



WINSTEAD

“FIDUCIARYIZE” YOUR CASE

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Introduction

- Fiduciary litigation is an important part civil dispute resolution.
- A plaintiff and his or her attorney should understand his or her rights regarding the potential defendant's fiduciary obligations.
- Fiduciary claims can greatly impact a case: there are procedural advantages, additional remedies, and potentially cap-busting punitive damages.

Introduction

- Plaintiffs should fully evaluate whether there can be any possible fiduciary claims in a case due to these advantages.
- This presentation will attempt to address how and why a party should “fiduciaryize” his or her case.

Areas of Discussion

- What is a fiduciary?
- General fiduciary duties
- Types of fiduciaries
- Capacity issues
- Net Widening Theories
- Procedural benefits for bringing fiduciary claims
- Pre-trial remedies
- Post-trial remedies

What is a Fiduciary?

- A “fiduciary” is a “person who occupies a position of peculiar confidence towards another.”
- A fiduciary owes its principal one of the highest duties known to law—this is a very special relationship.
- The expression of “fiduciary relation” is one of broad meaning, including both technical fiduciary relations and those informal relations that exist whenever one person trusts and relies upon another.
- A fiduciary relationship is one of equity, and the circumstances out of which a fiduciary relationship will be said to arise are not subject to hard and fast rules.

General Fiduciary Duties

- Duty of Loyalty
 - Interest of principal comes first
 - Confidentiality
 - To Not Compete
 - Duty of Obedience
- Duty of Prudence
 - Due Diligence
 - Reasonable Decisions
- Duty of Disclosure

Types of Fiduciary Relationships

- Corporate officers and directors
- Stockholders
- Partners (General, and potentially, limited)
- LLC Managers and Members
- Employees/Employers
- Agents/Power of Attorney Agents
- Joint Venturers
- Executors
- Trustees
- Trust Protectors With Certain Powers
- Husband/Wife/Life Partners
- Boyfriend/Girlfriend
- Confidential Relationships

Capacity Issues

- Texas courts have held that you have to judge parties' actions by the duties that they owe in the capacity that they are acting.
- *Benge vs. Thomas* example
- This is important because parties can act in multiple different capacities.
- The capacity can have important ramifications.
- Business judgment rule for officers/directors vs. duty of prudence for a trustee/executor

Capacity Issues

- In *In re Estate of Poe*, a son sued his father's estate and others regarding the father, as a board member, authorizing the corporation to issue new shares that the father bought, thus diluting the son's shares. No. 20-0178, 2022 Tex. LEXIS 544 (Tex. June 17, 2022).
- The son sued the father's estate for breach of fiduciary duty based on a confidential relationship and prevailed in the trial court.
- The Texas Supreme Court reversed.

Capacity Issues

- The Court stated:
 - We have never held, in Ritchie or elsewhere, that a corporation's director, while owing formal fiduciary duties to the corporation requiring him to manage the corporation's affairs for the sole benefit of the corporation, simultaneously owes an informal fiduciary duty to a shareholder to operate the corporation for that shareholder's benefit or consistent with the shareholder's best interest. We reaffirm this principle today and hold that a director cannot simultaneously owe these two potentially conflicting duties. By electing to form and own PMI as a corporation, the parties disclaimed the existence of duties regarding the management of the corporation's affairs beyond those that exist by statute or arise from the corporation's formation documents or other agreement.

Net Widening Theories

- Knowing Participation in Breach of Fiduciary Duty
- Conspiracy to Commit Breach of Fiduciary Duty
- Aiding and Abetting Breach of Fiduciary Duty
- Co-Fiduciaries

Procedural Advantages

- Potential argument to disregard limitation of liability clauses
- Presumption of unfairness for self-dealing transaction
- Release agreements with a fiduciary and a full knowledge requirement
- Evidentiary presumptions
- Summary judgment burden shifting for self-dealing
- Burden shifting for trial, and motion to open and close

Pre-Trial Remedies

- Receiverships (TBOC, TCPRC, Trust Code, etc.)
- Injunctions
 - Probable Right of Recovery
 - Irreparable Harm
- Audits (TRCP 172)

Post-Trial Remedies

- Direct Damages
- Consequential Damages
- Mental Anguish
- Attorney's Fees
- Forfeiture
- Disgorgement
- Punitive Damages
- Rescission
- Constructive Trust
- Accounting
- Injunction
- Equitable Lien
- Declaratory Relief
- Partition

Conclusion

- Because there are no relationships in law that create such high standards, fiduciary claims create procedural and substantive advantages.
- This presentation was intended to provide guidance as to why and how to raise such claims and the advantages for doing so.

Conclusion

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