

§855. Court-ordered indemnification; advance for expenses

1. Application and order. A director who is a party to a proceeding because the director is a director of the corporation may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice the court considers necessary, the court shall:

A. Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 853; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Order indemnification or an advance for expenses if the court determines that the director is entitled to indemnification or an advance for expenses pursuant to a provision authorized by section 859, subsection 1; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. Order indemnification or an advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(1) To indemnify the director; or

(2) To advance expenses to the director even if the director has not met the relevant standard of conduct set forth in section 852, subsection 1, failed to comply with section 854 or was adjudged liable in a proceeding referred to in section 852, subsection 4, paragraph A or B, but, if the director was adjudged so liable, the director's indemnification must be limited to reasonable expenses incurred in connection with the proceeding. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2003, c. 344, Pt. B, §68 (AMD).]

2. Entitlement to expenses. If the court determines that the director is entitled to indemnification under subsection 1, paragraph A or to indemnification or an advance for expenses under subsection 1, paragraph B, the court shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining the court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or an advance for expenses under subsection 1, paragraph C, the court may also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining the court-ordered indemnification or advance for expenses. [PL 2003, c. 344, Pt. B, §68 (AMD).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B68 (AMD).

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