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Good Faith Revisited Extra-contractual Duties in Texas

The imposition of a duty of good faith and fair dealing into a relationship otherwise defined by a contract is generally perceived as a development favorable to the potential plaintiff. First and perhaps most obvious, it may give the plaintiff an additional common law cause of action, in tort, separate and apart from contract or statutory claims. Second, the duty owed by the defendant may sound amorphous and plaintiff-friendly in a jury instruction as compared to the specific obligations owed under the applicable contract. Third, the tort remedy won't be subject to contractual restrictions that limit the contract claims. Fourth, with the addition of a common law cause of action the measures of recoverable damages expand beyond those that would be available for breach of contract, and—again—won't be subject to contractual limitations such as preclusion of consequential damages. Fifth, the tort remedy opens up the potential for punitive damages.

Years ago, in *Federal Deposit Ins. Corp. v. Coleman*, the Texas Supreme Court held that the FDIC, as successor to a failed bank, did not owe a duty of good faith to guarantors of a secured loan and therefore was not liable for allegedly unreasonably delaying foreclosing on the collateral in a declining market—and accordingly affirmed summary judgment for the FDIC. Has anything changed in the almost three decades since the *Coleman* decision?

View the PDF version of [Good Faith Revisited Extra-contractual Duties in Texas](#), which was originally published in the [Texas Bar Journal](#).

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