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Alphabet Settlement Sets New Standard for #MeToo Derivative Suits

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Alphabet Settlement Sets New Standard for #MeToo Derivative Suits

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On September 25, 2020, Cohen Milstein announced an historic agreement with Alphabet, Google's parent company, to settle shareholder derivative litigation over allegations that the company's leadership enabled and concealed egregious sexual misconduct by top executives. The most significant and sweeping resolution of a #MeToo derivative lawsuit to date, the settlement shows that shareholders can protect their long-term investment in a company by seeking meaningful corporate governance reform through litigation.

THE MOST SIGNIFICANT AND SWEEPING RESOLUTION OF A #METOO DERIVATIVE LAWSUIT TO DATE, THE SETTLEMENT SHOWS THAT SHAREHOLDERS CAN PROTECT THEIR LONG-TERM INVESTMENT IN A COMPANY BY SEEKING MEANINGFUL CORPORATE GOVERNANCE REFORM THROUGH LITIGATION.

The case was filed after an October 25, 2018 article in *The New York Times* revealed that Google had protected, praised, and rewarded Android platform founder Andy Rubin despite an internal investigation finding that he had been credibly accused of sexual harassment. The article prompted a global walkout of 20,000 Alphabet employees dissatisfied with the company's handling of sexual harassment; unsurprisingly, the walkout generated immense public scrutiny. Over the next year, new reports revealed that more Alphabet executives had engaged in sexual misconduct and that, rather than taking any corrective action, the company had offered them large severance packages or permitted them to modify their 10b5-1 stock trading plans so they could leave the company with tens of millions of dollars and unblemished records.

Like many tech companies, Google believes its workforce is its most important asset. The company invests tremendous resources to recruit, pay, and develop top talent. But the double standard that had taken hold at Google, where top male executives deemed too important to be disciplined were allowed to engage in sexual misconduct, harmed not only the individual victims but also Google's broader ability to recruit and retain the best people. By allowing this harmful workplace culture to fester, Google's actions threatened the investment Alphabet's shareholders had made in the company.

Seeking to end and remedy these harms to the company, Alphabet shareholders Northern California Pipe Trades Pension Plan and Teamsters Local 272 Labor Management Pension Fund filed a derivative lawsuit in California state court in January 2019, represented by Cohen Milstein. Our clients were appointed to act as co-lead plaintiffs on behalf of all Alphabet stockholders, along with an individual investor. A working group of four attorneys, including Julie Goldsmith Reiser of Cohen Milstein, led the settlement negotiations.

After a vigorous back and forth, the parties reached a comprehensive settlement that addressed every aspect of the employment experience and required significant governance reforms. Alphabet agreed to devote $310 million to diversity, equity, and inclusion ("DEI") initiatives—the largest public commitment to such efforts by any tech

company. The company also agreed to sweeping reforms to employment policies, including ending mandatory arbitration in harassment, discrimination, and retaliation-related disputes between any Alphabet company and an employee or extended workforce member; limiting Google's use of non-disclosure agreements, so that employees can discuss the underlying facts and circumstances of an incident and the reporting process; and calibrating corrective action recommendations across business units to ensure that employees receive consistent consequences for the same misconduct. In addition, Alphabet agreed to establish a DEI Advisory Council, guided by outside experts, including retired federal judge Nancy Gertner, and internal leaders, including CEO Sundar Pichai.

ALPHABET AGREED TO DEVOTE $310 MILLION TO DIVERSITY, EQUITY, AND INCLUSION ("DEI") INITIATIVES– THE LARGEST PUBLIC COMMITMENT TO SUCH EFFORTS BY ANY TECH COMPANY.

Alphabet also agreed to institute governance measures to ensure that its Board of Directors is informed of and accountable for overseeing risks arising from sexual harassment by executives and, more broadly, fostering a diverse, equitable, and inclusive culture. Key features of the settlement with respect to governance include expanding the Audit Committee's charter to Audit and Compliance, with quarterly reports to the full board on legal and regulatory compliance, and preventing employees with 10b5-1 stock purchase plans from amending their trading plans while subject to investigations or a lawsuit for sexual misconduct. Additionally, the settlement creates greater transparency for shareholders by requiring an accounting of DEI expenditures in the annual Diversity Report.

