

§833. Director's liability for unlawful distributions

1. Personal liability. A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to section 651, subsection 1 or section 1410, subsection 1 is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 651, subsection 1 or section 1410, subsection 1 if the party asserting liability establishes that when taking the action the director did not comply with section 831.

[PL 2003, c. 631, §18 (AMD).]

2. Contribution; recoupment. A director held liable under subsection 1 for an unlawful distribution is entitled to:

A. A contribution from every other director who could be held liable under subsection 1 for the unlawful distribution; and [RR 2001, c. 2, Pt. A, §18 (COR); RR 2001, c. 2, Pt. A, §19 (AFF).]

B. Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of section 651, subsection 1 or section 1410, subsection 1. [PL 2003, c. 631, §18 (AMD).]

[PL 2003, c. 631, §18 (AMD).]

3. Proceeding to enforce liability; 2-year period. A proceeding to enforce the liability of a director under subsection 1 is barred unless it is commenced within 2 years after the date:

A. On which the effect of the distribution was measured under section 651, subsection 5 or 7; [PL 2003, c. 631, §18 (NEW).]

B. As of which the violation of section 651, subsection 1 occurred as the consequence of disregard of a restriction in the corporation's articles of incorporation; or [PL 2003, c. 631, §18 (NEW).]

C. On which the distribution of assets to shareholders under section 1410, subsection 1 was made. [PL 2003, c. 631, §18 (NEW).]

[PL 2003, c. 631, §18 (AMD).]

4. Proceeding to enforce contribution or recoupment; one-year period. A proceeding to enforce a contribution or recoupment under subsection 2 is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection 1.

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

SECTION HISTORY

RR 2001, c. 2, §A18 (COR). RR 2001, c. 2, §A19 (AFF). PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 631, §18 (AMD).

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