

Breach of Fiduciary Duty: Massachusetts

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A Q&A guide to state law on breach of fiduciary duty in Massachusetts. This guide addresses the elements of a claim for breach of fiduciary duty, pleading requirements, potential remedies, defenses, applicable standards of proof and causation, and related claims that litigants often bring when asserting a breach of fiduciary duty claim.

Elements of Breach of Fiduciary Duty

1. What are the elements of a claim for breach of fiduciary duty in your jurisdiction?

In Massachusetts, the elements of a claim for breach of fiduciary duty are:

- The defendant owed a fiduciary duty to the plaintiff. A fiduciary relationship must exist.
- The defendant breached that fiduciary duty.
- The plaintiff suffered damages.
- A causal connection exists between the breach of the duty and the plaintiff's damages.

(*Estate of Moulton v. Puopolo*, 5 N.E.3d 908, 921 (Mass. 2014); *Baker v. Wilmer Cutler Pickering Hale & Dorr LLP*, 81 N.E.3d 782, 789 (Mass. App. Ct. 2017); *Hanover Ins. Co. v. Sutton*, 705 N.E.2d 279, 288 (Mass. App. Ct. 1999).)

2. What are the ways in which a formal or express fiduciary relationship can be formed in your jurisdiction?

Under Massachusetts law, an express fiduciary relationship may arise from:

- An agreement or contract between parties (*Max-Planck-Gesellschaft Zur Förderung Der Wissenschaften E.V. v. Whitehead Inst. for Biomed. Research*, 2010 WL 2900340, at *1 (D. Mass. July 26, 2010) (applying Massachusetts law); *Element Prods., Inc. v. Editbar, LLC*, 2018 WL 6933315, at *1 (Mass. Super. Nov. 30, 2018)).

- Legal proceedings, such as guardianship proceedings (*Hayes v. Mirick*, 378 F. Supp. 3d 109, 115 (D. Mass. 2019) (applying Massachusetts law); *Baker*, 81 N.E.3d at 789).
- The type of relationship between the parties, such as:
 - doctors and their patients (*Alberts v. Devine*, 479 N.E.2d 113, 120 (Mass. 1985); *Korper v. Weinstein*, 783 N.E.2d 877, 881-82 (Mass. App. Ct. 2003));
 - attorneys and their clients (*Baker*, 81 N.E.3d at 789);
 - real estate brokers and their clients (*Redfern v. Howard*, 2002 WL 1020661, at *2 (Mass. Super. March 20, 2002); see also *NRT New Eng., Inc. v. Moncure*, 937 N.E.2d 999, 1003 (Mass. App. Ct. 2010) (real estate broker has separate fiduciary duty if also serving as escrow agent to parties to an escrow agreement));
 - a corporate director and the corporation and, in certain circumstances, its shareholders (for example, in a close corporation) (*Int'l Brotherhood of Elec. Workers Local No. 129 Benefit Fund v. Tucci*, 70 N.E.3d 918, 924-26 (Mass. 2017); *Demoulas v. Demoulas Super Mkts., Inc.*, 677 N.E.2d 159, 179 (Mass. 1997));
 - shareholders in a close corporation (*O'Brien v. Pearson*, 868 N.E.2d 118, 125 (Mass. 2007));
 - stockbrokers and their clients (depending on the stockbroker's duties) (*In re Murphy*, 297 B.R. 332, 349 (Bankr. D. Mass. 2003) (applying Massachusetts law); *Patsos v. First Albany Corp.*, 741 N.E.2d 841, 848-49 (Mass. 2001) (fiduciary relationship exists where there is a full relation of principal and broker, rather than an ordinary business relationship));
 - trusteeships or other situations where one is tasked with protecting others' interests, such as an executor,



receiver, or administrator (*Rutanen v. Ballard*, 678 N.E.2d 133, 140 (Mass. 1997); *Alford v. Thibault*, 990 N.E.2d 93, 95 n.2 (Mass. App. Ct. 2013); *Hilti, Inc. v. HML Dev. Corp.*, 2007 WL 809792, at *16 (Mass. Super. Feb. 13, 2007)); and

- partners in a partnership (*Meehan v. Shaughnessy*, 535 N.E.2d 1255, 1263 (Mass. 1989)).

