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Court Dismisses Fiduciary Duty Suit Against Financial Adviser

The Ruling

On January 13, 2009 the Circuit Court of Cook County, Illinois entered its decision in *Young v. Goldman Sachs*, dismissing a putative class action brought by a shareholder of the Wm. Wrigley Jr. Company in connection with last year's acquisition of Wrigley by Mars, Incorporated. The plaintiff had sought to bring a class action against Goldman Sachs alleging, among other things, that the contingent nature of a substantial portion of Goldman's compensation for advising Wrigley created a conflict of interest that prohibited Goldman from rendering unbiased financial advice and that Goldman had thus breached a duty it owed to Wrigley's stockholders.

In *Young*, the plaintiff sought to rely on two New York cases in which shareholder claims against financial advisers for alleged breaches of fiduciary duty were permitted. The court noted that, in both cases, the investment bankers had been retained by special committees formed specifically to advise the company's shareholders and that the financial adviser thus had a duty to the shareholders. The court noted that Goldman's engagement letter with Wrigley made it clear that Goldman was being retained by Wrigley's board and that there was no intent to create a duty to Wrigley's stockholders or for them to be third-party beneficiaries of the engagement letter. The court also made a point of noting the proxy statement's customary language, which introduced the discussion of Goldman's fairness opinion, stating that Goldman's opinion was provided to Wrigley's board for its information and assistance and was not a recommendation to Wrigley's stockholders.

Based on the language of the engagement letter, the court held that Goldman had not been retained to advise Wrigley's stockholders, that Wrigley's stockholders were

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neither parties to nor beneficiaries of Goldman's engagement letter with Wrigley and that any duty on the part of Goldman ran to Wrigley, not to its individual stockholders.

Engagement Letters Remain Critical in Defining Scope of Potential Liability

Young is a significant decision for investment bankers and financial advisers. Courts continue to be reluctant to extend the scope of investment bankers' legal duties beyond the express language of their engagement agreements – and thus the careful preparation of those agreements continues to be a critical risk management tool for investment bankers. The court's reference to the proxy statement disclaimers is also noteworthy. *Young* is a reminder that discussions of fairness opinions in proxy statements also warrant careful review, as the decision indicates that courts are willing to view those disclaimers and statements of limitation as more than simply "boilerplate."

If you have any questions regarding this court decision or would like further information regarding any of the matters discussed above, please contact [Daniel G. Berick](#) or your principal Squire Sanders lawyer.

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