The Fiduciary Duties Of A Nevada LLC Manager May Be limited Indeed!

Friday, May 31, 2019

When the Nevada legislature enacted the state's limited-liability company act, it did not prescribe the fiduciary duties, if any, owed by managers. As I observed:

"Thus, the legislature has left it for the courts to decide what, if any, default fiduciary duties, other than the implied contractual [covenant of] good faith and fair dealing, may exist under the act."

Bishop and Zucker on Nevada Corporations and Limited Liability Companies § 16.2[A] (footnote omitted). NRS 86.286(5), which was later added to Nevada's act, provides:

"If, and to the extent that, a member or manager or other person has duties to a limited-liability company, to another member or manager, or to another person that is a party to or is otherwise bound by the operating agreement, such duties may be expanded, restricted or eliminated by provisions in the operating agreement, except that an operating agreement may not eliminate the implied contractual covenant of good faith and fair dealing."

AB 207 will now clarify that the implied contractual covenant of good faith and fair dealing is the only statutorily prescribed fiduciary duty of an LLC manager or managing member:

"The duties of a manager or managing member of a limited-liability company to the limited-liability company, to any series of the limited-liability company, to any member or to another person that is a party to or otherwise bound by the operating agreement are only:
1. The implied contractual covenant of good faith and fair dealing; and
2. Such other duties, including, without limitation, fiduciary duties, if any, as are expressly prescribed by the articles of organization or the operating agreement."

Many existing LLCs may not be affected by this change. Section 31 of AB 207 provides that this amendment applies to an LLC that files its original articles of organization on or after October 1, 2019. An LLC existing before that date may voluntarily elect to be governed by the new statute. Finally, an LLC existing before that date will be subject to this change if it was managed by a sole manager before October 1, 2019 and either (i) becomes managed by one or more managers after that date, or (ii) admits one or more additional members on or after that date.

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