State Law & State Taxation Corner

By Thomas E. Rutledge

Linkage, Cabining and Junction Box: The Brave New World of Entity Law Comes Together in Kansas

The decision rendered by the Kansas Supreme Court in *Welch v. Via Christi Health Partners, Inc.*[1] presents a case study of several recent developments in business organization law. Based upon the statutes in effect, it does appear that the decisions rendered are well reasoned and, with one possible exception, reflect the appropriate outcome. The broader question, and that not presented to the Court but worthy of our consideration, is whether those should have been the laws under consideration.

The Case

The suit involved MR Imaging Center, L.P., a Kansas limited partnership ("Imaging LP") formed in September 1985, and challenges to its merger with MRI, LLC, a Kansas limited liability company ("MRI LLC"). The general partner of Imaging LP was Via Christi Health Partners, Inc. ("Via Christi"), and it was as well the 71-percent and, therefore, the majority limited partner. Via Christi was the controlling member of MRI LLC.

On July 15, 2003, Via Christi sent a notice of a special meeting of the limited partners, advising them that there would be proposed an amendment to the limited partnership agreement and a merger agreement pursuant to which Imaging LP would merge with and into MRI LLC. Prior to its proposed amendment, the Imaging LP limited partnership agreement allowed for mergers only upon the unanimous approval of the partners. The amendment proposed that a merger could be undertaken by the general partner without the necessity of further approval from the

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limited partners.[2] The limited partners were advised that Via Christi supported the proposed amendment and that it would pass.

The limited partners were also advised of the terms of the merger of Imaging LP into MRI LLC and provided an independent valuation of the limited partnership units determined on both a fair value and a fair market value basis. The terms of the merger were that all of the limited partners would be cashed out and paid the fair value of their units (as such they were not subject to marketability and minority discounts). Again they were told that Via Christi would vote in favor of the transaction and that with the prior amendment of the partnership agreement, the outcome was a foregone conclusion.

None of the limited partners other than Via Christi voted in favor of the amendment to the limited partnership agreement or of the merger agreement. The entity surviving the merger was ultimately named MR Imaging LLC ("Imaging LLC"). Certain of the limited partners brought suit against Via Christi and Imaging LP: (1) alleging breach of fiduciary duties in eliminating their interests in Imaging LP; (2) seeking a valuation of their interests in accordance with KSA 56a-701 (the Kansas adoption of RUPA §701); and (3) seeking fees and costs. The defendants moved for summary judgment, which was granted, and that grant of summary judgment was under review by the Kansas Supreme Court.

> The Kansas Supreme Court applied the fiduciary duty rules that the KsLPA directed it to apply. It does not necessarily follow that the statute properly set forth the correct rules.

The Limited Partner's Application for Dissenter Appraisal Rights

The plaintiff limited partners sought a valuation of their limited partnership units in accordance with KSA §56a-701, the Kansas adoption of RUPA §701,[3] arguing that the termination of their interest in Imaging LP caused them to be dissociated partners. The defendants responded that neither 56a-701 nor the terms of the Kansas Mixed Entity Merger Act[4] applied to afford the limited partners any statutory appraisal rights. The Kansas Mixed Entity Merger Act (the "MEMA") applies to mergers involving a corporation, a limited partnership or an LLC, and at least one other entity of another type,[5] and specifically provides that dissenter's appraisal rights afforded by the organization act shall not be abridged by the MEMA.[6] Each side agreed that the MEMA enabled the merger; where there was disagreement was as to whether another statute afforded Imaging LP's limited partners dissenter's appraisal rights. From there, the Court first looked at the Kansas Limited Partnership Act.[7]

As did limited partnership acts prior to ULPA (2001), under the Kansas Limited Partnership Act ("KsLPA")[8] there was linkage to the General Partnership Act ("KsGPA")[9] for those situations not addressed in the KsLPA.[10] The plaintiff limited partners argued that as the KsLPA does not address the consequences of the dissocation of a limited partner, reference should be made to the KsGPA, and through it, to the buyout value provisions of KSA §56-701. The defendants argued that reference should not be made to the KsGPA as the KsLPA addressed the consequences of a limited partner's dissociation in each of KSA §§56-1a353(b)[11] and 56-1a354,[12] the latter of which provides for a payment of the "fair value" of the limited partner's interest upon dissociation.

