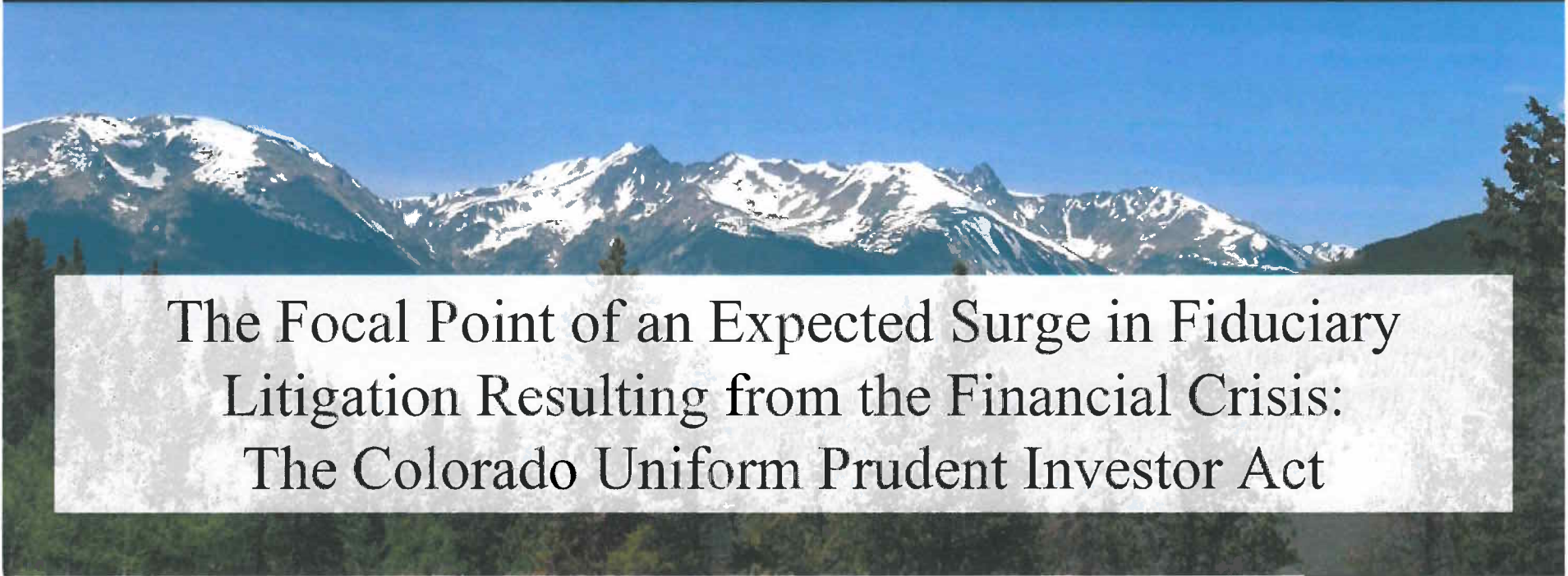




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A wide-angle photograph of a mountain range with significant snow cover under a clear blue sky. The mountains are the central focus, with some evergreen trees visible in the foreground.

The Focal Point of an Expected Surge in Fiduciary
Litigation Resulting from the Financial Crisis:
The Colorado Uniform Prudent Investor Act

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Duty of Prudence in Investing

Prudence requires the exercise of reasonable care, skill and caution

Duties with respect to prudent investing

- Portfolio risk level**
- Diversification**
- Loyalty and impartiality**
- Delegation**
- Cost management**

Duty of Prudence in Investing (cont'd)

Restatement of Trusts – Principles

- Diversification is fundamental to risk management and is therefore ordinarily required of trustees
- Risk and return are so directly related that trustees have a duty to analyze and make conscious decisions concerning the levels of risk appropriate to the purposes, terms, distribution requirements and other circumstances of the trust
- Trustees have a duty to avoid costs that are not justified by the needs and objectives of the trust's investment program
- Impartiality requires a balancing of the elements of total return between the production of current income and the protection of purchasing power
- Trustees may have a duty as well as having the authority to delegate

Restatement Third, Trusts, page 290

Duty of Prudence in Investing (cont'd)

UPIA – Objectives of the Act

- The standard of prudence is applied to any investment as part of the total portfolio, rather than to individual investments
- The tradeoff in all investing between risk and return is identified as the fiduciary's central consideration
- The trustee can invest in anything that plays an appropriate role in achieving the risk/return objectives of the trust
- Prudent investing requires diversification
- Delegation is permitted

UPIA, Prefatory Note