

No. 24-2000

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

YOON DOELGER; PETER DOELGER,

Plaintiffs-Appellants,

v.

JPMORGAN CHASE BANK, N.A.; CHICKASAW CAPITAL MANAGEMENT, LLC

Defendants-Appellees,

On Appeal from the United States District Court
for the District of Massachusetts

**REPLY AMICUS CURIAE BRIEF OF PUBLIC INVESTORS ADVOCATE
BAR ASSOCIATION IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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STATEMENT OF INTEREST OF THE AMICUS CURIAE

Public Investors Advocate Bar Association (PIABA) is a bar association comprised primarily of attorneys who represent members of the investing public. The mission of PIABA is to promote the interests of and to help protect the investing public. PIABA also advocates for public education regarding investment fraud and industry misconduct. PIABA often issues comment letters regarding FINRA rule changes, testifies to government agencies and Congress, and files *amicus* briefs on many issues relating to the protection of the investing public—the people and businesses who give corporations the capital needed to drive economic activity in the United States. Particularly relevant here, PIABA members often represent people harmed by low-quality financial advice.

No party's counsel has authored this brief in whole or in part or contributed money intended to fund preparing or submitting this brief. This brief was funded only by PIABA.

SUMMARY OF THE ARGUMENT

Defendants JPMorgan Chase Bank, N.A. (JPMC) and Chickasaw Capital Management, LLC (Chickasaw) and their Amici¹ ignore the controlling law, factual record, and public policies imposing unwaivable duties of care, loyalty, and good

¹ Professor Allen Ferrell, the Chamber of Commerce of the United States of America (Chamber), the Associated Industries of Massachusetts (AIM), and the Securities Industry and Financial Markets Association (SIFMA).

faith on investment fiduciaries.² They distort well-established fiduciary law to argue that time-tested principles are unworkable in today's financial world, so the Court should allow investment fiduciaries to contractually eliminate much of their fiduciary duties to the detriment of all retail investors in this Circuit. *E.g.*, SIFMA Br. at 3–5; Ferrell Br. at 7; Chamber/AIM Br. at 5. In doing so, they misstate PIABA's original arguments supporting Plaintiffs, fight strawmen, and use scare tactics to push a rule which allows someone to call himself a fiduciary but not have to act like it.

PIABA urges this Court to uphold the law recognizing that fiduciary and contract law are independent legal concepts, and hold that an investment fiduciary's duties cannot be contractually diminished. Reversal will not “craft[] a new rule,” as Defendants' Amici claim. *See* Chamber/AIM Br. at 24. Affirming will. This Court therefore should hold that the district court erred in finding that Appellees could disavow these duties to Appellants.

² While Defendants' Amici all facially support JPMC and Chickasaw, they only advance arguments in support of JPMC. This gives Defendants' Amici license to largely avoid the fiduciary obligations and restrictions under the Investment Advisers Act of 1940 and SEC guidance. *E.g.*, SIFMA Br. at 26 (“Thus, *Amici*'s discussion of the IAA and related SEC guidance is irrelevant.”); Chamber/AIM Br. at 7 (stating the SEC's guidance “has no bearing on Plaintiffs' claims”). Of course, those laws are relevant to Chickasaw, which subject to them. Defendants' Amici also cannot demonstrate how those principles are not persuasive as to JPMC and the common law fiduciary duties it owes.

ARGUMENT

I. Defendants’ Amici Ignore the Difference Between Limiting the Scope of a Fiduciary Duty and Limiting its Substance.

Defendants and their Amici focus their arguments on limiting the scope of a fiduciary duty as opposed to its substance. The essence of their argument is that Defendants’ limitations are on scope only and therefore proper. *E.g.*, Chamber/AIM Br. at 16–17. PIABA agrees there is a difference between these limitations. But for all the protestations of Defendants and their Amici, they ignore this difference.

