Litigating the Ledger: Civil Liability for DAO Controllers

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Abstract: Organizations coordinating using blockchain tools nonetheless have a variety of fiduciary duties to their members. Thus, DAO controllers probably have a set of relationships that are not well clarified in practice when it comes to what is the nature of the duty owed token holders by those who exercise. When certain members of DAOs make decisions that materially affect the interests of wider range of DAO members (as evinced by token holdings), these members are exercising the equivalent of managerial control. Whether or not that control is managerial is part of the deep questions that are the subject of ongoing consideration by regulatory authorities around the world. The fiduciary duty of care requires that controllers make decisions that pursue the corporation's interest with reasonable diligence and prudence. A duty of loyalty is where decision makers within the company should act in the interest of the company, and not in their own interest. These, though, are significantly cabined by the business judgment rule, which courts are loath after the fact to disturb every business judgment made precisely because businesses operate in a risky environment. However, there are well-understood exceptions to the business judgment rule involving self-dealing, excessive compensation, inactivity with invested capital, and investments made outside the ordinary course of business. Given the uncertainty surrounding the organizational status of DAOs in many jurisdictions, though, it is likely that civil plaintiffs attorneys are deterred from filing otherwise viable cases. Thus, if the organizational status of DAOs is clarified, it is likely that cases will be brought under the areas of liability I discuss herein.

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