(*UBS Fin. Servs., Inc. v. Aliberti*, 133 N.E.3d 277, 289 (Mass. 2019); see also *Locator Servs. Grp., Ltd. v. Treasurer & Receiver Gen'l*, 825 N.E.2d 78, 93 (Mass. 2005) (identifying types of relationships where fiduciary duties arise).)

3. Does your jurisdiction have any statutes that impose fiduciary duties on certain types of relationships (for example, directors of a corporation)? If so, please list some of the more common types of fiduciary relationships in your jurisdiction and the corresponding statute(s).

Yes. The Massachusetts General Laws contain provisions on fiduciary duties that can arise in the relationships between, for example:

- A personal representative of a decedent's estate and an interested person (M.G.L. c. 190B, § 3-703).
- A trustee and a trust beneficiary (M.G.L. c. 203E, § 802).
- A guardian and ward (M.G.L. c. 190B, § 5-209).
- A director of a corporation and the corporation (M.G.L. c. 156D, § 8.30 (describing general standards for directors in discharging their duties); see *Tucci*, 70 N.E.3d at 924-25).
- An officer of a corporation and:
 - the corporation; or
 - the shareholders.
 - (M.G.L. c. 156D, § 8.42 (describing general standards for officers in discharging their duties).)
- A general partner of a limited partnership and:
 - the limited partnership; or
 - the other partners.

(M.G.L. c. 108A, §§ 6, 20, and 21; M.G.L. c. 109, §§ 21, 24, and 62; see also *Karter v. Pleasant View Gardens, Inc.*, 248 F. Supp. 3d 299, 309 (D. Mass. 2017) (applying Massachusetts law and recognizing that partners owe the partnership and other partners fiduciary duties).)

- A partner of a general partnership and:
 - the partnership; or
 - the other partners.(M.G.L. c. 108A, §§ 18, 20, and 21.)

4. Does your jurisdiction recognize fiduciary relationships that may arise based on the facts or circumstances of a case (for example, implied or informal fiduciary relationships)? If so, what is the standard that courts in your jurisdiction use to determine whether a fiduciary relationship exists based on the facts or circumstances of a case?

Yes. Massachusetts courts recognize fiduciary relationships that are implied (*UBS Fin. Servs.*, 133 N.E.3d at 288-290). Whether an implied fiduciary relationship exists generally depends on the facts of the case and the circumstances surrounding the parties' relationship in the underlying transaction at issue (*Doe v. Harbor Schs., Inc.*, 843 N.E.2d 1058, 1064 (Mass. 2006)).

An implied fiduciary relationship may arise when the facts show a relationship in which:

- One party reposes or places trust and confidence in another party.
- That other party is aware of the party's reliance on them.

(*Cahaly v. Benistar Prop. Exch. Tr. Co.*, 864 N.E.2d 548, 560 (Mass. App. Ct. 2007); see also *Doe*, 843 N.E.2d at 1064 (recognizing that courts have not established a comprehensive uniform definition for implied fiduciary relationships because of the varied circumstances in which they arise).)

To be considered an implied fiduciary relationship, the relationship must involve some degree of dependence on one side and some degree of an undertaking by the other side to advise or counsel the less knowledgeable party in business, property, or financial matters. There is a duty on the part of one party to act for the benefit of the other party. (*Doe*, 843 N.E.2d at 1064; *Yousif v. Yousif*, 814 N.E.2d 14, 21 (Mass. App. Ct. 2004); *Collins v. Huculak*, 783 N.E.2d 834, 841 (Mass. App. Ct. 2003).) An implied fiduciary relationship typically does not exist when the parties are dealing at arm's length (*Davidson v. Gen. Motors Corp.*, 786 N.E.2d 845, 849 (Mass. App. Ct. 2003)

(no fiduciary relationship existed where parties expressly agreed that plaintiff had an obligation to perform due diligence on an investment and not rely on the defendant); see Question 9).