But first, PIABA starts where all agree. All agree that Defendants were the Doelger’s fiduciaries. *E.g.*, Chamber/AIM Br. at 16–17. All agree that parties can limit the scope of a fiduciary relationship. *E.g.*, Chamber/AIM Br. at 5 (“Put simply, scope-shaping is not the same as duty-waiving, and the former is entirely permissible.”). For example, a lawyer can represent a client in one matter but not another. An investment adviser can offer some services or manage some accounts, but not others. A trust instrument can limit the scope of a trustee’s powers. The pages devoted to arguing that PIABA suggests “[a]ll [i]nvestment [p]rofessionals” are treated identically and “investment professionals cannot limit the scope of their fiduciary duties by contract” therefore are gratuitous, as PIABA never made those arguments. *E.g.*, SIFMA Br. at 21–24. And all agree that a fiduciary cannot disclaim its obligations. *E.g.*, Chamber/AIM Br. at 9 (“Since these types of fiduciary relationships arise by operation of law, their fiduciary nature typically cannot be

eliminated ‘wholesale’ by contract.”); SIFMA Br. at 18 (“SIFMA does not argue—and does not understand Appellants to argue—that investment professionals or other fiduciaries may fully disclaim these duties via contract.”)

Now to where we disagree. Despite recognizing the difference, Defendants and their Amici pass limitations on substance (such as limiting liability to only gross negligence) off as limitations on scope. If accepted, this would grant advisors free rein to gut the duties owed to their clients. *See infra* pp. 12–13. To help secure this result, Defendants’ Amici resort to fearmongering based on the fiction that the issue here is one of scope. *E.g.*, Chamber/AIM Br. at 5 (“If *every* investor-advisor relationship (and the corresponding fiduciary duties pertaining to that relationship) were limitless, costs would skyrocket Plaintiffs’ proposed rule could price many investors out of those investment-advisory services altogether, not to mention shutter the small businesses that overwhelming cater to individual investors.”). But these concerns disappear once the proper framework is applied: first identify the scope, then apply the duty within that scope.

A spade must be called a spade. When substance is correctly viewed as substance, the district court’s error in allowing Defendants to shield themselves from liability when acting within the scope of their fiduciary relationship becomes clear.

II. Defendants Limited the Substance of their Fiduciary Duties.

The contractual language at issue does not define the services which Defendants will provide, *i.e.*, scope. The agreements do that elsewhere. It instead limits the liability when the provision of those services goes awry:

Except as otherwise provided by law, JPMC’s sole liability and that of Morgan Affiliates to the Doelgers shall be any direct damages Plaintiffs incur because of JPMC or Morgan Affiliates’ gross negligence or willful misconduct.

ADD87. That is a prototypical limit on the substance of a fiduciary duty from the duty of care, loyalty, honesty, and fair dealing—the punctilio of an honor the most sensitive—to imposing liability for gross negligence or willful misconduct only. Under it, JPMC can violate the traditional fiduciary duty when providing agreed-upon services but not be liable. *See* PIABA Br. at 13–15 (explaining that breach of fiduciary encompasses ordinary negligence).

Defendants and their Amici never explain how this is a limit on scope and not substance. They either ignore this language and still claim that the issue presented is one of scope (Professor Farrell and the Chamber/AIM), or they discuss this language without calling it a limitation on substance (Defendants and SIFMA). Also, many cases they cite are inapposite. For example, they often cite *Patsos v. First Albany Corp.*, 741 N.E.2d 841 (Mass. 2001), which concerned whether a fiduciary duty existed between a broker and its client. *Id.* at 847–52. That is not an issue here, and

Patsos did not discuss whether the broker could contractually limit his liability. Similarly, many other cases they cite address the scope of the investment fiduciary's services, not the substance of the duty owed when performing them. Regardless, they are united in arguing that Defendants can limit their fiduciary duties by contract, even if it means not fulfilling their fiduciary obligations when performing the agreed-upon services. *E.g.*, SIFMA Br. at 3–5; Ferrell Br. 8; Chamber/AIM Br. at 5.

