

# California Court Opines On Fiduciary Duties Of LLC Members And Covenants Not To Compete

Article By:

Keith Paul Bishop

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Yesterday, the Fourth District Court of Appeal issued a noteworthy opinion addressing at least two significant questions. *Samuelian v. Life Generations Healthcare, LLC*, 2024 WL 3878448.

First, can fiduciary duties be imposed on members of a manager-managed limited liability company? Section 17704.09(f) of the California Corporations Code establishes a default rule in which members in a manager-managed LLC do not owe fiduciary duties to the company or other members, other than the duty of good faith and fair dealing imposed by Section 17704.09(d). However, this default rule includes the phrase "except as otherwise provided". The Court of Appeal concluded that this allowed for an operating agreement to impose fiduciary obligations on members in a manager-managed LLC.

Second, the Court of Appeal addressed the standard to be applied to covenants not to compete when there is a sale of less than all of an interest in a business. The Court rejected the application of a rule that these covenants were *per se* void. Instead, it concluded that they must be scrutinized under the reasonableness standard to determine whether they have procompetitive benefits given the nature of the selling owner's continuing connection to the business.

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