. Higher Power Energy, LLC, No. 4:17-CV-00414, 2018 WL 3020328, at *3 (E.D. Tex. June 18, 2018, no pet.); *Chase v. Hodge*, No. 1:20-cv-0175-RP, 2021 WL 1948470, at *8 (W.D. Tex. May 14, 2021, no pet.); *Cardwell*, 2018 WL 3454800, at *6.

62. *See* Allen v. Devon Energy Holdings, L.L.C., 367 S.W.3d 355, 391 (Tex. App.—Houston [1st Dist.] 2012, pet. granted, judgm't vacated w.r.m.); *Cardwell*, 2018 WL 3454800, at *6.

63. *Fiduciary Duties: LLCs (TX)* , *supra* note 1.

64. *See infra* Subsection II.C.2 (explaining informal fiduciary relationships).

65. Bazan v. Munoz, 444 S.W.3d 110, 119 (Tex. App.—San Antonio 2014, no pet.).

66. *Id.* at 113.

67. *Id.*

68. *Id.* at 118 (citing *Crim Truck & Tractor Co. v. Navistar Int'l Transp. Corp.*, 823 S.W.2d 591, 594 (Tex. 1992)).

69. *Id.* at 119.

70. *Id.* at 118–19.

3. A New Perspective: Straehla

In 2020, the San Antonio Court of Appeals took a different approach to the fiduciary duty issue for LLCs.[71] In *Straehla v. AL Global Services, LLC*, the Puerto Rico Electrical Power Authority hired Cobra Acquisitions LLC to rebuild the electrical utility system.[72] Subsequently, Cobra hired AL Global Services, LLC for security support and they further subcontracted with Espada Caribbean, LLC.[73] Eventually, Cobra terminated its contract with AL Global Services and contracted with Espada.[74] Because of the termination and subsequent contract, AL Global Services sued one of its LLC members, Jorrie—who also owned Espada—for breach of fiduciary duty, alleging that he took the company's business opportunity.[75]

To analyze whether Jorrie owed a fiduciary duty to AL Global Services, the court looked to the Texas Business Organizations Code.[76] The court stated: "Although we do not have the . . . LLC agreement in the record, we presume, based on the assumption inherent in section 101.401 of the Business Organizations Code that, [the LLC member] owed the same fiduciary duties that a corporate executive or partner would owe a corporation or partnership, unless the LLC agreement shows otherwise."[77] In other words, this court created the presumption that members and managers of LLCs owe fiduciary duties of care, loyalty, and good faith unless the company agreement states otherwise.[78] Therefore, the court held that Jorrie did owe fiduciary duties to AL Global Services.[79]

Given this background information on the Texas Business Organizations Code and relevant caselaw, Part III will urge the Texas Supreme Court to adopt the *Straehla* rule.[80]

III. ADOPTING THE STRAEHLA RULE

The Texas Supreme Court should adopt the *Straehla* rule for three reasons: (1) it aligns Texas with Delaware Corporate law; (2) it promotes predictability within this area of the law; and (3) it still allows for

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71. *See generally* Straehla v. AL Global Servs., LLC, 619 S.W.3d 795 (Tex. App.—San Antonio 2020, pet. withdrawn).

72. *Id.* at 800.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 804–05.

77. *Id.* at 805 (citing Cardwell, 2018 WL 3454800, at *5).

78. *See id.*; Ryan Philip Pitts, Straehla's *Presumed Duties*, 58 HOUS. L. 45 (2021).

79. *See Straehla*, 619 S.W.3d at 805.