The Court rejected the contention that these provisions applied, noting that the Imaging LP partnership agreement did not permit withdrawal and that statutes addressing withdrawal would not apply to limited partners upon being forced out of the partnership. The Court noted that the statute addressing mergers between limited partnerships does not provide for appraisal rights or the other relief sought by the limited partners, but held that it did not apply to the merger of a limited partnership and an LLC. From there the Court determined that it would reference the KsGPA to ascertain the "appraisal rights of an involuntarily dissociated partner after a merger."[13]

The Court held that the limited partners were not, by reason of the merger of Imaging LP into MRI LLC, dissociated partners able to benefit from the buyout provisions of KsGPA, specifically that they were not expelled pursuant to the partnership agreement,[14] but rather that the termination of their relationship with Imaging LP by reason of the merger "was merely a side effect of the specific merger authority granted by the amendment to the partnership agreement."[15] The Court found as well that the KsGPA adoption of RUPA §906 and its provision that a partner may be "dissociated" by a merger[16] would not apply in the

context of affording rights to a limited partner in a merger not solely between general and/or limited partnerships.[17]

In the end, the plaintiff limited partners were involved with a limited partnership that engaged in an inter-entity merger pursuant to the MEMA, which does not of itself provide for dissenter appraisal rights, and neither the KsLPA nor the KsGPA granted dissenter appraisal rights to limited partners who, consequent to a merger, were cashed out.[18]

Assertions of a Violation of Fiduciary Obligations

The plaintiff limited partners argued that Via Christi, as the general partner, violated its fiduciary obligation of loyalty, as well as its obligations of good faith and fair dealing.[19] After the usual disagreement as to whether the nonmoving party had demonstrated facts showing a dispute, the Court first considered an argument that a freeze-out merger in the context of a limited partnership into LLC merger did not trigger fiduciary obligation, as it would not in the context of a merger between corporations. In the course of this discussion, which was headed in the direction that there is no blanket rule that a cash-out merger could never violate fiduciary obligations but seemingly at the same time recognizing that no business purpose be shown and that statutory appraisal rights served to remedy possible fiduciary breaches,[20] the Court noted that there are problems in analogizing corporate cases to those involving partnerships. The Court stated that while corporate directors are held to the standards of a trustee, RUPA eliminated any obligation of self-abnegation.[21] Observing that Via Christi did not purchase the interests of the other limited partners, but that pursuant to the merger, all of the partnership units were acquired by MRI LLC, and apparently suggesting that the duty of good faith was satisfied, the Court observed:

> However, it is important to note in this case, the general partner, Via Christi did not purchase the plaintiffs' limited partnership interests. It did, however, have the partnership valued through an appraisal and then paid all the partners including itself the appraised value of their respective interests in the partnership. Thus, each limited partner and the general partner were paid the same amount for each unit of partnership owned at the time of merger.[22]

On that basis, the cases imposing special obligations upon corporate directors purchasing shares from shareholders were distinguished.

The Court went on to note that, based upon the consensual and contractual nature of their relationship in Imaging LP, neither the amendment of the partnership agreement and subsequent merger[23] nor the consequences of the merger in which the minority limited partners no longer shared in the proceeds of the venture[24] violated any duties owed. The Court also found that even as it was structuring the merger of Imaging LP into MRI LLC, Via Christi was not acting on behalf of a party with an interest adverse to those of Imaging LP.[25]

The Court rejected an effort to set aside the valuation determined by the appraiser hired by Via Christi and to substitute a higher appraisal determined by an appraiser hired by the plaintiff limited partners as, applying the rule of *Weinberger*,[26] the first valuation would not be assessed absent a showing of misconduct or manipulation in its preparation.[27]

Linkage, or Were the Correct Fiduciary Rules Applied?