This argument cannot bear the weight Defendants and their Amici place on it. Illustrative is the Chamber/AIM's example of an advisor contractually limited to investing in environmentally friendly investments. Chamber/AIM Br. at 15. This advisor might not owe a duty to remove the client's funds and invest them in something else. That is a limitation on scope. But the advisor *does* owe a fiduciary duty to warn the client of any dangers associated with investing in those funds, especially as it relates to different funds meeting the environmentally friendly criteria. Also, a fiduciary duty to make a reasonable inquiry into the client's financial profile to know whether such investments are within the client's best interest exists. Those are the substance of the duty which cannot be contracted away.

Advisors are not mere order-takers. They are compensated for providing advice, often handsomely. Here, JPMC charged the Doelgers \$1,148,790.61 in management fees, plus nearly \$200,000 in commissions and other charges. Dkt. No. 301-322 at 22. Of JPMC's over 30,000 advisory accounts, the Doelgers ranked 132

in terms of fees collected. JA2906. So when an advisory client like the Doelgers proposes something within the scope of the relationship which is contrary to the client's best interest, the advisor must speak up. If the advisor does and the client persists anyway, the fiduciary duty may be satisfied. But if the advisor stays silent, the advisor has breached the fiduciary duty even within the limited scope of the relationship. *Doe v. Harbor Sch., Inc.*, 843 N.E.2d 1058, 1064 (Mass. 2006) (acknowledging that a fiduciary's "central tenet is the duty on the part of the fiduciary to act for the benefit of the other party to the relation as to matters within the scope of the relation") (internal quotation omitted); *cf. Hays v. Ellrich*, 31 N.E.3d 1064, 1076 (Mass. 2015) ("[W]here an investment advisor owes a fiduciary duty of disclosure to his or her client and violates the act by misleading the client regarding the suitability of an investment, Massachusetts law deems it fraudulent concealment for the fiduciary to fail to reveal to the client that the investment was not suitable[.]").

To hold otherwise would obliterate the nature of a fiduciary relationship, which entitles a beneficiary "to approach without skepticism a fiduciary's representation that the fiduciary is investing the beneficiary's money on the beneficiary's behalf." *Doe*, 843 N.E.2d at 1067 n.13; *see also Acad. Imaging, LLC v. Soterion Corp.*, 352 F. App'x 59, 69 (6th Cir. 2009) ("However, a party to a business transaction in a fiduciary relationship with another is bound to make a full disclosure of material facts known to him but not to the other, or where such

disclosure is necessary to dispel misleading impressions that are or might have been created by partial revelation of the facts.”) (internal quotation omitted).

Stated simply, fulfilling contractual terms and fulfilling fiduciary obligations are two things. *In re Daisy Sys. Corp.*, 97 F.3d 1171, 1180 (9th Cir. 1996) (rejecting argument that fulfilling contract was enough because that “contention evinces a misunderstanding of the duty owed in this matter, that duty being to provide Daisy with reliable information based upon diligent and thorough analysis”). This Court should reinforce that fundamental concept.

III. Defendants Impermissibly Limited the Substance of their Fiduciary Duties.

The question then becomes whether this limitation on substance is proper. Only SIFMA and Defendants address this issue directly. SIFMA Br. at 25–28; Defendants’ Br. at 66. In their briefs, SIFMA and Defendants rely on cases where non-investment fiduciaries limited their liability, the issue was the extent of services to be provided, or the issue was whether the defendants breached a duty. SIFMA Br. at 25–28; Defendants’ Br. at 39–45. But whether other fiduciaries can limit the substance of their duties is not the question here, and Plaintiffs adequately address the scope of Defendants’ services and whether Defendants breached their duties. The question PIABA addresses is whether *these* investment fiduciaries can substantively limit their fiduciary duties. That context matters. *Cf. Greenleaf Arms Realty Tr. I, LLC v. New Bos. Fund, Inc.*, 962 N.E.2d 221, 230 (Mass. App. Ct. 2012) (“[W]here