The settlement and Cohen Milstein's leadership in the case have received significant attention, including coverage by major media outlets such as *The New York Times*, *The Wall Street Journal*, *Pensions & Investments*, and CNBC.

This settlement sets a new standard for the tech industry. It strengthens Alphabet's ability and obligation to respond effectively and lawfully to sexual harassment, retaliation, and discrimination. And importantly, the settlement is well-positioned to succeed. Many of the individuals involved in the alleged wrongdoing have since left or reduced their roles in the company. In addition, by sitting on the DEI Advisory Council for its first year, new CEO Sundar Pichar is demonstrating the importance of robust cultural change to the company. As Pichai advised the employees after the settlement was announced, he "hope[s] these commitments will serve as a strong signal to all of you that we are not going back in time."

The Alphabet derivative litigation demonstrates shareholders' ability to effect significant change to protect the public companies in which they invest. When a company's best asset is its workforce, investors and employees have a shared interest in ensuring that corporate boards enact fair, lawful, and equitable policies that allow employees to thrive. We look forward to continued representation of investors in significant and transformative derivative litigation. ■

Molly J. Bowen is an Associate at Cohen Milstein and a member of the Securities Litigation & Investor Protection practice group.

In Memoriam: Justice Ruth Bader Ginsburg (1933-2020)

The death of U.S. Supreme Court Justice Ruth Bader Ginsburg (RBG) on the evening of September 18, 2020 came as shock but not a surprise. The 87-year-old jurist, who had become a legal, cultural, and feminist icon to many, lost her battle with metastatic cancer of the pancreas—her fifth bout of cancer since 1999. As mourners lined the steps of the Supreme Court and impromptu candlelight vigils were held around the country, Chief Justice John Roberts issued a statement: "Our nation has lost a justice of historic stature. We at the Supreme Court have lost a cherished colleague. Today we mourn but with confidence that future generations will remember Ruth Bader Ginsburg as we knew her, a tireless and resolute champion of justice."

As a Supreme Court Justice, RBG aligned with the "liberal wing." After Justice Samuel Alito replaced Justice Sandra Day O'Connor in 2006, pushing the Court more reliably to the right, RBG dissented more often and with greater force. From the time she joined the Court through the 2019 term, RBG authored 21 majority opinions in 5-4 decisions and nine dissents in 8-1 decisions. In an interview, RBG said, "Some of my favorite opinions are dissenting opinions. I will not live to see what becomes of them, but I remain hopeful."

Although most known for her work on gender equality, RBG served on a Court that rendered landmark decisions on controversial issues from *Bush v. Gore* in 2000 to the constitutionality of the Affordable Care Act in *National Federation of Independent Business v. Sebelius* in 2012. In recent years, RBG has also ruled on several cases that have shaped federal securities litigation. Importantly, in 2017 she filed a dissent in *California Public Employees' Retirement System v. ANZ Securities, Inc.*, taking the majority to task for weakening class action protections for shareholders.

Though she gained late-life stature as a liberal hero for a younger generation of activists—the "Notorious RBG"—Justice Ruth Bader Ginsburg spent her legal and judicial career carefully selecting bellwether cases that featured injustices stark enough to convince reluctant, male-dominated courts to nudge the law in the direction of equality. In addition to the changes they have already helped bring about, her forceful legal arguments will continue to shape our society long after the political arguments ignited by her death have faded. ■

DELAWARE COURT SAYS BOARD MUST PROPERLY MONITOR "MISSION CRITICAL" COMPLIANCE RISK

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THE COURT OF CHANCERY FOUND THAT PLAINTIFFS PLED FACTS FROM WHICH CAN BE REASONABLY INFERRED THAT THE BOARD CONSCIOUSLY IGNORED RED FLAGS THAT ITS SUBSIDIARIES WERE DEFYING IMPORTANT FDA REGULATIONS THAT WERE "MISSION CRITICAL" TO ABC'S BUSINESS OPERATION.

Investors seeking to hold corporate boards liable for failing to properly oversee "mission critical" operations in highly regulated companies should be encouraged by a recent decision allowing shareholders of a pharmaceutical company to proceed with their derivative lawsuit.

