

Understanding (and Managing) the Divergent Fiduciary Duty Standards for Corporations and LLCs after the Wisconsin Supreme Court's Decision in *Marx v. Morris*

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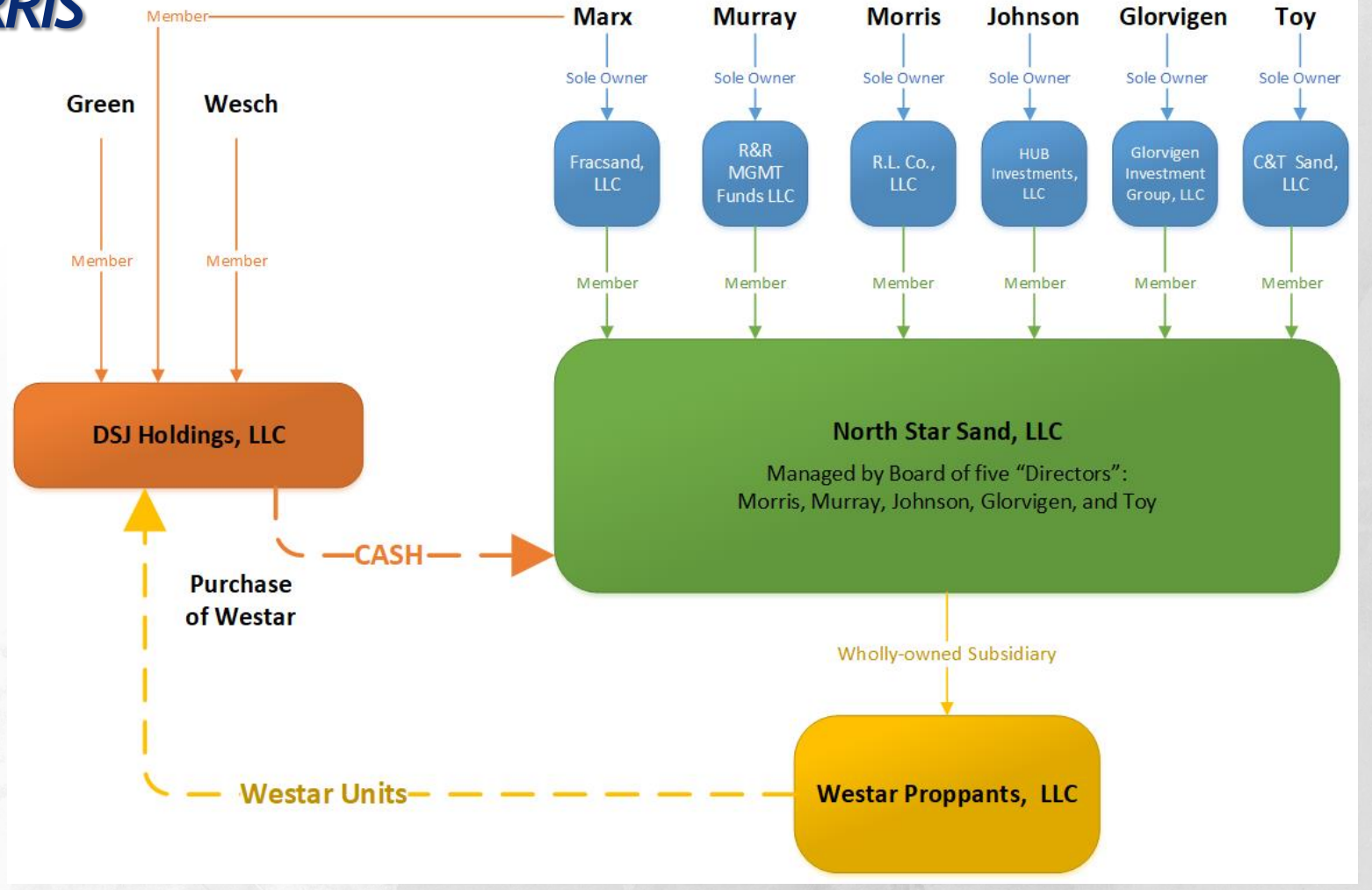
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Sub-Zero

Overview of Corporate Director and LLC Manager Fiduciary Duties in Delaware and Wisconsin

Directors/Managers	Duty: Good Faith	Duty: Loyalty
Del. Corp.	Common law; can exculpate	Common law; cannot exculpate
Wis. Corp.	Exculpated by stats.	Statutory; cannot exculpate
Del. LLC	Common law; can exculpate	Common law by analogy to corps; can exculpate
Wis. LLC	Common law by analogy to partnerships(?); exculpation is uncertain	Statutory; cannot exculpate

MARX v. MORRIS (Wis. 2019)



Delaware vs. Wisconsin LLCs

Issue	Delaware	Wisconsin
Governing law	Del. law	Wis. law
Duties of members and managers*	Common law by analogy to corp.	Statutory duties; common law by analogy to partnerships(?)
Exculpation	LLC agt can fully exculpate members/mgrs for breach of duties, except contractual duty of good faith & fair dealing.	Cannot exculpate as to statutory duties; no express language about exculpation as to common law claims.
Indemnification	LLC agt can indemnify members/mgrs for breach of duties, except contractual duty of good faith & fair dealing.	LLC can indemnify except for breaches of statutory duties; seems to allow indemnification for all other liabilities.
Derivative claims	Consistent with law for corporate derivative suits.	Statute permits derivative suits but does not require suits to be brought derivatively.

*Also, consider affiliates/attribution issue; Who are the parties?

THANK YOU

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The Lawyer's Guide to Family Business Succession Planning by Greg Monday available now at <https://www.americanbar.org/products/inv/book/401507619/>



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