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Court Rules That Non-Innocent Agent Must Be Indementified

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Section 317 of the California Corporations Code authorizes a California corporation to indemnify its agents (as defined) under certain circumstances. The statute deals separately with third party claims (Subdivision (b)) and claims brought by or in the right of the corporation (Subdivision (c)). Subdivision (d) of the statute mandates indemnification in two circumstances. The first is when the agent is successful on the merits in the defense of any proceeding. The second is when the agent successful in defense of "any claim, issue or matter" in the proceeding.

Superior Court Judge William D. Claster recently addressed the second situation in a case in which he had found that the agent had breached his fiduciary duty and engaged in constructive fraud. The agent nonetheless claimed, and Judge Claster agreed, that he had prevailed on four issues at trial.

The agent contended that he was entitled to indemnification as to these issues pursuant to Section 317(d).

The corporation argued allowing indemnification would "reward a corporate agent for his or her own misconduct". Judge Claster, however, ruled that the agent was entitled to indemnification:

"[t]he Court appreciates Hutton's obvious frustration. Hutton believes that it proved Bellavia acted wrongfully (the Court agreed), and that this finding alone should end the discussion over indemnification. And if Section 317(d) was [sic] couched in terms of who won and who lost the lawsuit, then Hutton might have a point. The problem, of course, is that the statute is not written that way, but instead has been drafted to provide protection for the employee for his work for the corporation. Unlike §§ 317(b) and (c), Bellavia's lack of good faith is not an issue. Nor is the fact that Hutton succeeded on the merits of several causes of action against Bellavia."

Bellavia v. Hutton Dev. Co., Cal. Super. Ct. Case No. 30-2015-00773108 (Jan. 3, 2019).

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