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## Nevada District Court Finds Business Judgment Rule Applies to Nevada LLCs

By [Sean Donahue](#), [Tim Reynolds](#) and [Meg Dennard](#)

The Nevada District Court recently clarified that the business judgment rule — a fundamental corporate law protection — applies to limited liability companies when their operating agreements specify fiduciary duties. The presumption that business leaders act in good faith and in the company's best interest in pursuing decisions of the company is a cornerstone principle of corporate law. Without it, companies would take less calculated business risks and as a result, grow less quickly for fear that every judgment call would be second-guessed in litigation. While that principle, the business judgment rule, is sacrosanct in corporations, it was until recently less clear that the same principle applied to Nevada limited liability companies absent express language in the LLCs' governing documents.

In a recent opinion of the Nevada District Court, Judge Maria Gall, a member of the Eighth Judicial District's Business Court, confirmed that the business judgment rule presumption *does apply* to Nevada limited liability companies that specify the fiduciary duties of their members in the LLC operating agreement while also reiterating the core concept of limited liability companies: Those entities are creatures of contract and thus exculpation from liability must be strictly construed in the governing agreements. The court's well-reasoned opinion underscores Nevada's growing strength in business law matters and shows its judges are capable of handling complex matters as it looks to create a dedicated appointed business court in the future (Nevada business court judges are currently elected and hear cases in multiple areas of law).

### The Business Judgment Rule in Nevada

Nevada law codifies the business judgment rule as the standard of judicial review for fiduciaries of a corporation in [NRS 78.138\(3\)](#). However, the statutory provisions governing Nevada LLCs do not contain an equivalent statutory business judgment rule for LLC fiduciaries. Similarly, Nevada law codifies corporate exculpation in [NRS 78.138\(7\)](#) but does not have a statutory exculpation provision for LLCs. The reason is straight forward: LLCs are creatures of contract law and parties are presumed to have included the specific provisions necessary to run the business within the context of the statutory code. Nevada permits parties wide latitude in drafting agreements that fit with the parties' preferences for running the business.

### The *Silva v. Clay, et al.* Decision

This case (A-25-909767-B, Nev. Dept. No. IX, July 3, 2025) arose from a dispute between Francisco Silva, the chief science officer of CPI Management Group LLC (CPI), a Nevada limited liability company

providing stem cell therapy treatment, and CPI's other LLC members (the Members). In 2021, Silva and the Members signed an LLC operating agreement, which governed the operation of CPI and expressly provided that each LLC member owed fiduciary duties to the company. The complaint alleges that in 2024, Silva discovered an alleged series of personal cash transfers from CPI to the Members that Silva alleged diverted millions away from CPI to the Members for their own personal gain. Silva brought claims for breach of fiduciary duties, including fiduciary duties of loyalty and care. The Members filed a motion to dismiss, which the court granted in part and denied in part.

The critical issue that the court analyzed was the application of the Nevada business judgment rule to the decisions of the entity's fiduciaries when the operating agreement did not expressly state that the business judgment rule applied to decisions of the entity's members or its managers.

Applying general corporate business principles in Nevada and in reference to legal treatises, law review articles and precedent from other jurisdictions, including Delaware, the court held that the business judgment rule did apply. The court reasoned that because the operating agreement expressly incorporated fiduciary duties, it is *implied* that "the members incorporated the business judgment rule to assess whether they breached those duties." The court concluded that the business judgment rule is meant to be applied to any breach of fiduciary duties, even absent express language setting forth the rule or a similar presumption in an LLC operating agreement, because without that business judgment rule presumption, courts would be forced to second-guess the decisions of business fiduciaries — the exact situation that the presumption in the business judgment rule is meant to prevent.

Notably, however, the court declined to extend NRS 78.138(7) (the exculpation provisions) to the operating agreement at issue. The court reasoned that, while the inclusion of fiduciary duties in an LLC operating agreement implies the existence of the business judgment rule to examine whether they have been breached, it does not imply that the LLC members intended to contract for member exculpation absent an express provision in the agreement. The court referenced the operating agreement's express exculpation provision, which provided certain protections (but not as robust as the statutory provisions) and reasoned that the parties specifically contracted for those limited exculpation provisions.

Applying its reasoning to the case at hand, the court found that Silva's allegations against the Members, which included misappropriation of company assets and opportunities for the Members' personal enrichment and diversion of company funds, were sufficient to rebut the presumption of the business judgment rule with respect to the breach of the duty of loyalty claim. Accordingly, the Members' motion to dismiss was denied. With regards to the duty of care claim, the court dismissed the claim because (1) Silva's allegation that the Members improperly enriched themselves was a breach of the duty of *loyalty*, not the duty of care, and (2) Silva failed to allege any other particularized facts showing that the decisions the Members made, including the decision to terminate him from his position and terminate his membership interest, were grossly negligent or uninformed.

The court's reasoning tracks statutory and common law principles in cases involving complex questions of fiduciary duties. The decision provides clarity for litigants that the business judgment rule does apply to LLCs while also reinforcing the core tenants of limited liability companies — the contract will govern.

### **Key Takeaways and Nevada's Future Appointed Business Court**

First, Nevada businesses, particularly LLCs, should be comforted by the well-reasoned and practical approach to the application of the business judgment rule in Nevada. This decision reinforces the presumption and applies it to those entities that include references to the fiduciary duties of members, managers, officers, and directors.

Second, Nevada LLCs and their managers, members, officers, and directors should be very mindful of the exculpation provisions in the operating agreement. This decision underscores the importance of clear contracts that include fulsome protections for those business decisions, including indemnification and

exculpation, to the fullest extent provided by law and strengthens the strong presumption that LLC governing agreements are matters of contract law and the plain language shall govern with respect to the conduct of its members, managers, officers, or directors. To the extent any Nevada entity believes its governing agreements should be clarified, updated, or reinforced, those entities should promptly contact counsel to ensure adequate protections are put in place.

Third, the decision provides insight into how Nevada's business courts analyze legal issues. Nevada courts generally take a statutory approach to analyzing corporate law matters, but this case shows that in the absence of clear statutory language, they will take a more mixed approach, combining the well-established jurisprudence of other jurisdictions, including Delaware, with legal scholarship and common law principles. As more corporations incorporate in or reincorporate to Nevada, and as more Nevada LLCs are formed, likely leading to an increase in business disputes, the Nevada business courts may develop more of their own legal tests to analyze key issues and begin to further distinguish Nevada from other jurisdictions.

Finally, Nevada eyes a dedicated appointed business court capable of handling large numbers of complex business disputes similar to the Delaware Court of Chancery. Complex business courts require practical and business-minded jurists to manage a considerable number of disputes. Judge Gall's decision is precisely that well-reasoned decision that will provide comfort to business leaders weighing challenging decisions, including whether to reincorporate, reestablish or open new ventures under Nevada law and subject to Nevada courts.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

#### Los Angeles

Tim Reynolds  
+1-213-683-6216

[TimothyReynolds@paulhastings.com](mailto:TimothyReynolds@paulhastings.com)

#### Washington, D.C.

Sean Donahue  
+1-202-551-1704

[seandonahue@paulhastings.com](mailto:seandonahue@paulhastings.com)

Meg Dennard  
+1-202-551-1924

[megdennard@paulhastings.com](mailto:megdennard@paulhastings.com)

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