IV. The baseline conception of the duty of good faith

It is neither necessary nor appropriate, however, to delineate that meaning by a single phrase. The duty of good faith is a general principle, and general principles often are delineated by baseline conceptions consisting of a cluster of elements. For example, the general principle of care is delineated by a baseline conception consisting of elements such as diligence and rationality. The general principle of loyalty is delineated by a baseline conception consisting of elements such as fairness and disclosure. The general principle of good faith is also delineated by a baseline conception consisting of a cluster of elements.

To begin with, good faith requires subjective honesty. Subjective honesty, in turn, requires several types of sincerity. A corporate manager must sincerely believe that his conduct is in the best interests of the corporation; that any statements he makes in his managerial capacity are truthful; and that his conduct is within the realm of decent behavior.

It is not enough, however, that a manager acts honestly in the sense that he acts sincerely. Many persons adopt belief-systems that allows them to sincerely conclude that their morally outrageous conduct is proper. This point is well put in a review by Mick LaSalle of the film *Downfall*, which concerns Adolph Hitler's final days. As LaSalle noted, the fact that "Hitler is portrayed as human made the film mildly controversial in America, as though that were the same as making him likeable." This, LaSalle pointed out, missed the value of the film, which is to remind us of "a lesson that simply can't be repeated enough - that absolute faith in one's virtue is not a commitment to virtuous behavior but a commitment to one's own will." Or, as Deborah De Mott puts it:

Wholly apart from these practical issues of proof, a Standard for good faith that looks solely to directors' motives ignores the function to be served by the Standard. As applied to directors' decisions, a Standard of good faith tests directors' fidelity to the interests they may appropriately consider of serve. Subjective motivation and sincere belief are, at best, imprecise surrogates to measure fidelity. Directors, like other people, are capable of deceiving themselves about the point and effect of their actions.

Sincere self-deception is not responsive to the Obligation to which directors, as fiduciaries, are subject. Fiduciary norms are stringent: they prohibit the fiduciary from creating interests in conflict with interests of the beneficiary protected by the relationship, and they deny a fiduciary the profit derived from a breach of duty even when the breach caused no demonstrable injury to the beneficiary. One explanation for this stringency is the persistent capacity of decisionmakers for sincere self-deception when self-interest is at stake.

Accordingly, good faith in law includes objective as well as subjective elements. So, for example, in *First Nat'l Bank v. F. C. Trebein Co.* the court said "[G]ood faith in law ... is not to be measured by a man's own standard of right, but by that which [the law] has adopted and prescribed as a standard for the observance of all men in their dealings with each other."

27 DeMott, supra note 1, at 22-23
28 52 N.E. 834, 837 (Ohio 1989)

Referring Principles:
I.1.1 - Good faith and fair dealing in international trade