The Kansas Supreme Court applied the fiduciary duty rules that the KsLPA directed it to apply. It does not necessarily follow that the statute properly set forth the correct rules. RULPA (1976) was drafted against the background of the Uniform Partnership Act (1914) (the "UPA"), and it was to the UPA that the drafters were referring in both the general linkage provision as well as the linkage provision specifically referencing the rights and duties of the general partners.[28] UPA was rather sparse in addressing the fiduciary duties of partners, explicitly addressing the standard of loyalty[29] and being silent on the duty of care. Still, UPA was drafted against the background of the common law and expressly incorporated the law of agency with its rich analysis of care.[30] Specifically, as reflected in the words of Justice Cardozo in *Meinhard v. Salmon*,[31] UPA has been interpreted as holding partners to the duties of a trustee:

> Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday would for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not

> honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.

In contrast, RUPA sought to set forth an exclusive and all inclusive recitation as to what are the fiduciary duties of the partners,[32] relegated good faith to a contractual rather than a fiduciary duty,[33] and expressly eliminated the rule of self-abnegation.[34]

When the KsLPA was adopted in 1983, it was to UPA that it linked for the obligations of the general partners and it was against this body of law that the Imaging LP limited partnership agreement was drafted. Whether those fiduciary duties could have been modified in the partnership agreement is open to dispute,[35] but it is clear that they came into and became part of the partnership agreement.[36] Setting aside the question of whether RUPA, constitutionally, could be applied to partnerships organized under a RULPA that linked to UPA,[37] it must be asked whether the shift in linkage from UPA to RUPA as a good idea. At the time Imaging LP was organized, the limited partners could have reasonably expected that Via Christi, as the general partner, would be held to a standard similar, if not equal, to that of a trustee (and, therefore, of a corporate director under Kansas law) with an obligation of self-abnegation. The linkage to KsRUPA radically altered those rules, and it may be argued, did great violence to both the partnership agreement and the expectations of the limited partners. The Kansas Supreme Court may have applied the law that the legislature said it should apply, but it must be questioned whether less violence would have been done *inter-se* Imaging LP had the KsLPA continued to link to KsUPA rather than to KsRUPA.[38]

> The Kansas Supreme Court has provided us a well-written examination of how these new concepts and rules will apply, perhaps not in the instance in which their application was intended.

There is also a question as to whether the Court applied the correct rule as to the withdrawal rights of the limited partners. The Court cited KSA §56-1a353(b)(1) for the rule that limited partners have only such rights of withdrawal as are provided in the partnership agreement. The Court did not expressly recognize in its opinion that this rule applies only to limited partnerships organized after July 1, 1997.[39] Limited partnerships existing on June 30, 1997 (such as Imaging LP) are governed by a different rule expressly providing for a right of withdrawal in the limited partners.[40] Now it may be that the partnership agreement expressly waived the limited partner's right to withdraw, but as Imaging LP was organized well before the effective date of KSA §56-1a353(b)(1), it must be wondered why it was cited and relied upon. Could—or should—a forced termination of limited partner status by reason of a merger be treated as a voluntary withdrawal under this statute?—possibly not, but whether a limited partner forced out should have economic rights at least equal to those they would have upon a voluntary termination is a fair question.

Cabining, or Is That All That is Expected?

Under UPA, the fiduciary duties continue to evolve both as to what they are internally as well as to what are the fiduciary duties—hence the ongoing debates over whether good faith and candor are or are not fiduciary in nature. RUPA's restriction of the fiduciary duties to care and loyalty and the restrictive statutory definitions of each is referred to as "cabining." The Kansas Supreme Court applied the cabining rules in holding that the only fiduciary obligations that would be applied were those of care and loyalty and then setting aside the loyalty issues by reference to the rule allowing self-interest as well as the contractual analysis that Via Christi could revise the agreement as it saw fit to achieve its desired outcome.

One wonders whether the limited partners were surprised to find that the prior rule of unanimous approval of a merger could be revised by a simple majority to impose a lesser threshold; would not good faith and fair dealing have required that the modification of this rule require unanimous approval as well?[41] Did not the general partner's obligation of loyalty (*i.e.*, the requirement that no group of partners be treated better than any other group of partners) not require protection of the prerogatives of unanimous approval, another way of saying that each partner has a veto power and in that way may protect its expectations in the deal? By applying only the words of RUPA

§404, these questions were avoided. But should they be avoided? Should fiduciary duty law be so limited?[42]

One must also wonder whether the rule of RUPA §404(e), indicating that acting in self-interest does not, in and of itself, violate a fiduciary duty, was given too much authority in this case, in that, in effect, the Kansas Supreme Court allowed it to supersede the duty of loyalty issues.[43]