Circumstances where Massachusetts courts have found an implied fiduciary relationship include:

- In familial relationships where one party put a high level of trust and confidence in a relative and that relative knew of that trust (see, for example, *Germain v. Girard*, 892 N.E.2d 754, 757 (Mass. 2008); *Sullivan v. Rooney*, 533 N.E.2d 1372, 1374 (Mass. 1989); *Yousif*, 814 N.E.2d at 22).
- When accountants recommend transactions, structure deals, and provide investment advice to their clients in a manner that exerts managerial control (*RTR Techs., Inc. v. Helming*, 815 F. Supp. 2d 411, 432-33 (D. Mass. 2011), *aff'd* on other grounds, 707 F.3d 84 (1st Cir. 2013) (applying Massachusetts law)).

Pleading Breach of Fiduciary Duty

5. What is the pleading standard for a claim for breach of fiduciary duty in your jurisdiction?

Under Massachusetts law, a claim for breach of fiduciary duty is subject to Massachusetts' general fact-pleading standard, which requires a complaint to allege sufficient ultimate facts that:

- Prove each element of the alleged cause of action, as mere conclusions are insufficient (see *UBS Fin. Servs.*, 133 N.E.3d at 289; *Galiastro v. Mortg. Elec. Registration Sys., Inc.*, 4 N.E.3d 270, 275 (Mass. 2014); *Kushner v. Wallace*, 2018 WL 1076491, at *4 (Mass. Super. Jan. 30, 2018)).
- Justify imposing liability on the defendant (see *Rule v. Mass. Mut. Life Ins. Co.*, 49 N.E.3d 697, at *2 (Mass. App. Ct. 2016) (unpublished opinion under Mass. App. Ct. Rule 1:28); *Connolly v. Roman Catholic Archbishop of Bos.*, 2019 WL 2402290, at *6-7 (Mass. Super. May 17, 2019)).

Parties are not required to plead a breach of fiduciary duty claim with particularity (*Clayman v. McLaughlin*, 2017 WL 4508479, at *6 (Mass. Super. Aug. 15, 2017)). However, parties asserting breach of fiduciary duty claims sometimes bring related fraud claims, which a plaintiff must plead with particularity under Massachusetts law (Mass. R. Civ. P. 9(b)).

6. If a heightened pleading standard applies to a claim for breach of fiduciary duty in your jurisdiction, what is the standard that a plaintiff must meet? Does this heightened standard apply when pleading all types of fiduciary relationships, or only when pleading certain types of fiduciary relationships (for example, implied or informal fiduciary relationships)?

Absent fraud, a heightened pleading standard does not generally apply to a breach of fiduciary duty claim under Massachusetts law (see Question 5).

Remedies for Breach of Fiduciary Duty

7. What types of damages are available for breach of fiduciary duty in your jurisdiction?

Depending on the case, various types of damages may be available under Massachusetts law for a breach of fiduciary duty claim, such as:

- Compensatory damages (*MAZ Partners LP v. Shear*, 265 F. Supp. 109, 116 (D. Mass. 2017), *aff'd* sub nom., *In re PHC, Inc. S'holder Litig.*, 894 F.3d 419 (1st Cir. 2018) (applying Massachusetts law and requiring economic loss for compensatory damages award)).
- Consequential damages (*O'Brien*, 868 N.E.2d at 128; *Mullins v. Corcoran*, 2018 WL 2049365, at *1 (Mass. Super. March 27, 2018) (lost profits can be an appropriate measure of damages for breach of fiduciary duty); *Elements Prods.*, 2018 WL 6933315, at *3).
- Prejudgment interest (M.G.L. c. 231, § 6B (permitting prejudgment interest from date of commencement of action for tort claims); *The Woodward Sch. For Girls, Inc. v. City of Quincy*, 13 N.E.3d 579, 599 (Mass. 2014) (holding that M.G.L. c. 231, § 6B inapplicable to claim for breach of trust involving imprudent investment decisions and awarding interest from date of breach); *Lattuca v. Robsham*, 812 N.E.2d 877, 881-82 (Mass. 2004) (applying M.G.L. c. 231, § 6B)).
- Attorneys' fees. A plaintiff can recover attorneys' fees only if authority exists for the award (*Beers v. Tisdale*, 603 N.E.2d 239, 241 (Mass. App. Ct. 1992)). For example, attorneys' fees are appropriate in a derivative action for fiduciary duty claims benefitting a corporate

