

**§832. Standards of liability for directors**

**1. Basis for potential liability.** A director of a corporation is not liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

- A. A defense interposed by the director does not preclude liability if the defense is based on:
- (1) Any provision in the corporation's articles of incorporation authorized by section 202, subsection 2, paragraph D or F;
  - (2) The protection afforded by section 872 for action taken in compliance with section 873 or 874; or
  - (3) The protection afforded by section 881; and [PL 2015, c. 259, §13 (AMD).]
- B. The challenged conduct consisted or was the result of:
- (1) Action not in good faith;
  - (2) A decision:
    - (a) That the director did not reasonably believe to be in the best interests of the corporation; or
    - (b) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances;
  - (3) A lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct when that relationship or domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to that corporation, and, after a reasonable expectation to that effect has been established, the director did not establish that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation;
  - (4) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or
  - (5) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2015, c. 259, §13 (AMD).]

**2. Additional elements.** In addition to the burden set forth in subsection 1, the party seeking to hold the director liable:

- A. For money damages has the burden of establishing that:
- (1) Harm to the corporation or its shareholders has been suffered; and
  - (2) The harm suffered was proximately caused by the director's challenged conduct; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
- B. For money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. For money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**3. Other causes of action.** This section does not:

A. In any instance when fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section 872, subsection 2, paragraph C, alter the burden of proving the fact or lack of fairness otherwise applicable; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Alter the fact or lack of liability of a director under another section of this Act, such as the provisions governing the consequences of an unlawful distribution under section 833 or a transactional interest under section 872; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. Affect any rights to which the corporation or a shareholder may be entitled under another law of this State or the United States. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2007, c. 289, §17 (AMD). PL 2015, c. 259, §13 (AMD).

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