Junction Box, or Just Because You Can Do Something Does Not Mean You Should Do Something

The Kansas MEMA is a junction box statute addressing in a central provision certain of the rules for certain inter-entity mergers. In its favor, it did not seem to do any violence to the rights and expectations of the limited partners in Imaging LP as they addressed the merger with MRI LLC. At the same time, it seems to have added confusion to the matter by providing some, but certainly not all, of the rules for an inter-entity merger. Rather, the Court needed to refer back to the KsLPA and from there to the KsGPA (in this case KsRUPA) for the determination of whether the limited partners had appraisal rights. Furthermore, Article 9 of RUPA is itself a limited scope junction box statute, addressing mergers and conversions involving general and limited partnerships. There is a disconnect between RUPA §601, listing what are the events of dissociation and its comment indicating that the listing is complete and exclusive,[44] and RUPA §906(e)'s express declaration that:

> A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under Section 701 or another statute specifically applicable to that partner's interest with respect to a merger.

This disconnect is exacerbated by the linkage of RULPA to RUPA. Inter-entity merger statutes are complicated ventures, and it is crucial that all of the steps in the transactions be addressed as well as that all of the underlying rights and expectations that should be protected actually are protected.[45] Kansas, by linking to the limited junction box in RUPA without apparently addressing appraisal rights for limited partners, may have failed to protect the interests of this constituency; many other states are no doubt in that same position.

Conclusion

Things are happening fast in organizational law. Perhaps they are happening too fast. The Kansas Supreme Court has provided us a well-written examination of how these new concepts and rules will apply, perhaps not in the instance in which their application was intended. "Our dilemma is that we hate change and love it at the same time; what we really want is for things to remain the same but get better."[46]

[1] *Welch v. Via Christi Health Partners, Inc.*, Kan SCt, 281 Kan. 732, 133 P.3d 122 (2006).

[2] *Id.* at 126. Later the opinion recites that the amendment provided that a merger could be approved by a two-thirds vote. *Id.* at 129, 133. Regardless, the action would be approved by Via Christi acting unilaterally.

[3] This statute provides in part:

> (a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under K.S.A. 56a-801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).
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> (b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subsection (b) of K.S.A. 56a-807 if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.
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> (e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

[4] KSA §§17-7701 through 17-7708.

[5] KSA §17-7701(d).

[6] KSA §17-7707(k) ("Nothing in K.S.A. 17-7701 through 17-7708 shall abridge or impair any dissenter's appraisal shares or their equivalent rights that may otherwise be available to the members or shareholders or other holders of an interest, in any constituent entity.")

[7] The Kansas limited partnership act was adopted in 1983 and is based upon the Revised Uniform Limited Partnership Act (1976)

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("RULPA (1976)") and the Delaware LP Act. 133 P.3d at 130. Its initial effective date was July 1, 1984. *See* KSA §56-1a603(a).

[8] KSA §§56-1a101 through 56-1a609.

[9] Prior to January 1, 1999, the KsGPA would have been its adoption of the Uniform Partnership Act (1914) ("KsUPA") codified at KSA §§56-301 through 56-343. In 1998, Kansas adopted the [Revised] Uniform Partnership Act (1997) ("KsRUPA"), codified at KSA §§56a-101 through 56a-1305.

[10] KSA §56-1a604 ("In any case not provided for in the Kansas revised limited partnership act, the provisions of the Kansas uniform partnership act (K.S.A. 56a-101 *et seq.*, and amendments thereto) shall govern.")

[11] The language quoted by the Court is KSA §56-1a353(b)(1) and provides "A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement and in accordance with the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw, the limited partner shall have no right to withdraw.")

[12] KSA §6-1a354 provides ("Except as provided in K.S.A. 56-1a351 through 56-1a358, upon withdrawal any withdrawing partner is entitled to receive any distribution to which the partner is entitled under the partnership agreement. If not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within a reasonable time after withdrawal, the fair value of the partner's interest in the limited partnership as of the date of withdrawal, based upon the partner's right to share in distributions from the limited partnership.")

[13] 133 P.3d at 132.