80. *See infra* Part III (explaining why the Texas Supreme Court should adopt the *Straehla* rule).

the flexibility to describe the relationship of the parties by contract. Section III.A will explain how the *Straehla* rule mirrors the Delaware rule.[81] Next, Section III.B will discuss how this rule promotes predictability for LLCs involved in litigation.[82] Finally, Section III.C will discuss how the *Straehla* rule allows LLCs to maintain one of their key advantages: management flexibility.[83]

A. Texas Meets Delaware

If the Texas Supreme Court adopts the *Straehla* rule, it will align Texas with Delaware law.[84] Furthermore, Texas needs to align itself with Delaware corporate law to ensure the courts have proper guidance on this issue in the future.[85] Few Texas courts have analyzed this issue, but Delaware has a slew of caselaw dissecting fiduciary duties amongst LLC members.[86]

Before proceeding to the comparison between *Straehla* and Delaware law, it is important to note the sound reasoning behind the *Straehla* decision.[87] Rather than conducting the court's own analysis of whether a fiduciary relationship existed, the court looked to the Texas Business Organizations Code to interpret what the Texas Legislature intended to do.[88] This aligns with the well-established principle that "[i]n construing [a] statute, [the court's] objective is to determine and give effect to the legislature's intent."[89] The court recognized that the legislature certainly intended to impose some fiduciary duties on members and managers of LLCs and gave effect to this intent.[90] The court gave effect to this intent by creating a presumption of fiduciary duties, while still allowing for the statute's company agreement exception.[91]

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81. *See infra* Section III.A (discussing how the rule aligns with Delaware law).

82. *See infra* Section III.B (providing insight into how this rule promotes predictability).

83. *See infra* Section III.C (explaining how this rule maintains LLC flexibility).

84. *See* Straehla v. AL Global Servs., 619 S.W.3d 795 (Tex. App.—San Antonio 2020, pet. withdrawn); *see also* Ryan Pitts, *Ryan Pitts Authors Houston Lawyer Article About Fiduciary Duties of LLCs*, HAYNES BOONE (Aug. 25, 2021), https://www.haynesboone.com/news/publications/ryan-pitts-houston-lawyer-article.

85. Hanmi Fin. Corp. v. SWNB Bancorp, Inc., No. 18-CV-3546, 2019 WL 937195, at *7 (S.D. Tex. Feb. 26, 2019, no pet.) ("Texas courts consider Delaware decisional law persuasive in resolving unsettled issues of Texas corporate law."); *See* In re Aguilar, 344 S.W.3d 41, 47 (Tex. App.—El Paso 2011, no pet.) ("Courts throughout the country look to Delaware for guidance on matters of corporate law.").

86. *See, e.g.*, Auriga Capital Corp. v. Gatz Props., 40 A.3d 839, 850–51 (Del. Ch. 2012); *Feeley v. NHAOCG, LLC*, 62 A.3d 649, 663–64 (Del. Ch. 2012).

87. *See generally Straehla*, 619 S.W.3d. 805

88. *See id.* at 805.

89. Tex. Dep't of Pub. Safety v. Jackson, 76 S.W.3d 103, 106 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (citing Nat'l Liab. & Fire Ins. Co. v. Allen, 15 S.W.3d 525, 527 (Tex. 2000)).

90. *See id.*

91. *See Straehla*, 619 S.W.3d. at 805.

This court's decision also aligns with basic agency principles.[92] In essence, because the Code characterizes LLC members or managers as agents of the company "when acting as an agent of the LLC, a manager or managing member owes a duty of care pursuant to basic agency principles."[93] Overall, the *Straehla* decision reconciles the Code and agency law to create a new, clear rule.[94]

Further, the *Straehla* rule would align Texas with Delaware law and why this is desirable. In Delaware, both managers and members of LLCs owe certain fiduciary duties to the company by default.[95] However, these duties may be modified by the language in the company agreement.[96] This rule essentially comes from the Delaware LLC Act.[97] Similarly, the *Straehla* rule makes the same assumption based off of Texas's LLC rules coming from the Texas Business Organizations Code.[98] Accordingly, the *Straehla* court's ruling aligns with Delaware law, which will give Texas more guidance for future cases.[99] After all, Texas has referred to Delaware as "the Mother Court of corporate law."[100] This is one way—amongst others—that Texas could promote predictability within this area of the law.[101]