the effect of contract language in an agreement that is not of [a partnership agreement's] charter or foundational character is to eliminate or discard fiduciary obligations wholesale, the law will not so abide.”); *Blake v. Smith*, No. 0300003B, 2006 WL 4114305, at *6 (Mass. Sup. Ct. Dec. 11, 2006) (recognizing that Massachusetts statutes prevent corporate directors from waiving duties of loyalty and good faith). When the issue is properly framed, the answer crystalizes as “no.”

A. An investment professional’s fiduciary duty exists independent of any contract and enjoys greater protection than other fiduciary relationships.

A fiduciary duty does not exist in a contract vacuum. It is “extra-contractual.” *Baker v. Goldman Sachs & Co.*, 656 F. Supp. 2d 226, 236 (D. Mass. 2009). Thus, it “can be considered independent of the contract even if it arises out of the relationship that the contract created.” *Balta v. Ayco Co., LP*, 626 F. Supp. 2d 347, 360 (W.D.N.Y. 2009); *cf. Daisy Sys.*, 97 F.3d at 1175, 1180 (rejecting the argument that a fiduciary duty was limited by the engagement letter). As a result, “the presence of a contract will not always supplant a [] fiduciary duty,” especially when the duty is apart from the expressed terms. *Selmark Assocs., Inc. v. Ehrlich*, 5 N.E.3d 923, 933 (Mass. 2014).

To illustrate, the law affords special protections for the investor-advisor relationship. *In the Matter of Comprehensive Cap. Mgmt., Inc.*, Release No. 5943, at 5 (Jan. 11, 2022) (“[T]he statement that ‘[defendants] will be liable only for their

own acts of gross negligence or willful misconduct’ is an inaccurate statement of the liability standards under the federal securities laws as they apply to investment advisers.”); 17 C.F.R. § 240.15/-1 (requiring that a broker-dealer “shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer”). Massachusetts law also provides even greater protection for investors than federal law might. *See Robinhood Fin. LLC v. Sec’y of Commonwealth*, 214 N.E.3d 1058, 1076–81 (Mass. 2023) (affirming the adoption of a state regulation which provides greater protection for investors than the Federal “Regulation Best Interest”); *Crown v. Kobrick Offshore Fund, Ltd.*, 8 N.E.3d 281, 294 (Mass. App. Ct. 2014) (“Massachusetts public policy is protective of investors. Thus, Massachusetts policy seems at odds with those Federal courts that have upheld indemnification clauses under the Federal securities act.”) (internal citations omitted).

So a contract is not the end of the story. To further the public policy discussed below, the law restricts an investment fiduciary’s ability to limit its obligations to retail clients. *See Feeney v. Dell Inc.*, 908 N.E.2d 753, 761–62 (Mass. 2009) (holding that contract terms which violate public policy are unenforceable). That some fiduciaries can limit the substance of their duties while others cannot is nothing new.

For example, there is no suggestion that lawyers can limit their liability the way Defendants here have, and the sky has not fallen on the legal profession.

B. SIFMA misleadingly cites SEC guidance on institutional investors to argue that Defendants can limit the substance of their duties to retail investors.

The Doelgers are retail clients. *See* Appellants’ Brief at 57, n.1. SIFMA, however, quotes language from an SEC release about institutional clients and shaping that relationship through agreement—while intentionally omitting the part about retail investors—to argue that Defendants can limit their duties here. SIFMA Br. at 19–20. The full text, with the omitted parts underlined, states:

In addition, it will generally be necessary for an adviser to a retail client to update the client’s investment profile in order to maintain a reasonable understanding of the client’s objectives and adjust the advice to reflect any changed circumstances. The frequency with which the adviser must update the client’s investment profile in order to consider changes to any advice the adviser provides would itself turn on the facts and circumstances, including whether the adviser is aware of events that have occurred that could render inaccurate or incomplete the investment profile on which the adviser currently bases its advice. For instance, in the case of a financial plan where the investment adviser also provides advice on an ongoing basis, a change in the relevant tax law or knowledge that the client has retired or experienced a change in marital status could trigger an obligation to make a new inquiry.