On August 24, 2020, in *Teamsters Local 443 Health Services & Insurance Plan v. Chou*, No. 2019-0816-SG, 2020 WL 5028065 (Del. Ch. Aug. 24, 2020), the Delaware Court of Chancery continued a recent trend in the Delaware courts by upholding stockholder derivative claims against a board of directors for its alleged failure to comply with its oversight duty under *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959 (Del. Ch. 1996). The court held that stockholder-plaintiffs sufficiently pled that a majority of the directors of AmerisourceBergen Corp. ("ABC") (the "Board") faced a substantial likelihood of liability.

Specifically, plaintiffs alleged that ABC's wholly owned subsidiary, Pharmacy, "was run like a criminal organization." Pharmacy operated in a way to appear as if it were a state-licensed pharmacy, which it was not, to purposely avoid the Food and Drug Administration's ("FDA") oversight. Pharmacy's business was to buy single-dose sterile vials of oncology drugs, put those drugs into syringes, and sell them for injection into a cancer patient's body. Pharmacy bought the single-dose vials knowing that they were intentionally overfilled by the manufacturer. Instead of discarding this overfill, which was not intended for patient use, Pharmacy illegally "pooled" the overfill and used it to fill additional syringes. This process was unsterile and led to contamination of the pooled drugs.

ABC both pocketed the extra revenue and undercut the competition by providing kickbacks to buyers to increase its market share through its "extra" product. Ultimately, the criminal activities at Pharmacy and other associated subsidiaries were uncovered, leading to significant corporate criminal and civil penalties of approximately ***$885 million***.

Plaintiffs alleged the Board failed to exercise its oversight responsibilities in good faith as required by *Caremark* and its progeny because criminal activities occurred at ABC's subsidiaries, causing them to incur $885 million in fines. The court agreed, relying on *Marchand v. Barnhill*, 212 A.3d 805 (Del.

ULTIMATELY, THE COURT DENIED DEFENDANTS' MOTION TO DISMISS ON ALL COUNTS, CONTINUING A STRING OF DECISIONS OVER THE PAST YEAR OF UPHOLDING CLAIMS AGAINST DIRECTORS WHO FAIL TO PROPERLY OVERSEE THE MISSION CRITICAL OPERATIONS OF HIGHLY REGULATED COMPANIES.

2019), where the Delaware Supreme Court explained a board's duty to monitor a company's "mission critical regulatory issues" and held that directors cannot ignore red flags indicating misconduct in defiance of their oversight duty under *Caremark* when the company's core business operation is tied to complying with laws and a comprehensive regulatory regime. Similarly, here the Court of Chancery found that plaintiffs pled facts from which can be reasonably inferred that the Board consciously ignored red flags that its subsidiaries were defying important FDA regulations that were "mission critical" to ABC's business operation.

The court found three categories of red flags relevant to its determination that the Board allegedly failed in its oversight duties. First, the court relied on allegations concerning a report prepared by the Company's outside counsel, indicating that ABC had: (a) no centralized compliance and reporting structure, (b) inadequate documentation and tracking of compliance and ethics processes, and (c) inadequate accountability for compliance violations. Plaintiffs further alleged that the Audit Committee and the Board failed to take any steps to remedy the issues identified in the report. The court found this report qualified as a red flag and that the Board failed to respond to it.

Next, the court recognized another category of red flags based on the allegations in a *qui tam* (whistleblower) suit brought by a former employee. Plaintiffs alleged that the Board members had signed Form 10-Ks disclosing the *qui tam* complaint, which addressed the problematic use of overfill occurring at ABC's subsidiaries but took no action in response to this red flag. The court also acknowledged a third and final category of red flags, embodied in a 2012 Department of Justice subpoena and an FDA search warrant. Although both documents were publicly disclosed, the ABC Board again took no corrective actions in response to them.

Based on these red flags, the court held that the Board consciously ignored facts warning of ABC's subsidiaries' illegal overfill business, along with its attendant mission critical compliance risks. The court further held that the Board faced a substantial likelihood of liability because a majority of the Board knew of the evidence of corporate misconduct—yet acted in bad faith by consciously disregarding its duty to address that misconduct in the Company's subsidiary.