B. Promoting Predictability

One of the biggest complaints that attorneys have right now regarding this legal issue is that the law is still unsettled.[102] The Texas Business Organizations Code provides some guidance but has been amended during every legislative session in response to other changes in the law.[103] Therefore, if the Texas Legislature cannot properly modify the Texas Business Organizations Code, the Texas Supreme Court

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92. *Id.*; Elizabeth S. Miller, *Fiduciary Duties, Exculpation, and Indemnification in Texas Business Organizations*, STATE BAR OF TEX. (Nov. 5–6, 2020), https://freemanlaw.com/wp-content/uploads/2023/01/Fiduciary-Duties-Exculpation-and-Indemnification-in-Texas-Business-Organizations-State-Bar-of-Texas-Annual-Advanced-Business-Law-Chapter-7-Baylor-Law-School.pdf. (citing RESTATEMENT (THIRD) OF AGENCY § 8.08).

93. *See* TEX. BUS. ORGS. CODE ANN. § 101.254; Miller, *supra* note 92.

94. *Id.*

95. *See* Auriga Cap. Corp. v. Gatz Props., 40 A.3d 839, 850–51 (Del. Ch. 2012).

96. *Id.*

97. *Id.*

98. *See* Straehla v. AL Glob. Servs., LLC, 619 S.W.3d 795, 804-805 (Tex. App. 2020).

99. *Id.*

100. In re Life Ptnrs. Holdings, Inc., No. DR-11-CV-43-AM, WL 8523103, at *11 (W.D. Tex. Nov. 9, 2015) (citing Kamen v. Kemper Fin. Serv., Inc., 908 F.2d 1338, 1343 (7th Cir. 1990)).

101. *See infra* Section III.B (discussing increased predictability).

102. L&S Pro-Line, LLC v. Gagliano, No. 09-21-00178-CV, 2024 Tex. App. LEXIS 4590, at *87 (Tex. App.—Beaumont June 28, 2024, pet. filed) (stating that fiduciary duties in the LLC context are an "unsettled area of Texas law.").

103. *Critical Distinctions Between Texas and Delaware LLC Law*, *supra* note 22.

should adopt the *Straehla* rule because it gives Texas attorneys a clear rule to follow.[104]

Currently, the formal and informal fiduciary relationships analyses do not give attorneys enough guidance within this area of the law.[105] Though formal fiduciary relationships are recognized as a matter of law, several different manager-member arrangements can arise within the context of LLCs.[106] Furthermore, informal fiduciary relationships are extremely fact intensive.[107] Looking to the *Bazan* case, the jury had to consider several different details regarding the relationship between the LLC members.[108] The jury even had to look at evidence of their old friendship.[109] Texas simply does not have enough caselaw in this area to justify maintaining these types of analyses.[110]

In contrast, the *Straehla* court announced a bright-line rule for LLCs.[111] Under this rule, both managers and members are presumed to owe a duty of care and loyalty to the company.[112] However, the company agreement may modify these duties.[113] Because all managers and members owe these duties, attorneys will have a better understanding of the law and will be more prepared for litigation.[114]

Another important policy point to note is that increased predictability can lead to less congestion in the courts.[115] It is reasonable to assume that more parties will be willing to settle these types of cases if they better understand the weaknesses of their case.[116] If defendants understand that there is a presumption of fiduciary duties, they will be motivated to settle the case quickly because they know they more than likely will not win.[117] In other words, LLC members who may have breached a duty would be more likely to settle to avoid a harsh judgment later on in the legal process.

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104. *See Straehla*, 619 S.W.3d at 805.

105. *Fiduciary Duties: LLCs (TX)* , *supra* note 1.

106. *See id.*; Allen v. Devon Energy Holdings, L.L.C., 367 S.W.3d 355, 391 (Tex. App.—Houston [1st Dist.] 2012, pet. granted, judgm't vacated w.r.m.); *Cardwell v. Gurley*, No. 05-09-01068-CV, 2018 WL 3454800, at *5 (Tex. App.—Dallas July 18, 2018, pet. denied).

107. *See generally* Bazan v. Munoz, 444 S.W.3d 110 (Tex. App.—San Antonio 2014, no pet.).