By contrast, in providing investment advice to institutional clients, the nature and extent of the reasonable inquiry into the client’s objectives generally is shaped by the specific investment mandates from those clients. For example, an investment adviser engaged to advise on an institutional client’s investment grade bond portfolio would need to gain a reasonable understanding of the client’s objectives within that bond portfolio, but not the client’s objectives within its entire

investment portfolio. Similarly, an investment adviser whose client is a registered investment company or a private fund would need to have a reasonable understanding of the fund's investment guidelines and objectives. For advisers acting on specific investment mandates for institutional clients, particularly funds, we believe that the obligation to update the client's objectives would not be applicable except as may be set forth in the advisory agreement.

SEC, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248; File No. S7-07-18 (June 5, 2019), 84 Fed. Reg. 33,669, 33,673. The SEC drew an express contrast between retail investors and institutional investors, and recognized that greater duties are owed to retail investors. *See, e.g., Robinhood*, 214 N.E.3d at 1066.

C. Allowing Defendants to limit the substance of their fiduciary duties would eviscerate established investor protections and cause untold harm.

Our laws require investment professionals to fully comply with their fiduciary duties when acting within the scope of their relationship. Allowing firms like Defendants to limit their liability for breaching fiduciary duties would have ruinous effects far outside this case. The Court therefore should hold such limitations are unenforceable.

PIABA explained in its opening amicus brief how holding advisors liable for negligence forces them “to use their best efforts to give advice which is right for the particular client and circumstances.” *In re Aloha Airgroup, Inc.*, No. 04-3063, 2005 WL 1156092, at *1 (Bankr. D. Haw. Feb. 24, 2005). Advisors with limited liability—

such as no liability for negligence—will not have an incentive to perform their core obligations. For example, they need not perform the same level of due diligence into their clients’ backgrounds and goals (know your customer or “KYC,” and customer-specific suitability), perform the same level of due diligence into the products they recommend (reasonable basis suitability requires an investment fiduciary to understand the products before recommending them), supervise advisors with the same rigor, police against conflicts of interest, or fully perform any of their obligations which the investment advisory system depends on to function properly. They will operate as “fiduciaries in name only”—people who can call themselves fiduciaries but not have to act like one. The advisor gains substantial protection, while the investing public, particularly the retail investing public which is most vulnerable when these protections are gone, bears the weight.

In the end, clients and advisors can limit the scope of an advisor’s services. But when an advisor acts within that scope, the law demands that the full body of fiduciary obligations apply. Affirming the district court’s order shakes the foundation of investor protection to the core. This Court therefore should reverse the district court in this regard.

CONCLUSION

PIABA supports the Doelgers in urging this Court to reverse the district court’s order regarding JPMC and Chickasaw’s fiduciary duties.

Respectfully submitted,

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September 2, 2025

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32 (a)(5), I hereby certify that this brief uses 14-Point Times New Roman, a proportionally-spaced font. Pursuant to Fed. R. App. P. 32 (a)(7)(B), I certify that the brief was prepared using Microsoft Word, and contains 3,242 words, excluding the portions of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(i), and according to that system's word count function.

Date: September 2, 2025

/s/ R. Walker Humphrey, II

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2025, I have electronically filed the foregoing brief with the United States Court of Appeals for the First Circuit by the CM/ECF system, which will then send notification of such filing to all counsel of record.

Date: September 2, 2025

/s/ R. Walker Humphrey, II