

### "I'm Not Saying I'd Make a Better CEO; That's Unsaid." Compelling the Trustee to Sell the Family Business when Succession Goes Awry

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Synopsis: Trust settlors frequently establish trusts as a means of keeping a business in the family dynastically through multiple generations. These trust structures commonly immunize trustees from liability for retaining the business and waive the general duty of diversification. Frequently, beneficiaries of such trust structures do not feel any economic benefit from their status unless they are also insiders in the business earning salaries, bonuses, and perquisites. In circumstances where beneficiaries have sought relief, courts generally demur, pointing to the provisions immunizing the trustee from liability for retaining the assets. No case has addressed the question asked, and which this Article seeks to answer, whether a provision immunizing a trustee from liability should be equated with a mandate to retain them (absent catastrophic events). The Article suggests that even if the trustee would not be found liable for having made a good faith decision to retain assets, trustees nonetheless have the power to sell unless there is an actual mandate to retain the assets, which is rare. If trustees have the power to sell if they conclude it would be reasonable to do so, even if they would be immunized from liability if they did nothing, then surely the court has the power to instruct the trustee to sell in such circumstances.

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