108. *Id.* at 118–19.

109. *Id.*

110. *Fiduciary Duties: LLCs (TX)*, *supra* note 1.

111. *See Straehla*, 619 S.W.3d at 805.

112. *Id.*

113. *Id.*

114. *See id.*

115. *See* Stefanie A. Lindquist & Frank C. Cross, *Stability, Predictability, and the Rule of Law: Stare Decisis as Reciprocity Norm*, UNIV. TEX. SCH. L., 1, 4 https://law.utexas.edu/conferences/measuring/The%20Papers/Rule%20of%20Law%20Conference.crosslindquist.pdf (last visited Apr. 7, 2024).

116. *See id.* at 1.

117. *See id.*

Lastly, increased predictability within this area of the law may have other positive outcomes.[118] As shown by the *Bazan* case, many times, friends or family members will create an LLC together.[119] This has the potential to put the underlying relationship at risk.[120] However, if the parties are forced to discuss the issue of fiduciary duties when creating the company agreement, they may be able to avoid putting the relationship at risk.[121] They may realize that forming an entity together is unwise, or they may reach an agreement as to each other's expectations.[122] Furthermore, a clear company agreement would significantly shorten the litigation process.[123]

Though this bright-line rule promotes predictability for attorneys practicing corporate law, the rule does not sacrifice the key advantage of forming an LLC: management flexibility.[124] The following Section will explain how.[125]

C. Maintaining Flexibility

The *Straehla* rule still allows for management flexibility within LLCs.[126] LLCs are more flexible than other entities, such as corporations, because of the power that the operating agreement has over the LLC.[127] Though there are certain laws that an LLC must comply with, many aspects of LLCs can be changed through the company agreement.[128]

This flexibility is not inhibited by the *Straehla* rule because it still gives power to the company agreement.[129] Although this rule presumes that members and managers owe fiduciary duties to the company, it also allows the company agreement to alter these duties.[130] This is reinforced by the Texas Business Organizations Code, which states: "The company agreement of a limited liability company may expand or restrict any duties, including fiduciary duties, and related liabilities that a

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118. *See When a Texas Fiduciary Goes Into Business Owing a Duty*, FREEMAN LAW, https://freemanlaw.com/texas-fiduciary-goes-into-business/ (last visited Apr. 8, 2024).

119. *See Bazan v. Munoz*, 444 S.W.3d 110 (Tex. App.—San Antonio 2014, no pet.).

120. *See id.*

121. *See id.*

122. *See id.*

123. Andrew C. Vredenburg, *Get it in Writing: The Importance of Written Agreements in Business*, FOSTER SWIFT (Oct. 13, 2015), https://www.fosterswift.com/communications-Written-Business-Agreements.html.

124. *See Fiduciary Duties: LLCs (TX)*, *supra* note 1.

125. *See infra* Section III.C (discussing LLC flexibility).

126. *See Straehla*, 619 S.W.3d at 804.

127. *Why is an LLC the "Most Flexible" Entity Type?*, THE STOWE LAW FIRM, https://stowelegal.com/news/2015/8/18/why-is-a-llc-the-most-flexible-entity-type (last visited Apr. 7, 2024).

128. *Id.*

129. *See Straehla*, 619 S.W.3d at 805.

130. *See id.*

member, manager, officer, or other person has to the company or to a member or manager of the company."[131]

It is understood there are potential issues that could arise from the particular "*may* expand or restrict *any* duties" language in the Code.[132] Though some state statutes impose limits on how much a company may expand or limit fiduciary duties, the Code here does not.[133] This may lead someone to assume that there is possibility of future misuse of this provision.[134] However, given that Texas has still not settled this issue, this may be a problem that never arises.