Ultimately, the court denied defendants' motion to dismiss on all counts, continuing a string of decisions over the past year of upholding claims against directors who fail to properly oversee the mission critical operations of highly regulated companies. This recent trend in Delaware provides encouragement to stockholders to assert similar claims based on oversight failures under *Caremark*, especially where a board had a duty to monitor a company's "mission critical regulatory issues" and has failed in those efforts. ■

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U.S. POISED TO GET TOUGH ON CHINESE CORPORATIONS, RECTIFYING LOOPHOLES THAT EXPOSE U.S. INVESTORS TO FRAUD

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> *There are plenty of markets all over the world open to cheaters, but America can't afford to be one of them.*"

U.S. SEN. JOHN KENNEDY (R-LA.), ON ANNOUNCING THE SENATE'S PASSAGE OF THE HOLDING FOREIGN COMPANIES ACCOUNTABLE ACT

"There are plenty of markets all over the world open to cheaters, but America can't afford to be one of them," explained Senator John Kennedy (R-La.), when announcing the chamber's passage of the Holding Foreign Companies Accountable Act ("Accountability Act") in May 2020. The bill seeks to close a loophole that allows foreign companies to evade the same scrutiny as U.S. corporations, requiring them to submit their earnings statements to the Public Company Accounting Oversight Board (PCAOB) for review.

In a rare show of bipartisan support, the Senate approved the bill by unanimous consent. That same day, Representative Brad Sherman (D-Calif.), Chair of the House Financial Services Subcommittee on Investor Protection, Entrepreneurship and Capital Markets, introduced a companion bill in the House. Two months later, Representative Sherman, who is also Co-Chair of the Congressional Caucus on CPAs and Accountants, was able to attach his bill as an amendment to the National Defense Authorization Act for Fiscal Year 2021, which passed. With passage in both houses, albeit through different vehicles, Congress appears poised to see the bill become law later this year.

This was not the first time that Congress introduced legislation to increase oversight of foreign corporations listed on U.S. stock exchanges. But this year's introduction coincided with a massive accounting scandal that cost U.S. investors in China-based Luckin Coffee billions of dollars. Unlike U.S. public companies that submit to inspections of their audits by the PCAOB, Luckin had been able to refuse such inspections. As a result, it was easier for the company, which had already raised over half a billion dollars on Wall Street, to lie to investors about its worth. In 2019 alone, Luckin Coffee overvalued its revenue by $300 million. Once the truth was revealed, the company's shares tumbled 95% from January to May before it was delisted from Nasdaq.

AIMED LARGELY AT CHINESE COMPANIES WHO SELL STOCK ON U.S. EXCHANGES, THE BILL WOULD DELIST ISSUERS THAT BLOCK THEIR FINANCIAL AUDITS FROM INSPECTION BY THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.

Luckin Coffee is far from the only ticking time bomb for investors. Eleven percent of all securities class actions in 2011 were brought against Chinese-owned companies not subject to PCAOB oversight and, according to the SEC, 224 U.S.-listed companies with market capitalization of more than $1.8 trillion are located in countries where there are obstacles to PCAOB inspections.[1]

Congress felt pressure to act on a problem that has been festering since 2013. In 2013, the U.S. negotiated a Memorandum of Understanding allowing for Chinese companies to be listed on U.S. stock exchanges—with the understanding that China would eventually allow greater access to PCAOB inspections. The 2002 Sarbanes-Oxley Act, which created the PCAOB, was never meant to exempt foreign corporations from the same scrutiny as U.S. companies. But that was the result. As Representative Sherman sees it: "China got tough and we got weak."

By introducing the Accountability Act, Congress is now more forcefully confronting China's refusal to honor its agreement. The bill would delist issuers that block their financial audits from PCAOB inspection. Although it is written broadly to apply to any foreign company, it is primarily targeted at China, one of only a few countries that does not allow the U.S. to inspect financial audits conducted in a company's country of residence. The only other countries preventing such inspections are France, Belgium, and in some circumstances Hong Kong (if the audit client has operations in mainland China). The U.S. is expected to soon finalize agreements with Belgium to allow for such inspections and in the case of France renew a previous agreement that expired in December 2019.[2]

Representative Sherman says he did not sponsor the House bill to delist foreign companies and reduce U.S. investors' opportunities but rather "to demand that China do what every other country has done and agree that if their companies want to participate in U.S. capital markets, they agree to live by U.S. capital-markets rules."

The bill amends Section 104 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214) by adding language to govern foreign companies that refuse PCAOB inspection—requiring them to disclose whether government entities control a financial interest or the company has any ties to the Chinese Communist Party, for example. If a foreign company refuses inspection three years in a row, it will be delisted and its securities will be prohibited from being traded on a U.S. national securities exchange or on U.S. over-the-counter markets. The bill also provides an avenue for redemption for companies that certify they have hired a public accounting firm inspected by the PCAOB, though they face a five-year minimum delisting if they again refuse PCAOB inspection in any subsequent year. The House bill differs only slightly from the Senate version.

