

# Table of Contents

<b>Introduction .....</b>	<b>1</b>
<b>Chapter 1: Summary of Fiduciary Duties of a Board of Directors.....</b>	<b>3</b>
A. Duty of Loyalty .....	6
B. Duty of Care.....	11
<b>Chapter 2: Applicable Standards of Review for Transactions Under Delaware Law .....</b>	<b>13</b>
A. Overview .....	13
B. Business Judgment Rule Protection: The Default Standard of Review .....	15
C. Entire Fairness Review: Heightened Review of Transactions.....	19
D. Enhanced Scrutiny Review: Intermediate Level of Review .....	21
E. Exculpatory Provisions .....	22
<b>Chapter 3: Limited Liability Companies ....</b>	<b>25</b>
A. Fiduciary Duties: The Contract Controls.....	25
B. Derivative Actions Against an LLC and/or Its Managers and Members .....	29
<b>Chapter 4: The Origins of the Zone of Insolvency.....</b>	<b>31</b>
A. <i>Credit Lyonnais Bank Nederland, N.V.</i> .....	31
B. ...and Its Progeny (1991-2007).....	32

<b>Chapter 5: Current Status of the Zone of Insolvency .....</b>	<b>37</b>
A. <i>Gheewahala</i> .....	37
B. Recent Developments in Derivative Claims in the Zone of Insolvency.....	38
1. <i>Trenwick</i> .....	38
2. <i>Quadrant</i> .....	40
C. Current State of “Zone of Insolvency” Law .....	44
D. Derivative Claims Against an LLC.....	47

<b>Chapter 6: Comparison of Delaware Corporate Fiduciary Duties to Other Jurisdictions .....</b>	<b>49</b>
A. Preeminence of Delaware Corporate Law Principles .....	49
B. Few States Have Directly Modeled their Corporation Acts on the Delaware General Corporation Act, Which Underpins Delaware Corporate Common Law.....	51
C. Fiduciary Duties Under the MBCA .....	52
1. General Framework.....	52
2. Standards of Conduct for Directors Under the MBCA.....	53
3. Standards of Liability for Directors Under the MBCA .....	55
D. Fiduciary Duties Under Other Notable States.....	57

<b>Chapter 7: Comparison of Delaware LLC Fiduciary Duties to Other Jurisdictions .....</b>	<b>61</b>
--	-----------

<b>Chapter 8: Other Jurisdictions’ Views on Fiduciary Duties, Zone of Insolvency and Deepening Insolvency .....</b>	<b>63</b>
A. Most States Require Self-Dealing to Hold Directors and Officers of Insolvent Corporations Liable for Corporate Debt .....	63

B. Jurisdictions Recognizing Creditor Suits Once Corporation Becomes Insolvent .....	70
C. Jurisdictions Recognizing Creditor Suits When Corporation Is in the Zone of Insolvency .....	75
D. Other Jurisdictions' Views on Deepening Insolvency .....	77
1. Jurisdictions Recognizing Deepening Insolvency as an Independent Tort.....	77
2. Jurisdictions Rejecting Deepening Insolvency as an Independent Tort.....	82
3. Jurisdictions Permitting Deepening Insolvency as a Theory of Damages .....	85
4. Jurisdictions Rejecting Deepening Insolvency as a Theory of Damages .....	86
E. Conclusion .....	88
<b>Polsinelli's Devil's Dictionary Glossary .....</b>	<b>89</b>