Breach of Fiduciary Duty: Massachusetts

entity or if authorized by statute (for example, M.G.L. c. 156C, § 57). While a court may award attorneys' fees for a derivative action benefitting the corporation, a plaintiff generally cannot recover attorneys' fees for direct claims benefitting themselves personally (*Beninati v. Borghi*, 61 N.E.3d 476, 487 (Mass. App. Ct. 2016)). An attorneys' fees award is generally discretionary by the judge and not a matter of right (*Coggins v. New Eng. Patriots Football Club, Inc.*, 550 N.E.2d 141, 143 (Mass. 1990)).

A plaintiff can also recover post-judgment interest on a damages award for a breach of fiduciary duty claim (M.G.L. c. 235, § 8; *Bournival v. Ricci Consultants, Inc.*, 2016 WL 3478955, at *6 (Mass. Super. May 20, 2016)).

Massachusetts does not permit an award of punitive or exemplary damages in cases unless expressly authorized by statute (*Citigroup Global Mkts., Inc. v. Salerno*, 445 F. Supp. 2d 124, 126 (D. Mass. 2006) (applying Massachusetts law); *Aleo v. SLB Toys USA, Inc.*, 995 N.E.2d 740, 753 (Mass. 2013); *Haddad v. Wal-Mart Stores, Inc.*, 914 N.E.2d 59, 75 (Mass. 2009)). There are no Massachusetts statutes authorizing punitive or exemplary damages for breach of fiduciary duty claims.

8. What types of equitable relief are available for breach of fiduciary duty in your jurisdiction?

Massachusetts courts have broad equitable powers to remedy breaches of fiduciary duty (*Henderson v. Axiom, Inc.*, 1999 WL 33587312, at *54 (Mass. Super. June 22, 1999)). In cases involving breach of fiduciary duty, money damages may be an insufficient remedy, or a plaintiff may need to seek interim relief before final judgment is made in the underlying dispute. In these cases, a plaintiff may plead a variety of equitable relief (as applicable) for a breach of fiduciary duty claim under Massachusetts law, including, for example:

- Injunctive relief (*Cain v. Cain*, 334 N.E.2d 650, 657 (Mass. App. Ct. 1975) (injunctive relief against competition); *Serrano v. Serrano*, 2011 WL 3930207, at *1 (Mass. Super. June 24, 2011) (preliminary injunction preventing special meeting of stockholders)).
- A declaratory judgment (M.G.L. c. 231A, § 1; *Hanover Ins.*, 705 N.E.2d at 296 (declaratory judgment affirmed against former vice president improperly diverting a corporate opportunity for the vice president's own benefit)).
- An accounting (*Dapkus v. Dapkus*, 2012 WL 5984823, at *12 (Mass. Land Ct. Nov. 29, 2012) (accounting granted

to plaintiff as remedy where trustee breached the trustee's fiduciary duty to beneficiary)).

- A constructive trust (*Genesis Tech. & Fin., Inc. v. Cast Navigation, LLC*, 905 N.E.2d 569, 576-77 (Mass. App. Ct. 2009) (constructive trust available in breach of fiduciary duty cases to restore property to rightful owner and prevent unjust enrichment)).
- Disgorgement of profits, fees, or commissions received because of the breach of fiduciary duty (*Berish v. Bornstein*, 770 N.E.2d 961, 978 (Mass. 2002) (profits gained from breach of fiduciary duty subject to disgorgement); *Demoulas*, 677 N.E.2d at 195).
- Rescission or reformation (*Demoulas v. Demoulas*, 703 N.E.2d 1149, 1169 (Mass. 1998) (rescission may be ordered to avoid unjust enrichment of the fiduciary at the expense of the beneficiary or reformation of an agreement to correct a wrongdoing); *Michaud v. Forcier*, 934 N.E.2d 860, 866 (Mass. App. Ct. 2010)).