1 https://www.sec.gov/news/public-statement/statement-vital-role-audit-quality-and-regulatory-access-audit-and-other.

2 The only impediment to the finalizing of the agreements with Belgium and France is final approval regarding data protections under the European Union's recent General Data Protection Regulation.

The White House is also eager to reign in foreign companies. In August, the White House Working Group on Financial Markets announced policy proposals that would give already-listed Chinese companies until 2022 to either comply with U.S. audit requirements or be delisted from U.S. exchanges. Any new companies that wish to trade on the U.S. exchange would need to comply with PCAOCB inspections first. Moreover, the White House working group proposed heightened warnings to investors about the risks associated with investing in companies that don't allow PCAOCB inspections.

With Congress and the White House busily working to close a loophole that has been open for years, it is very likely that by 2021 Chinese companies will have to submit to inspections or risk delisting. In the most likely scenario, the Accountability Act provisions will be incorporated into the final passage by both houses of the National Defense Authorization Act for Fiscal Year 2021. The House version of that bill, which Congress approves each year, includes Representative Sherman's Accountability Act language. It seems unlikely the Senate will seek to strike that language during the conference committee discussions since the Senate's standalone bill, which enjoyed unanimous consent, contains nearly identical provisions. While these actions come too late for Luckin Coffee investors, they should reduce investors' exposure to losses through any future accounting fraud at non-U.S. companies. ■

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FIDUCIARY FOCUS

HOW SHOULD FIDUCIARIES VIEW CALIFORNIA LAW MANDATING CORPORATE BOARD DIVERSITY?

Two years after passing legislation requiring California-based companies to include women on their boards of directors, the state has enacted a bill to expand that mandate to members of a broad range of underrepresented communities. At the signing ceremony on September 30, 2020, the bill's co-author urged other states to follow California's lead. That same day, a lawsuit was brought seeking to overturn the new legislation as unconstitutional. How should pension trustees incorporate this information into their own deliberations about diversity issues? The answer, as always, starts with adherence to fundamental fiduciary principles.

Background on Diversity Requirement

Under the law, California companies must appoint at least one board member from underrepresented communities by 2021 and, depending on the size of the board, two or three such directors by 2022. The law defines a member of an underrepresented community as someone who self-identifies as "Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native" or as gay, lesbian, bisexual, or transgender.

The law permits the California Secretary of State to impose fines for violations of the law. Lawmakers cited data from a 2018 study from Deloitte and the Alliance for Board Diversity that found 84% of Fortune 500 company board seats were held by individuals who identified as white, a number that they noted is significantly higher than that group's share of the general population.

This legislation follows another first-in-the-nation California law enacted in 2018 that mandated that the boards of publicly traded companies headquartered in the state include female directors. That law required corporations to include at least one female director by 2019 and, depending on the size of the board, two or three female directors by the end of 2021. When that law was passed, 29% of California-headquartered companies had all-male boards and, by 2019, the percentage had dropped to 4% according to a study by the KPMG Board Leadership Center.

The new law has already been challenged in state court by the same groups that sued to contest the 2018 law. The same day the new law was signed, three California taxpayers, backed by a conservative national nonprofit, filed a complaint in California Superior Court alleging that the new law violates the state constitution.

IT IS CLEAR THAT CONSIDERATION OF DIVERSITY IS AN IMPORTANT TOPIC TODAY TO FIDUCIARIES OF INSTITUTIONAL INVESTORS, INCLUDING PUBLIC PENSION PLANS, AND WILL LIKELY REMAIN SO IN THE FUTURE.

Other constitutional law experts do not share that view. For example, Dean Erwin Chemerinsky of the UC Berkeley School of Law has said he believes there is a strong argument that the laws are constitutional, since there is a compelling need to enhance diversity on corporate boards. It will remain for the courts to decide whether these laws are sufficiently narrowly tailored to meet the compelling need.

Institutional investors increasingly have focused on board diversity and have been evaluating companies that lack sufficient board diversity. Just a week before the California law was enacted, Connecticut State Treasurer Shawn T. Wooden announced that his office was partnering with the Ford Foundation to assemble a coalition of CEOs to confront longstanding racial economic disparities and their impact on the nation's economy, including increasing diversity on their boards.

