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Derek Jeter Sued for Breach of Fiduciary Duty

By Melissa J. Anderson August 15, 2016

Retired **New York Yankees** star **Derek Jeter** will face claims that he breached the terms of his director contract and lied to investors while serving on the board of **RevolutionWear**, a luxury underwear manufacturer headquartered in New York, following a ruling by the **Delaware Chancery Court** last month.

Jeter had joined the board of the company in 2011 in a so-called reverse endorsement deal, which would, in theory, enable the future Hall of Famer to avoid breaking his lucrative endorsement contract with **Nike** by serving on RevolutionWear's board instead of simply promoting its products.

After joining the board and purchasing a significant stake in the company, Jeter refused to allow RevolutionWear to publicize his new role, which the company says harmed its ability to reach new customers and raise investment capital. Jeter denies he was responsible for the company's financial misfortunes.

"This case provides a cautionary tale of the mixing of roles in a corporate-governance setting," vice chancellor **Sam Glasscock** said in his ruling denying Jeter's motion to dismiss the case.

According to Glasscock, RevolutionWear presumed the reverse endorsement "would appear more sincere to the underpants-buying public than would a standard paid endorsement."

Experts say these arrangements are unusual. Moreover, they warn, boards interested in employing an athlete or celebrity as a director should take extra care to ensure that all parties understand their roles and responsibilities. The company may actually benefit more from having the athlete or celebrity serve on an advisory board rather than as a full-fledged director, attorneys say.

"In my experience, businesses oftentimes make missteps with respect to athletes," says **Jeffrey Klein**, chair of the employment litigation practice at **Weil, Gotshal & Manges**.

"They have blind spots with respect to how to think about athletes either in a limiting fashion, or they have blind spots because they are fans. And that's not a good formula for negotiation," he says.

Case Details

Jeter's March 2011 director agreement with RevolutionWear states that the company was permitted to publish a press release, subject to his approval, saying that he had joined the board. RevolutionWear offered several drafts of press releases, which Jeter repeatedly refused to sign off on, according to court documents.

Derek Jeter

A year later, Jeter told the board he would not give his permission to announce his board role publicly unless RevolutionWear changed the marketing of its signature underwear line to indicate it was a "fashion undergarment" instead of a "sports undergarment," because he was nervous his connection to a sports apparel company could impact his Nike deal, the company alleges. Previously, Jeter's attorneys had indicated that the Nike contract featured a carve-out specifically for his relationship with RevolutionWear, although they never provided a copy of the Nike contract to the board.

By November 2013, Jeter's attorney had informed RevolutionWear that he would not give his permission to publicize his role on the board, due to the Nike contract. He would, he said, allow the company to include a statement in a press release noting his "excitement" about the product, without referring to his connection to the company.

Meanwhile, as a board director, Jeter attempted to bring in a management consultant to lead the company through financial troubles, and later attempted to buy enough stock to make himself the company's largest shareholder, although he was unable to do so and his ownership stake remained at 15%.

The company was never able to procure Jeter's approval of the press release announcing his board role by the time his directorship ended in June 2015.

RevolutionWear brought several claims against Jeter, even alleging he purposely sought to tank the company so he could sell its patents to Nike. Many of the claims, including that one, were dismissed by the court. However, Glasscock upheld the claim that Jeter had breached the implied covenant of good faith and fair dealing with respect to the press release, which was included in the terms of his director contract. The claim that Jeter fraudulently induced the board to agree to the terms of the director contract also survived the motion to dismiss. Finally, Glasscock also allowed a claim that Jeter had breached his fiduciary duty to investors.

Fiduciary Duties

As Glasscock says in his case, "RWI's allegations, in my mind, illustrate the difficulties that may arise in the fiduciary duty context when a corporation expects its directors to perform acts outside of their traditional fiduciary role."

According to court documents, Jeter had told RevolutionWear's investors several times in person that the company would soon announce his participation as a board director. Eventually, as the announcement was not forthcoming, investors began to suspect it would never happen, and they lost faith in the company, slowing the investment pipeline, RevolutionWear alleges. According to the company, this behavior violated Jeter's duty of loyalty to act in the best interests of the company. The claim survived the motion to dismiss.

In his ruling, Glasscock pointed out that many of RevolutionWear's complaints about Jeter stem from his acting like a director instead of like the "promoter manqué that RWI apparently intended he be."

The lack of clarity surrounding Jeter's role as both a director and as a celebrity endorser are at the root of the case, legal experts say.

"Other members on the board have to ask, 'Why are we asking this person [to join the board]? Is it to get a publicity bump, or do we want them to act like a board member?'" asks **Christopher Chase**, a partner at **Frankfurt Kurnit Klein & Selz** who focuses on advertising, sports and entertainment law.

"That's a risk," he says. "If a celebrity is going to be a true board member, they're going to act like one."

After all, in inviting an athlete or celebrity to become a director, the board is handing him or her quite a bit of strategic and fiduciary power. The case shows what can go wrong when neither the board nor the athlete seems to fully understand what that means, Chase says.

"There is an argument from RevolutionWear that Jeter was trying to benefit himself by pushing the strategy [a certain] way, but this can happen with any board, with any person. You can have a 70-year-old banker pushing his own agenda," Chase says.

Chase recommends that if boards want to tap athletes or celebrities for their unique skills or knowledge of a market, they may benefit more by asking them to join an advisory board rather than as a board director.

In addition to adding clarity to roles and responsibilities of the athlete or celebrity, under an advisory board arrangement executives and the board of directors can consider his or her advice without always having to act on it. Similarly, many athletes and celebrities might not want to take on the fiduciary rigor, liability, or time commitment of serving on a corporate board.

Both Chase and Klein also suggest that if companies are worried that a paid endorsement by an athlete or celebrity may not seem sincere to the general public, instead of offering a board seat in a reverse endorsement deal, they could offer equity in the company.

This type of arrangement has been pursued by **UnderArmour**, for example, which has offered stock compensation to athletes such as **NBA** star **Stephen Curry**, **NFL** quarterback **Tom Brady** and golf prodigy **Jordan Spieth**. Tennis champion **Serena Williams** boasts equity deals with **Home Shopping Network** and **Mission Athletecare**.

"It aligns the corporation with the athlete him- or herself, and makes sure the parties are on the same page, because they have skin in the game now," Chase says.

Meanwhile, if a board insists on including unique contingencies of service in a director's agreement, they should proceed with caution, writes **Steve Mader**, vice chairman and managing director of board services practice at **Korn Ferry**, in an e-mail.

"Further, receiving any compensation whatsoever associated with singular service is highly scrutinized and regulated. A board better be ready to document it in the proxy and to defend it," he writes.