Defenses to Breach of Fiduciary Duty

9. What are the common defenses that a defendant may assert in response to a breach of fiduciary duty claim in your jurisdiction?

Common defenses asserted in response to a breach of fiduciary duty claim under Massachusetts law include:

- The claim is barred by the statute of limitations (M.G.L. c. 260, § 2A; *Kury v. Calechman*, 2007 WL 3014930, at *4 (Mass. Super. Feb. 2007); see Question 12).
- The business judgment rule protects the defendant from liability for breach of fiduciary duty (*Harhen v. Brown*, 730 N.E.2d 859, 865 (Mass. 2000); see Question 10).
- The defendant can prove that they had a legitimate business purpose in taking the action that caused the alleged breach (*Pointer v. Castellani*, 918 N.E.2d 805, 816 (Mass. 2009); *O'Brien*, 868 N.E.2d at 125 (in context of shareholders in a close corporation, no liability unless plaintiff shows that the legitimate business purpose may have instead been reached using a less harmful, reasonably practicable mode of action)).
- The defendant acted in compliance or in good faith with the terms of the contract or documents governing the parties' relationship (*Allison v. Eriksson*, 98 N.E.3d 143, 152 (Mass. 2018) (recognizing defense under M.G.L. c. 156C § 63(b) for a member's or manager's good faith

reliance on an operating agreement); *Chokel v. Genzyme Corp.*, 867 N.E.2d 325, 331 (Mass. 2007) (claims falling entirely within the scope of a contract between the directors and shareholders are not subject to fiduciary duty principles); *Homeowner's Rehab, Inc. v. Related Corp. V SLP, LP*, 2016 WL 7077901, at *9 (Mass. Super. Sept. 13, 2016)).

- The duty that the defendant allegedly breached is beyond the scope of the fiduciary relationship (*Korper v. Weinstein*, 783 N.E.2d 877, 881 (Mass. App. Ct. 2003)).
- The party waived any breach of fiduciary duty claim (see *Sinsheimer v. Burke*, 79 N.E.3d 1112, at *2, *4 (Mass. App. Ct. 2017) (unpublished opinion under Mass. App. Ct. Rule 1:28)).
- No fiduciary relationship exists under Massachusetts law because the relationship at issue is at arm's length, such as that between:
 - a bank and its customers (*Lechoslaw v. Bank of Am., N.A.*, 575 F. Supp. 2d 286, 297 (D. Mass. 2008) (applying Massachusetts law); but see *Bakis v. Nat'l Bank of Greece, S.A.*, 1998 WL 34064622, at *13 (Mass. Super. Dec. 15, 1998) (departing from general rule against fiduciary relationship because of bank's conduct and superior knowledge));
 - a lender and a borrower (*Fernandes v. Havkin*, 731 F. Supp. 2d 103, 110 (D. Mass. 2010) (applying Massachusetts law); *Clark v. Rowe*, 701 N.E.2d 624, 629 (Mass. 1998); see *Pimental v. Wachovia Mortg. Corp.*, 411 F. Supp. 2d 32, 39 (D. Mass. 2006) (applying Massachusetts law)); and
 - an insurer or insurance broker and a policyholder (unless special circumstances of assertion, representation, reliance exist) (*Szymanski v. Bos. Mut. Life Ins. Co.*, 778 N.E.2d 16, 27 (Mass. App. Ct. 2002); *Baldwin Crane & Equip. Corp. v. Riley & Rielly Ins. Agency, Inc.*, 687 N.E.2d 1267, 1269 (Mass. App. Ct. 1997)).

10. How does your jurisdiction define and apply the business judgment rule? Are there statutes or regulations that govern the business judgment rule in your jurisdiction?