[14] *See* §KSA 56a-601(c) ("A partner is dissociated from a partnership upon ... the partner's expulsion pursuant to the partnership agreement;").

[15] 133 P.2d at 133. The Court stated as well:

> As argued by the defendants, the enactment of this amendment would not have permitted the expulsion of any one or more of the limited partners on its own. In the absence of any express expulsion authority in the partnership agreement or argument concerning the existence of other statutory factors for expulsion listed in K.S.A. 56a-601(d) and (e), the plaintiffs have not demonstrated that they were expelled from the partnership under K.S.A. 56a-601 so as to be considered dissociated partners subject to buyout rights under K.S.A. 56a-701.

[16] KSA §56a-906(e) provides:

> A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under K.S.A. 56a-701 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under K.S.A. 56a-702 by an act of a general partner dissociated under this subsection, and the partner is liable under K.S.A. 56a-703 for transactions entered into by the surviving entity after the merger takes effect.

[17] *Id.* at 135.

[18] *Id.* at 136.

[19] Consequent to the general linkage of the KsLPA to the KsGPA as well as the specific linkage for the rights and duties of general partners (KSA §56-1a253), the fiduciary obligations of Via Christi were set forth in KSA §56a-404, the Kansas adoption of RUPA §404. As to loyalty as well as good faith and fair dealing, this statute provides:

> (a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c).
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> (b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:
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> (1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;
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> (2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and
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> (3) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.
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> (d) A partner shall discharge the duties to the partnership and the other partners under this act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

[20] 133 P.2d at 137.

[21] *Citing* KSA §56a-404(e)("A partner does not violate a duty or obligation under this act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.")

[22] 133 P.3d at 138.

[23] *Id.* at 142:

> First, the fact that Via Christi's actions were motivated by self-interest does not per se establish a breach of a fiduciary duty under K.S.A. 56a-404(d). Second, as discussed above, the terms of the agreement granted Via Christi the majority power to modify the partnership agreement as to the merger provisions as well as other provisions. Under the terms of their agreement and Kansas law, Via Christi had the authority to orchestrate the merger. As such, disclosure of plans to the plaintiffs would not have affected the transaction in this case, distinguishing this case from *Sampson*, where information regarding the value of the stock may have affected the sale. Finally, by analogy, we have approved freeze-out mergers under certain circumstances in the corporate context in *Arnaud*, *Achey*, and *Hesston*. We conclude that nothing in the process by which Via Christi secured the merger establishes a per se breach of the fiduciary duties of loyalty and good faith and fair dealing.

[24] *Id.*:

> The plaintiffs also fail to establish how Via Christi has appropriated *partnership* opportunities or benefits to itself and its new partners under Supp. 56a-404(b)(1). It is true that while Via Christi's interest in the limited partnership was bought out, it still retained the majority of its interest in the limited partnership and the plaintiff limited partners were replaced with new limited partners. While this may be considered an appropriation of the profits and opportunities expected to be shared by the plaintiffs as limited partners, no evidence was presented that the limited partnership itself (which was subsequently converted into an LLC) suffered any loss of business or new opportunities by virtue of the merger. Via Christi was conducting business on behalf of and for the benefit of the limited partnership, and while the transaction served Via Christi's self-interest, that is not sufficient to establish a breach of the fiduciary duty of loyalty in the absence of evidence of the misappropriation of a partnership opportunity under K.S.A. 56a-404(b)(1).

[25] *Id.*:

> Similarly under K.S.A. 56a-404(b)(2), no question exists that the interests of the plaintiff limited partners were adverse to both Via Christi and the new investors of MRI, LLC. However, the defendants rightly point out that the question is whether Via Christi

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acted as or on behalf of a party with an adverse interest to the *partnership* under this statutory provision. Although Via Christi, as the majority owner of both entities, represented both sides of the transaction, no evidence was presented that Via Christi itself possessed adverse interests to the limited partnership, nor was there evidence that its presence on both sides of the transaction actually harmed the limited partnership in any way. K.S.A. 56a-404(b)(2). As noted in the Official Comment to §§401(b)(2), this rule "is derived from Sections 389 and 391 of the Restatement (Second) of Agency. Comment c to Section 389 explains that the rule is not based upon the harm caused to the principal, but upon avoiding a conflict of opposing interests in the mind of an agent whose duty is to act for the benefit of his principal." RUPA §§404, cmt. 2, 6 (Pt. 1) U.L.A. at 144.