Even if someone were to argue though that the *Straehla* rule leads to misuse of the company agreement, there is a practical aspect of LLCs that resolves this potential issue.[135] This resolution arises because of the contractual nature of the company agreement.[136] When creating an LLC, members will file an operating agreement.[137] It is reasonable to assume that members would agree on a company agreement before filing. Furthermore, it is also reasonable to assume that if someone is joining an LLC, they would read the operating agreement before joining. Therefore, members should act as a check on one another during this process, given there is no information asymmetry or fraudulent inducement.[138] Overall, in the Author's opinion, it is unlikely that someone would abuse the company agreement in such a way.[139]

Overall, the *Straehla* decision provides a bright-line rule while preserving the key advantages of forming an LLC.[140]

IV. ALTERNATIVE SOLUTIONS

Though this Paper argues that the Texas Supreme Court should adopt the *Straehla* rule, there are other possible solutions to the uncertainties surrounding LLC fiduciary duties.[141] First, the Court could reject the *Straehla* rule and continue to apply the formal and informal fiduciary

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131. TEX. BUS. ORGS. CODE ANN. § 101.401 (West 2006).

132. *See id.* (emphasis added).

133. *See generally* MODEL BUS. CORP. ACT.

134. *See* TEX. BUS. ORGS. CODE ANN. § 101.401 (West 2006).

135. *See generally Straehla*, 619 S.W.3d at 805.

136. *See Fiduciary Duties: LLCs (TX)*, *supra* note 1.

137. Alison Kilian, *How to Start an LLC in Texas*, U.S. NEWS (Apr. 16, 2024), https://www.usnews.com/360-reviews/business/llc-services/how-to-start-llc-texas.

138. *See id.*

139. She may be a little too optimistic.

140. *See Straehla*, 619 S.W.3d at 805; *see also* Jorge Mares, *Do Members of a Limited Liability Company (LLC) Owe Other Members a Fiduciary Duty?*, GUERRA LLP TRIAL ATTORNEYS, https://guerrallp.com/commercial-litigation/do-members-of-a-limited-liability-company-llc-owe-other-members-a-fiduciary-duty (last visited Apr. 7, 2024) ("Members of an LLC may always contractually expand and/or restrict fiduciary duties.").

141. *See supra* Part III (urging the Texas Supreme Court to adopt the *Straehla* rule).

analyses.[142] Though this does not necessarily cure the predictability issue, it does provide *some* guidance to practicing attorneys.[143] Texas could continue to build its caselaw on the subject matter, and attorneys could look to on-point cases in other jurisdictions to bolster their cases.

Second—completely disregarding the courts—the Texas Legislature could amend the Texas Business Organizations Code to clarify which fiduciary duties are owed to whom.[144] Initially, this seems like the logical solution. The Texas Legislature should clarify their own ambiguities. However, over the past several years, the Texas Business Organizations Code has been amended during every legislative session in response to new cases and other statutory changes.[145] Though this tends to suggest that the legislature has been unsuccessful at clarifying these ambiguities, there are still alternative routes available.

The Texas Legislature could adopt model legislation to clarify who owes which fiduciary duties to whom. Specifically, the legislature could adopt provisions comparable to Illinois' Limited Liability Company Act, which states:

> (a) Without limiting any fiduciary duties owed at common law, the fiduciary duties a member owes to a member-managed company and its other members include the duty of loyalty and the duty of care referred to in subsections (b) and (c) of this Section.[146]
>
> Subsection (b) of the Act goes on to outline exactly what a member's duty of loyalty to the company includes:
>
> (1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;
>
> (2) to act fairly when a member deals with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

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142. *See, e.g.*, Allen v. Devon Energy Holdings, L.L.C., 367 S.W.3d 355, 391 (Tex. App.—Houston [1st Dist.] 2012, pet. granted, judgm't vacated w.r.m.) (explaining a particular formal fiduciary relationship); *Cardwell v. Gurley*, No. 05-09-01068-CV, 2018 WL 3454800, at *5 (Tex. App.—Dallas July 18, 2018, no pet.) (discussing a formal fiduciary relationship); *Bazan v. Munoz*, 444 S.W.3d 110, 119 (Tex. App.—San Antonio 2014, no pet.) (providing an example of an informal fiduciary relationship.).

143. *See supra* Section III.B (discussing how the *Straehla* rule promotes predictability).