The business judgment rule protects the business decisions of directors, officers, and other fiduciaries by presuming that they acted in the best interest of a company or other entity (*Halebian v. Berv*, 931 N.E.2d 986, 991 n.11 (Mass. 2010); *Harhen*, 730 N.E.2d at 865; *W. Inv., LLC v. Deutsche Multi-Mkt. Income Tr.*, 2017 WL 1103425, at *4 (Mass. Super. February 6, 2017) (applying business judgment rule to board of trustees)). It generally shields

decisionmakers from personal liability for breach of fiduciary duty and other claims related to their business decisions made reasonably in good faith (*Keros v. Mass. Mut. Life Ins. Co.*, 958 F. Supp. 2d 306, 311 (D. Mass. 2013) (applying Massachusetts law); *Halebian*, 931 N.E.2d at 991 n.11).

The business judgment rule in Massachusetts evolved from common law. The rule has been codified in several statutes for directors, officers, and incorporators of business corporations and other entities, including providing:

- A complete defense for a director, officer, and incorporator performing their duties in good faith and in a manner in the corporation's best interests (M.G.L. c. 156B, § 65).
- For the dismissal of derivative proceedings commenced after rejection of a shareholder demand (M.G.L. c. 156D, § 7.44; see also *Halebian*, 931 N.E.2d at 991 & n.11).
- A presumption of validity for directors in their individual capacity (M.G.L. c. 156D, § 8.30).
- A presumption of validity for officers in their individual capacity (M.G.L. c. 156D, § 8.42).

However, a plaintiff may overcome the business judgment rule defense by rebutting its application or by showing that the defendant's conduct falls into one of the exceptions to the business judgment rule (*Johnson v. Witkowski*, 573 N.E.2d 513, 722 (Mass. App. Ct. 1991); *Pinchuck v. State St. Corp.*, 2011 WL 477315, at *15 (Mass. Super. Jan. 19, 2011)). For example, the business judgment rule does not apply to self-dealing or illegal actions (*In re Dehon, Inc.*, 334 B.R. 55, 66 (Bankr. D. Mass. 2005) (applying Massachusetts law); *Starr v. Fordham*, 648 N.E.2d 1261, 1266 (Mass. 1995)).

In a derivative action, the burden of proof for applying the business judgment rule to a determination that derivative proceedings are not in the corporation's best interests following a shareholder demand depends on whether the decisionmakers were independent or interested parties. If a majority of the directors or appropriate parties were independent, to prevent application of the business judgment rule the plaintiff must plead and prove that the decisionmakers were not independent or did not act in good faith after reasonable inquiry. However, if a majority of the decisionmakers were not disinterested, the business judgment rule's presumption of validity does not apply and the corporation must prove that the determination regarding the shareholder demand was reasonable and principled. (M.G.L. c. 156D, § 7.44(e); *Drafters' Comment 2 to M.G.L. c. 156D, § 7.44.*)

11. Are there any doctrines, rules, or other authorities in your jurisdiction that may prevent a plaintiff from recovering damages or asserting a claim for both breach of fiduciary duty and another type of claim (for example, breach of contract)?

Under Massachusetts law, a plaintiff generally may not recover purely economic losses in tort and strict liability actions in the absence of personal injury or property damages (*Wyman v. Ayers Props., LLC*, 11 N.E.3d 1074, 1081 (Mass. 2014); *Herbert A. Sullivan, Inc. v. Utica Mut. Ins. Co.*, 788 N.E.2d 522, 543 (Mass. 2003)). However, Massachusetts courts have not applied the economic loss doctrine to tort claims against a fiduciary (*Szulik v. State St. Bank and Tr. Co.*, 935 F. Supp. 2d 240, n.11 (D. Mass. 2013) (applying Massachusetts law); *Clark v. Rowe*, 701 N.E.2d 624, 626-27 (Mass. 1998); *Harris Acquisition Tr. v. Botwinik*, 2017 WL 7693450, at *4 (Mass. Super. Dec. 22, 2017)).

