

Corporate & Financial Weekly Digest

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Fifth Circuit Holds That Fiduciary Obligations to General Partner Can Extend to Partnership

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The U.S. Court of Appeals for the Fifth Circuit held that a corporate fiduciary who exercises substantial control over a limited partnership managed by a corporation can owe fiduciary obligations to the partnership itself.

David Harwood was a Director and the Chief Operating Officer of B&W Finance Co., Inc., which was the sole general partner of FNFS, Ltd., a limited partnership engaged in consumer lending operations. Mr. Harwood, who managed B&W's daily affairs, exercised substantial control over FNFS, and withdrew more than \$800,000 of FNFS funds as personal loans that he allegedly neglected to properly record. The B&W board terminated Mr. Harwood, who filed for Chapter 7 bankruptcy, and B&W challenged Mr. Harwood's ability to discharge his debts to FNFS because he accrued this debt through defalcation while acting as a fiduciary.

The bankruptcy court ruled the debts were not dischargeable and Mr. Harwood appealed. He argued that while he owed a duty to B&W as an officer and director, this duty did not transfer to FNFS, the limited partnership managed by B&W. The Fifth Circuit disagreed, ruling that the status of a fiduciary was based on the trust conferred on Mr. Harwood and the control he exercised over FNFS. Accordingly, his debts to the partnership were not dischargeable. (*In re Harwood*, No. 10-40406, 2011 WL 1239810 (5th Cir. April 5, 2011))

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