Contrast with Recent DOL Proposals

The California Law stands in sharp contrast to recent action of the U.S. Department of Labor (DOL) in proposing regulations under the Employee Retirement Income Security Act (ERISA) in two areas: consideration of environment, social, and governance (ESG) factors when making investment decisions, and shareholder rights including proxy voting.

THE NEW LAW REQUIRES CALIFORNIA COMPANIES TO APPOINT AT LEAST ONE BOARD MEMBER FROM A BROAD RANGE OF 'UNDERREPRESENTED COMMUNITIES.'

In June 2020, in proposing regulations in the area of ESG the DOL stated that "ESG investing raises heightened concerns under ERISA." According to the DOL, the growing emphasis on ESG investing may be prompting fiduciaries to make investment decisions for purposes other than the only permissible reasons—to provide benefits to participants and beneficiaries and defray reasonable expenses of administering the plan.

The proposed regulations are intended to confirm that ERISA requires plan fiduciaries to select investments based solely on financial considerations that are relevant to the risk-adjusted economic value of a particular investment. They also make clear that fiduciaries may not invest in ESG vehicles when they understand an underlying investment strategy of the vehicle is to subordinate return or increase risk for the purpose of what DOL refers to as non-pecuniary objectives.

While the DOL acknowledges that ESG factors may qualify as economic considerations, they caution that this is true "only if they present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories."

In August, the DOL released a proposal to amend its regulations to address the application of ERISA's fiduciary duties of prudence and loyalty to the exercise of shareholder rights in the area of proxy voting. The DOL reiterated that fiduciaries may not subordinate the interests of plan participants and beneficiaries in their retirement income to any non-pecuniary objective. Stating that there appears to be a view among some that plan fiduciaries are required to vote all proxies, the proposed rule would instead provide that proxies may be voted only when the fiduciary prudently determines that the matter being voted upon would have an economic impact on the plan. The proposal contains a new provision under which plan fiduciaries must require that investment managers and proxy voting or advisory firms sufficiently document the rationale for proxy voting decisions or recommendations in order to demonstrate that the rationale was based upon the expected economic benefit to the plan.

DOL's proposals have significance even for public pension plans because although ERISA is not binding on public pension plans, it does establish principles that set standards of conduct that inform the nature of fiduciary duty even for public plans.

Key Takeaways

FIDUCIARIES MAY CONSIDER SUCH ISSUES PROVIDED THEY DO SO IN A MANNER THAT REFLECTS PROPER ATTENTION TO THEIR FIDUCIARY DUTIES.

It is clear that consideration of diversity is a topic of importance today to institutional investors including public pension plans and will likely remain so in the future. In light of increasing attention and assessment of advantages from corporate board diversity and engaged corporate governance on such social issues through proxy voting, fiduciaries will undoubtedly remain cognizant of these issues. What, then, is the role of a prudent fiduciary when addressing such issues? Fiduciaries may consider such issues provided they do so in a manner that reflects proper attention to their fiduciary duties.

Focus should be on the fundamental aspects of fiduciary duty. First, the underlying **fiduciary principles—***i.e.*, the exclusive benefit rule and the duties of loyalty, prudence, and care—must remain paramount. In addition, it is important to note that fiduciaries are judged by the **process** undertaken to reach decisions so that establishment of a reasonable decision-making process and adherence to that process help to demonstrate prudence. Finally, **documentation** of the process is key to demonstrating prudence. Fiduciaries would be well served by documenting the important effect of diversity from the perspective of material economic considerations, whether they are looking at corporate board performance or at investment risk, return and performance. The prudent fiduciary will be well served by a focus on these fundamentals.

Suzanne Dugan heads Cohen Milstein's Ethics & Fiduciary Counseling practice, which assists pension systems in creating and updating policies and procedures designed to address these and other fiduciary issues.