A plaintiff may assert a breach of fiduciary duty claim with other claims, such as breach of contract or conversion (see, for example, *Trowt v. Silva*, 2014 WL 7506856, at *8 (Mass. Super. Oct. 31, 2014) (entering judgment for plaintiff on the plaintiff's breach of contract, breach of fiduciary duty, and conversion claims)). However, the court can dismiss duplicative claims (see, for example, *Van Brode Grp., Inc. v. Bowditch & Dewey*, 633 N.E.2d 424, 428 & n.10 (Mass. App. Ct. 1994) (dismissing breach of fiduciary duty claim as duplicative of legal malpractice claim); *Hamadi Al Tamimi*, 2018 WL 9963869, at *5 (Mass. Super. Mar. 26, 2018) (dismissing claims for breach of contract and violation of the covenant of good faith and fair dealing as duplicative of breach of fiduciary duty and legal malpractice claims)).

12. What is the statute of limitations for asserting a breach of fiduciary duty claim in your jurisdiction? When does the statute of limitations period begin to run for a breach of fiduciary duty claim in your jurisdiction?

Under Massachusetts law, the applicable statute of limitations for most breach of fiduciary duty claims in the context of commercial litigation is the three-year statute of limitations for tort claims (M.G.L. c. 260, § 2A; *Demoulas*, 677 N.E.2d at 172 (applying tort statute of limitations when claim involves diversion of corporate opportunities or self-dealing)). The limitations period begins to run when the plaintiff has actual knowledge

of the alleged breach committed by the fiduciary (*Hays v. Ellrich*, 31 N.E.3d 1064, 1073-74 (Mass. 2015); *Martin v. Martin*, 2019 WL 4546584, at *6 (Mass. Super. Apr. 18, 2019)).

However, the six-year statute of limitations for contract claims applies if the court determines that a breach of fiduciary duty claim sounds in contract rather than in tort (M.G.L. c. 260, § 2; *Resolution Tr. Corp. v. Gladstone*, 895 F. Supp. 356, 374 (D. Mass. 1995) (applying Massachusetts law and holding that statute of limitations for contract actions applied where fiduciary duty arose from implied contractual relationship); *Barber v. Fox*, 632 N.E.2d 1246, 1249 (Mass. 1994) (applying contract statute of limitations where alleged breach of fiduciary duty based on breach of an agreement)).

Certain exceptions may also apply to toll or suspend the statute of limitations period once a claim has accrued (see Question 13).

13. Are there any doctrines, rules, or other authorities that courts in your jurisdiction may apply to toll or suspend the statute of limitations period for a breach of fiduciary duty claim?

Under Massachusetts law, courts allow for flexibility and toll the limitations period for a breach of fiduciary duty claim until the plaintiff has actual knowledge of their injury (*Doe*, 843 N.E.2d at 1065-66 (mere suspicion or mere knowledge that the fiduciary has acted improperly does not amount to actual knowledge of harm); *Lattuca*, 812 N.E.2d at 884 (constructive knowledge is insufficient)).

The statute of limitations period for breach of fiduciary claims may be tolled under the doctrines of:

- Repudiation of trust. Applies where a defendant standing in a fiduciary relationship towards another breaches that trust. The cause of action does not accrue until the defendant trustee repudiates the trust and the plaintiff beneficiary has actual knowledge of the repudiation. (*Lattuca*, 812 N.E.2d at 884-85; *Demoulas*, 677 N.E.2d at 173.)
- Fraudulent concealment. To establish fraudulent concealment when a fiduciary duty of disclosure exists, the plaintiff must show that the defendant failed to adequately disclose the facts on which the cause of action is based. The statute of limitations tolls until the plaintiff obtains actual knowledge of the facts. (M.G.L. c. 260, § 12; *Micromuse*,

Inc. v. Micromuse, PLC, 304 F. Supp. 2d 202, 214 (D. Mass. 2004) (applying Massachusetts law and noting that the plaintiff need not make an independent investigation); *Patsos*, 741 N.E.2d at 847; *Demoulas*, 677 N.E.2d at 174.) Alternatively, fraudulent concealment can occur when the defendant performs an affirmative act with an intent to deceive (M.G.L. c. 260, § 12; *Stark v. Advanced Metrics, Inc.*, 736 N.E.2d 434, 442 (Mass. App. Ct. 2000)).

For a discussion of exceptions and tolling that may generally apply to a statute of limitations defense, see [State Q&A, Statutes of Limitations: Massachusetts: Question 24](#).

