

## RESEARCH REPORT

---

**To:** Sample A. Client, Esq.

**Date:** January 1, 2017

**Evaluate the proposition: How do courts apply the corporate opportunity doctrine when evaluating whether a corporate director or officer is liable for usurping an opportunity that belonged to an organization?**

**Jurisdiction:** Ohio

---

1. “In Ohio, case law establishes that the so-called ‘line of business’ test is used to identify corporate opportunities which directors or officers may not appropriate for themselves.” *Eder v. M.D.F. Enterprises, Inc.*, 8th Dist. Cuyahoga No. 52667, 1988 Ohio App. LEXIS 1257, \*7 (Apr. 7, 1988), citing *Michals Enterprises Inc. v. Alexandrou*, 8th Dist. Cuyahoga No. 48016 (Nov. 21, 1984). The test requires four elements: “(1) defendants were officers and/or directors of a corporation; (2) in such fiduciary capacity, each defendant acquired knowledge of an investment or business opportunity; (3) the opportunity was in the line of the corporation’s business; and (4) the opportunity would be advantageous to the corporation and the corporation is able to accept the opportunity.” *Id.* at \*8-9.

2. Courts have taken a broad view of what constitutes an opportunity. “[B]ecause of the broad concept of fiduciary responsibility it would seem appropriate that any conduct taking advantage of a corporate situation to aid a second corporation at the expense of the first would involve a breach of fiduciary duty. Here there is involved no line of business opportunity in the sense that some new customer or source of stone was misused. . . . Today, because of the impact of tax laws, many ‘business opportunities’ involve adjustments directed to tax reductions.” *Flinn v. Hardin Quarry Co.*, 3d Dist. Hardin No. 6-80-1, 1980 Ohio App. LEXIS 11123, at \*10-11 (Sep. 12, 1980).

3. Courts may apply the corporate opportunity doctrine to situations where the company that was denied the opportunity would have been able to expand its line of business to advantage of it. In *Columbus Homes Ltd. v. S.A.R. Constr. Co.*, 10th Dist. Franklin Nos. 06AP-759, No. 06AP-760, 2007-Ohio-1702, the appellant-fiduciary operated a business to construct multi-family apartment complexes (SARBG) which he contended was not in the same line of business as SAR Construction. SAR built single family homes as its primary business, but it had begun, or prepared, at least, to also construct apartments. The trial court ruled that both companies were in “the business of residential construction,” and the appellate court upheld that finding. *Id.* at ¶ 61. The court ruled that the SARBG opportunity had been wrongfully denied to SAR Construction.

4. “Where a corporation is engaged in a certain business, and an opportunity is presented to it embracing an activity as to which it has fundamental knowledge, practical experience and ability to pursue, which, logically and naturally, is adaptable to its business having regard for its financial position, and is one that is consonant with its reasonable needs and aspirations for expansion, it may be properly said that the opportunity is in the line of the corporation’s business.” *Guth v. Loft, Inc.*, 5 A.2d 503, 514 (Del. 1939) (applying Delaware law).

*Guth* is perhaps the touchstone case regarding the corporate opportunity doctrine. The case involved an opportunity to get involved with Pepsi-Cola in its early days. Loft, Inc. operated candy and soda fountains. Loft’s president, Guth, took control of Pepsi following a chain of events that began with Guth’s decision to stop selling Coca-Cola in Loft’s stores. The Supreme Court of Delaware determined that Guth wrongfully denied the corporate opportunity to Loft. While Loft did not primarily manufacture soda syrup, “[t]he manufacture of syrups was one of Loft’s not unimportant activities. [Loft] had the necessary resources, facilities, equipment, technical and practical knowledge and experience.” *Id.* at 514. Pepsi’s business was “reasonably within the scope of” Loft’s activities, given that “latitude should be allowed for development and expansion.” *Id.* Moreover, “Loft had a practical and essential concern with respect to some cola syrup

with an established formula and trademark.” *Id.* “When Guth determined to discontinue the sale of Coca-Cola in the Loft stores, it became, by his own act, a matter of urgent necessity for Loft to acquire a constant supply of some satisfactory cola syrup.” *Id.*

5. “Where corporation officers fail as fiduciaries to protect the interests of their corporation . . . such officers may be required to transfer, to the corporation, the opportunity of which they have personally taken advantage, and account to the corporation for their inequitable profits.” *Hubbard v. Pape*, 2 Ohio App. 2d 326, 329-30, 203 N.E.2d 365 (1st Dist. 1964).

Example