COHENMILSTEIN IN THE NEWS

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- "Derivative vs. Class Action Lawsuits – What's Best for Shareholders?" *Responsible Investor* – October 5, 2020
- "Realtor Group Can't Ditch Antitrust Suit Over Commission," *Law360* – October 2, 2020
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- "5 Times Justice Ginsburg Left an Imprint on Employment Law," *Law360* – September 21, 2020
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- "Zetia Buyers Granted Cert. Despite Small Class Size," *Law360* – August 24, 2020
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- "Tivity Health Bid for New Look at Investor Class Approval Denied," *Bloomberg Law* – July 24, 2020
- "Boeing Shareholder Challenges Forum Selection Clause for Barring Federal Derivative Claim," *Reuters* – July 16, 2020
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AWARDS & ACCOLADES

- Cohen Milstein's Julie Goldsmith Reiser Named "Litigator of the Week" by *The American Lawyer* – October 2, 2020
- Cohen Milstein Named to *Benchmark Litigation's* 2020 List of "Top 10 Plaintiffs Firms" – October 1, 2020
- Five Cohen Milstein Attorneys Named to *Benchmark Litigation's* 2020 List of "Litigation Stars;" Four Cohen Milstein Attorneys Named to the 2020 List of "Future Stars" – September 25, 2020
- Cohen Milstein's Carol V. Gilden Named Among Chicago's "Notable Women in Law" by *Crain's Chicago Business* – September 8, 2020
- Six Cohen Milstein Attorneys Named to *Palm Beach Illustrated's* 2020 "Top Lawyers" List – September 1, 2020
- Cohen Milstein's Shaylyn Cochran Named a *National Law Journal* 2020 "Washington D.C. Trailblazer" – August 27, 2020
- Fifteen Cohen Milstein Lawyers Recognized Among the 2020 *Lawdragon 500* "Leading Plaintiff Financial Lawyers" – August 25, 2020
- Fifteen Cohen Milstein Attorneys Recognized in the 2021 Edition of *The Best Lawyers in America* – August 21, 2020
- Cohen Milstein's Stephan A. LeClainche Recognized as Personal Injury "Lawyer of the Year – West Palm Beach, FL" by *The Best Lawyers in America* – August 21, 2020
- Cohen Milstein's Poorad Razavi Named to *Florida Trend's* 2020 "Legal Elite" – July 30, 2020

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"*[In Wayman v. PriceWaterhouse Coopers]*, we negotiated a large multi-million dollar settlement that made it to the front page of the business section of *The New York Times*. I have the article framed in my office as a reminder of how important our work is in exposing corporate abuses."

Richard A. Speirs is Of Counsel at Cohen Milstein in the Securities & Investor Protection practice group and based in the firm's New York office. Upon joining the firm in 2010, Richard immediately began working with the litigation team that prosecuted the mortgage-backed fraud securities cases in the wake of the 2008 financial crisis. Those hard-fought cases recovered over $1 billion for investors. Richard has also played a critical role in developing the firm's strategy for bringing and settling landmark derivative actions. For this issue of the* Shareholder Advocate, *Richard talked with Editor Christina Saler.

I grew up in … the Flatbush neighborhood of Brooklyn, New York. Flatbush was, and I think always will be, a quintessential melting pot. When I was growing up, my friends were from first or second generation immigrant families. They were Irish, Italian, Jewish, German, Polish, Russian and Black—I was taught at an early age to accept and be friends with people from all backgrounds.

I can thank my wife … for becoming a lawyer. After college, I was working with Catholic Charities in New York City, running the social service programs for the mentally impaired. My wife, Maureen, was the assistant to the managing partner of a large law firm. She told me that I thought like a lawyer and encouraged me to go to law school. I liked the thought of the intellectual challenge. I enrolled in Brooklyn Law School with the view that if I didn't like it after a semester, I would leave. Needless to say, once classes started, I was hooked. Throughout law school, I was especially drawn to corporate and securities law classes.

A career highlight … was when we exposed the egregious discovery abuses and destruction of evidence by an auditor defendant in a securities class action. Just as the judge was poised to enter a default judgment in our favor based upon the magistrate judge's recommendation, the defendant came to the settlement table. We negotiated a large multi-million dollar settlement that made it to the front page of the business section of *The New York Times*. I have the article framed in my office as a reminder of how important our work is in exposing corporate abuses.

I just finished reading … *Sapiens: A Brief History of Humankind* by Yuval Noah Harari. It's a fascinating book that chronicles humankind's evolution in becoming the dominant force on the planet. It was especially interesting reading his book during the pandemic because I couldn't help but wonder how this pandemic will be chronicled and define humankind in the years to come. ■

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