[26] *Weinberger v. UOP, Inc.*, Del. SCt, 457 A.2d 701 (1983).

[27] 133 P.3d at 144. The Court noted as well that Via Christi had argued to the appraiser that minority and marketability discounts should not apply, in effect raising the consideration paid all of the partners by $3.2 million.

[28] *See* RULPA §§403, 1105.

[29] UPA §21(1) provides:

> Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

[30] *See* UPA §4(3); *see also* Mark J. Loewenstein, *Fiduciary Duties and Unincorporated Business Entities: In Defense of the "Manifestly Unreasonable" Standard*, U. of Colorado Legal Studies Research Paper No. 06-06, available at http://ssrn.com/abstract=893213 at pp. 6-7.

[31] *Meinhard v. Salmon*, N.Y. CtApp, 249 N.Y. 458; 164 N.E. 545 (1928).

[32] RUPA §404(a). *See also* Allan W. Vestal, *Fundamental Contractarian Error in the Revised Uniform Partnership Act of 1992*, 73 B.U. L. REV. 523, 532 (1993).

[33] RUPA §404(d).

[34] RUPA §404(e).

[35] *See, e.g.*, Loewenstein, Fiduciary Duties, *supra* note 30 at pp. 9-13; Claire Moore Dickerson, *Is It Appropriate to Appropriate Corporate Concepts: Fiduciary Duties and the Revised Uniform Partnership Act*, 64 U. COLO. L. REV. 111 at 111 (1993).

[36] *See, e.g., Northern Illinois Gas Co. v. Hartnett-Shaw Evanston, Inc.*, Ill. App., 53 IllApp3d 562, 368 NE2d 742, 11 Ill-Dec 191 (1977) (citations omitted); *LJM Corp. v. Maysville Hotel Group, LLC*, No. 2004-CA-00120-MR (Ky. App. April 8, 2005) ("[A]ll existing laws, statutes, and ordinances that are applicable are presumed to become part of a contract at the time and place of its making." *citing* 17A Am.Jur.2d *Contracts* §§371).

[37] *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat) 518 (1819), stands for the proposition that the Contract Clause precludes a state from modifying the enabling legislation of a business entity and bind an existing entity unless the power to do so is reserved to the state in the enabling legislation. Neither UPA nor RULPA (1976) contained a reservation of power to amend provision similar to RUPA §107 or MBCA §1.02.

[38] *See also* Elizabeth S. Miller, *Linkage and Delinkage: A Funny Thing Happened to Limited Partnerships When the Revised Uniform Partnership Act Came Along*, 37 SUFFOLK U. L. REV. 891 (2004).

[39] *See* KSA §56-1a353(b)(2)("The provisions of this subsection shall apply to limited partnerships formed on or after July 1, 1997.")

[40] *See* KSA §56-1a353(a)(1):

> A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement and in accordance with the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the affairs of the limited partnership, a limited partner may withdraw upon not less than six-months' prior written notice to each general partner at the general partner's address set forth in the certificate of limited partnership filed in the office of the secretary of state.

[41] *Contrast* MBCA §7.27(b).

[42] Many states have sought to avoid this limited view of what are the fiduciary duties by eliminating from their adoptions of RUPA and ULPA the "limited to" language and substituting in place thereof, inter alia, "include," implying no limitation. *See, e.g.*, Ky. Rev. Stat. §§362.1-404(1); 362.2-408(1).

[43] *Contrast Melcher v. Apollo Medical Fund Mgmt. LLC*, N.Y. SCt, 25 AD3d 482, 808 N.Y.S.2d 207 at 210 ([RUPA §§404(e) equivalent language] "does not appear to absolve members of the duty of loyalty *inter se* and of any corresponding prohibitions against diverting Company opportunities.")

[44] *See* RUPA §601, Official Comment 1 ("Section 601 enumerates all of the events that cause a partner's dissociation.")

[45] *See generally* Robert R. Keatinge, *Plumbing and Other Transitional Issues*, 58 BUS. LAW. 1051 (May 2003).

[46] Sydney J. Harris.