Proving Breach of Fiduciary Duty

14. What is the standard of proof that a party seeking to prove a breach of fiduciary duty claim must satisfy in your jurisdiction? Are there circumstances under which a defendant may have the burden of proof on one or more elements of a breach of fiduciary duty claim in your jurisdiction?

A party asserting breach of fiduciary duty generally has the burden of proving the claim by providing sufficient evidence (*Cahaly*, 864 N.E.2d at 560; *Lambert-Egan v. Lambert*, 2018 WL 6184623, at *4 (Mass. Super. Sept. 12, 2018); *Trowt*, 2014 WL 7506856, at *8). The plaintiff also bears the burden of proving the existence of a fiduciary relationship if it is not one created by law (*Doe*, 843 N.E.2d at 1064; *Germain*, 892 N.E.2d at 757; *Scott v. Mage*, 2014 WL 1118013, at *10 (Mass. Super. Feb. 24, 2014); see Question 4). The plaintiff must prove its claim by a preponderance of the evidence (*Bos. Prop. Exch. Transfer Co. v. Iantosca*, 834 F. Supp. 2d 4, 8 (D. Mass. 2011) (applying Massachusetts law)).

However, in certain types of cases, the burden of establishing that a fiduciary duty was breached may shift to the defendant (see, for example, *Cleary v. Cleary*, 692 N.E.2d 955, 961 (Mass. 1998) (any fiduciary that benefits from a transaction with the person represented by the fiduciary bears the burden of proving that the transaction did not breach a fiduciary duty); *Pollock v. Marshall*, 462 N.E.2d 312, 321 (Mass. 1984) (attorney must show independent advice was provided to the client or that they neutralized their influence over the client when a claim involves a transaction between the attorney and client)).

15. If causation is an element of a breach of fiduciary claim in your jurisdiction, what is the applicable standard for proving the causation element?

Causation is an element of a breach of fiduciary claim in Massachusetts (*Meehan*, 535 N.E.2d at 1265 (there must be a causal connection between an injury and the breach of fiduciary duty); see Question 1). A plaintiff must show that the defendant's breach of fiduciary duty proximately caused injury to the plaintiff (see *O'Brien*, 868 N.E.2d at 127 (recovery of damages requires a showing that losses were proximately caused by the defendants' wrongful conduct); *Augat, Inc.*, 565 N.E.2d at 421; *Desmarais v. Price*, 2019 WL 8331442, at *26 (Mass. Super. Nov. 13, 2019)).

Related Claims

16. Does your jurisdiction recognize claims for aiding and abetting a breach of fiduciary duty? If so, what are the elements of the claim?

Yes. Massachusetts law recognizes a claim for aiding and abetting breach of fiduciary duty, which arises when one defendant has helped cause another defendant's breach of its fiduciary duty to the plaintiff. Both the fiduciary and non-fiduciary defendant may be liable to the plaintiff. (See, for example, *Augat, Inc.*, 565 N.E.2d at 419.)

To assert a valid claim for aiding and abetting breach of fiduciary duty, a plaintiff must allege facts establishing that:

- The primary wrongdoer owed the plaintiff a fiduciary duty and breached that duty, proximately causing the plaintiff's damages (see Elements of Breach of Fiduciary Duty).
- The aider and abettor knew of the breach. A plaintiff should plead facts showing that the aider and abettor had actual knowledge of the breach.
- The aider and abettor actively participated in, substantially assisted with, or encouraged the wrongdoing so that they may not be reasonably held to have acted in good faith.

(*Prof'l Servs. Grp., Inc. v. Town of Rockland*, 515 F. Supp. 2d 179, 192 (D. Mass. 2007) (applying Massachusetts law); *Arcidi v. Nat'l Ass'n of Gov't Emps., Inc.*, 856 N.E.2d 167, 174 (Mass. 2006); *Spinner v. Nutt*, 631 N.E.2d 542, 546 (Mass. 1994).)

Miscellaneous

17. Are there other significant things that litigants should know when asserting or defending a breach of fiduciary duty claim in your jurisdiction that the above questions do not cover?

No.

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