

AUGUST 2020

Maryland's High Court Finally Confirms Fiduciary Duty Claims as Independent Causes of Action

Marshall B. Paul | Jacqueline A. Brooks | Eric G. Orlinsky

Ending almost 23 years of confusion, the Maryland Court of Appeals, in an opinion issued on July 14, 2020, unequivocally ruled that Maryland recognizes an independent cause of action for breach of fiduciary duty, erasing any doubt as to whether a fiduciary duty claim must be coupled with another cause of action dealing with the same conduct in order to be maintained.

In *Plank v. Cherneski*, WL3967980 (2020), the Court, in a necessarily lengthy but clear Opinion that explained the last twenty-three years' history and the basis for its conclusion, stated that:

"If a plaintiff describes a fiduciary relationship, identifies a breach, and requests a remedy historically recognized by statute, contract, or common law applicable to the specific type of fiduciary relationship and the specific breach is alleged, a court should permit the count to proceed. The cause of action may be pleaded without limitation as to whether there is another viable cause of action to address the same conduct."

The present confusion originated from a statement in the case of *Kann v Kann*, 344 Md 689 (1997), in which the Court held that "there is no universal or omnibus tort for the redress of breach of fiduciary duty by any and all fiduciaries." The Court, citing *Kann*, followed this statement with a footnote in *International Brotherhood of Teamsters v. Willis Corroon Corp. of Maryland*, 369 Md. 724 (2002), that said that "although the breach of fiduciary duty may give rise to one or more causes of action, in tort or in contract, Maryland does not recognize a separate tort action for breach of fiduciary duty." The Court then compounded the problem with another footnote, this time in *Shenker v. Laureate Education, Inc.*, 411 Md. 317 (2009), which stated that, "we assume, without deciding . . . that breach of fiduciary duties is a cognizable tort in Maryland." In *Plank*, the Court acknowledged that by reading these footnotes in isolation, "one could either conclude that we do not recognize a separate tort for breach of fiduciary duty or that it is an open-ended question." Numerous Maryland cases, relying on *Kann* and interpreting these footnotes in various ways, have produced inconsistent holdings.

The Court in *Plank* resolved any doubt created by *Kann* and these conflicting footnotes by giving a more fulsome explanation of *Kann* and by declaring that the footnotes in *International Brotherhood of Teamsters* and *Shenker* were dicta. That is, in *Teamsters*, the question of whether Maryland recognized an independent cause of action for breach of fiduciary duty was not directly involved in any issues of law raised on appeal, and, according to the Court, the inclusion of the footnote did not supply a deliberate expression of opinion on the issue. Likewise, the Court said that, in *Shenker*, the footnote was included in a section of the opinion dealing with the ability of shareholders to bring a civil conspiracy claim against certain investors, where the court found that there was no fiduciary relationship. The Court further pointed out that the *Shenker* opinion explicitly stated in three places that shareholders had the right to pursue a direct cause of action for breach of fiduciary duty against directors for damages.

In *Plank*, the Court also makes clear that managers of a limited liability company are subject to claims for breach of fiduciary duty in a properly pleaded action and may be held accountable for damages. *Plank* is a Court of Appeals' opinion with regard to the duty of a manager to a limited liability company. All previous rulings on this topic have been issued by the Maryland Court of Special Appeals.

This alert was written by Marshall B. Paul, a member of the Firm's Corporate Practice, Jacqueline A. Brooks, a member of the Practice, and Eric G. Orlinsky, co-chair of the Practice. Marshall can be reached at (410) 332-8956 or by email at Marshall.Paul@saul.com. Jacqueline can be reached at (410) 332-8651 or by email at Jacqueline.Brooks@saul.com. Eric can be reached at (410) 332-8687 or by email at Eric.Orlinsky@saul.com. This alert has been prepared for information purposes only.

Did you find this information useful? Please provide your feedback [here](#) and also let us know if there are other legal topics of interest to you.

The provision and receipt of the information in this publication (a) should not be considered legal advice, (b) does not create a lawyer-client relationship, and (c) should not be acted on without seeking professional counsel who have been informed of the specific facts. Under the rules of certain jurisdictions, this communication may constitute "Attorney Advertising."