

## **FIDUCIARY STANDARDS IN CORPORATE GOVERNANCE AND ERISA CASES**

(T)he duties of loyalty and care/prudence are consistently present in fiduciary obligation analyses despite their varying formulations and effects on burdens of proof, presumptions, and other protections. Notwithstanding the variations in legal standards set out by judges, fiduciary cases under state trust law, ERISA, and corporate law make very similar factual examinations. They scrutinize the fiduciary's information gathering and evaluation process to determine whether alternative courses of action were weighed and the effects of all possibilities projected; whether the fiduciaries sought a range of expert opinions, inquired into the grounds for those opinions, and made their own personal evaluation as well; whether the fiduciaries permitted themselves to be rushed into a decision or demanded the time to make a reasonable inquiry; whether the fiduciaries imposed conditions on the transaction to protect the beneficiaries or shareholders; and whether the fiduciaries monitored the implementation of their decisions.

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Courts in both areas probe the fiduciaries' motives to determine whether they have conflicting interests and then examine how they handle the conflicts. Courts investigate the conflicted fiduciary's actions in great detail for evidence of whether the fiduciary has acted solely in the interest of the beneficiary. None of the cases examined held an incidental benefit to the fiduciary or a third party sufficient to find a breach. In corporate cases, a director's obligations under the loyalty standard do not generally encompass his dealings with his own stock in the company. Analogous forms of self-dealing are uniformly prohibited under the common law of trusts and ERISA, unless a prohibited transaction exemption is available under the statute or obtained from the DOL.

Trustees and other pension fiduciaries lack the protection accorded corporate officers and directors by the business judgment rule and state statutes that limit directors' liability. If the prerequisites to application of the rule are satisfied, then courts will not inquire closely into the merits of a business decision. The trustee or ERISA fiduciary can expect to have her decision examined on its merits, notwithstanding her good faith and devotion to her beneficiary's interest. The business judgment rule is designed in part to protect "venturesome business activity." Trusts and pension funds are established to provide security for their beneficiaries— not to engage in venturesome business. Thus pension and trust fiduciaries need not be given this dispensation from the strict standard of fiduciary law.

Although the dynamics of the fiduciary relationship in the corporate sphere differ fundamentally from those of the fiduciary relationship in the pension and trust area, court analysis of fiduciary conduct in the corporate cases in regard to corporate governance issues and control contests does not differ significantly from the analysis in the pension fund cases on investment of plan assets. Courts look at the same types of factors to determine whether fiduciaries have conflicting interests and handle them properly. They look at the same aspects of conduct to determine whether the fiduciaries acted prudently.

Excerpt from *Fiduciary Standards in Pension and Trust Fund Management*  
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