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When a Financial Professional's Insistence on "Holding" Constitutes a Breach of Fiduciary Duties

The WorldCom financial collapse and accounting scandal in the early 2000s is still very fresh in minds of retail and "mom and pop" investors, especially where the telecommunications market at this time was heavily marketed, advertised, and otherwise promoted by many financial professionals as a very stable, consistent, and reliable industry, by which to invest and otherwise obtain capital gains. Approximately three years before its monumental collapse, WorldCom [was trading](#) at \$64.50 a share, and had approximately \$175 billion in investor holdings, comprising mutual and index funds, pensions, and employee retirement accounts. What was initially unknown at the time to the vast majority of retail investors, including retirees, senior citizens, and to your average investor was that WorldCom had [overstated](#) "a key measure of earnings by more than \$3.8 billion over five quarters, dating back to January 2001 [and] the company's reported profits, it turned out, were really losses." When such information began to publicly come to light, the financial implications were precipitous, and by June 26, 2002, the U.S. Securities and Exchange Commission (SEC) had [charged](#) the company with a "massive accounting fraud" but then, the damage was too late and by July of 2002, shares of WorldCom were trading for just \$.83 cents a share.

Despite the fact that there was a wealth of publicly available information regarding the pending collapse of WorldCom, [many investors](#) opted to continue to hold the company's stock, some largely on their financial professionals continued insistent (often by default) and strong [advice](#) to continue "holding" the stock, whether it was owned directly or alternatively, whether it constituted a large holding of a particular held mutual or index fund. Many financial professionals on behalf of their client, opted to do absolutely nothing, whether it be actively advising their clients to sell their holdings, or making their clients (at a minimum) aware of the magnitude or level of exposure they were facing,

even after June 26, 2002, when it was abundantly clear that the company's demise was imminent, leaving the financial knowledge and guidance (to which they were retained) solely to the whims of individual investor under the common [disclaimer](#) that, "futures, stocks and options trading involves substantial risk of loss and is not suitable for every investor...."

Understanding that every financial situation, including the WorldCom situation is different, the thing that remains consistent throughout is that financial professionals, whether brokers, financial planners, or otherwise, are agents of the client, and pursuant to the common law of [agency law](#), and where applicable both state and federal law, the financial professional or financial "advisor is a fiduciary who will be subject to liability for any breach of his fiduciary duties to the client." Put another way, such relationship between investors and financial professionals, even among financial planners imputes a [duty of care](#) owed to the individual investors, regardless of the investor's level of investment experience or knowledge, which includes duties of loyalty, good faith, and an application of reasonableness or prudence standards. Such duty of care is often understood as to what a reasonable or prudent financial professional in the industry would have done under the facts and circumstances of a particular case, which may or may not include actively advising clients of the situation, informing them of their scope and exposure, and certainly providing clients the ability to make informed choices regarding their respective financial investments. Inaction or simply advising investment clients to simply "hold" does not necessarily meet a financial professional's fiduciary responsibilities, and in the WorldCom situation, likely constituted breach of such duties.

About Us

Robert N. Wilkey, Esq. is the Principal Attorney of Wilkey Legal Consultants, LLC ("WLC") located in Exton, PA, with over a decade of class action, mass tort, and complex civil commercial litigation experience, including claims involving Federal and State laws involving unfair trade practices and consumer protection; banking and lending standards, credit services and truth in lending regulations, breach of good faith and dealing claims, and breach of fiduciary duties.

Mr. Wilkey holds a BA/MPP from Brigham Young University and a JD from the University of Iowa College of Law, and currently provides regulatory, legal, and consultation and litigation services to individuals, corporations, industry, non-profits, school districts, and government entities.

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Robert N. Wilkey, Esq., MPP, Wilkey Legal Consultants, LLC
Eagleview Office Plaza 600 Eagleview Blvd., Suite 300, Exton, PA 19341

www.robertwilkey.com

Toll Free Number: (888) 598-1112

Local Number: (610) 465-7393

Facsimile: (484) 698-7961

For General Inquiries Email us at: info@robertwilkey.com