144. *See generally* TEX. BUS. ORGS. CODE ANN. (suggesting that the duties of care and loyalty exist in the context of LLCs).

145. Byron F. Egan & Daniel W. Lewis, *Critical Distinctions Between Texas and Delaware LLC Law*, JACKSON WALKER (July 12 ,2022), https://www.jw.com/wpcontent/uploads/2022/07/32729774_2_CSC_Egan_Critical_Distinctions_Between_Texas_and_Delaware_LLC_Law_July12_2022.pdf.

146. 805 ILL. COMP. STAT. 180/15-3(a) (2024)

> (3) to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.[147]
>
> Subsections (c) of the Act also outlines the specificities regarding the duty to care that members owe to the company:
>
> (c) A member's duty of care to a member-managed company and its other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.[148]

The Texas Legislature could adopt all of these provisions—in addition to retaining its provision regarding the company agreement—to create a clear rule for LLCs and the duties of care and loyalty.[149] This also still gives the companies freedom to alter their duties in the company agreement.[150] Though this would be the ideal solution, the reality is that this solution is too difficult to implement given the nature of the Texas Legislature.[151]

V. CONCLUSION

Over the past several years, as LLCs become more popular, more uncertainty has arisen as to whether and to what extent members of LLCs owe fiduciary duties to each other.[152] This uncertainty is caused in part by the Texas Business Organizations Code as well as recent caselaw.[153] However, the *Straehla* decision provides a bright-line rule for LLCs: both members and managers are presumed to owe fiduciary duties to the company unless the company agreement states otherwise.[154] Whenever this issue makes its way to the Supreme Court of Texas, the court should adopt the *Straehla* rule for three reasons.[155] First, this decision aligns Texas with Delaware law.[156] Second, it

147. *Id.* at 180/15-3(b).

148. *Id.* at 180/15-3(c).

149. *See id.* at 180/15-3(a)–(c); TEX. BUS. ORGS. CODE ANN. § 101.401 (West 2006).

150. *See* TEX. BUS. ORGS. CODE ANN. § 101.401 (West 2006).

151. *See* Byron F. Egan & Daniel W. Lewis, *supra* note 145 (explaining how often the Texas Legislature has amended the Texas Business Organizations Code).

152. *See supra* Part I (explaining the uncertainty in this area of the law).

153. *See supra* Part II (summarizing the relevant Code provisions and recent caselaw).

154. *See supra* Subsection II.C.3 (providing the *Straehla* holding).

155. *See supra* Part III (proposing that the Texas Supreme Court should adopt the *Straehla* rule).

156. *See supra* Section III.A (comparing *Straehla* with Delaware law).

promotes predictability.[157] Finally, this decision still allows LLCs to maintain their formation flexibility.[158]

However, though not the best solutions to this issue, there are other potential alternatives.[159] First, the Texas Supreme Court could reject the *Straehla* rule and continue to apply the formal and informal fiduciary analyses.[160] Second, the Texas Legislature could amend the Texas Business Organizations Code to clarify fiduciary duties amongst LLCs.[161] Although, neither of these solutions would be as effective as the Texas Supreme Court's adoption of the *Straehla* rule.[162] Hopefully, attorneys practicing corporate law in Texas will have answers soon.[163]

157. *See supra* Section III.B (discussing increased predictability).

158. *See supra* Section III.C (highlighting that the rule allows LLCs to maintain their flexibility).

159. *See supra* Section IV (providing alternative solutions).

160. *See supra* Section IV (discussing an alternative solution within the courts).

161. *See supra* Section IV (discussing an alternative solution within the legislature).

162. *See supra* Section IV (explaining the inadequacies associated with the alternative solutions).

163. *See generally* George G. Bailey, *Predictability of the Law: Its Relation to Respect for Law*, 66 W. VA. STATE BAR 1, 2 (Dec. 1963) ("The difficulty is that today's practicing lawyer, while familiar with the necessity of predicting the law, feels that he is fast becoming a legal crystal-gazer or legal soothsayer.").