

LOS ANGELES CIVIL LITIGATION BLOG

Presented by the [Law Office of Christopher Blanchard, PC](#)

California Court of Appeals to Corporate Directors and Officers: You're in Control

[Key Takeaway: In *Hellum v. Breyer*, the Court of Appeals held that the fact of being a corporate director or officer by itself may lead to presumptive liability for certain securities violations.]

The First District Court of Appeals has handed down a case that every board member and officer of California businesses should consider. The case, *Hellum v. Breyer* (No. A127660, Cal. Ct. App (1st Dist.) (April 29, 2011)), revolves around the application of California Corporations Code § 25504, which provides for potential liability of people involved with a corporation that has allegedly engaged in improper securities transactions.

The defendants in *Hellum* argued that § 25504 is simply a “control person” statute analogous to similar federal statutes. They argued that directors are not potentially liable under § 25504 absent allegations sufficient to show that the director exercised actual control over the corporation.

The Court of Appeals for the First District rejected the defendants’ argument, pointing out that the statute does not place the burden on plaintiffs to plead facts evidencing actual control by directors. Instead, the statute states that directors – and officers - are potentially liable for the faulty securities transactions by mere fact of being a director or officer alone *unless* the defendants can prove that they were not aware and had no reason to be aware of the facts giving rise to liability.

To directly quote the Court:

“[P]resumptive liability is imposed for directors and officers of any corporation that violates specified state securities statutes, regardless of whether the particular officers and directors actually exercised control over the corporation.”

“Presumptive liability”: a phrase likely to send shivers down the back of any corporate director or officer (or their insurer).

This places a meaningful burden on a defendant being sued under §25504 to essentially prove a negative – to prove what they did not know at a particular time. It also makes it much easier for plaintiffs to survive a demurrer on §25504 claims against directors and officers.

There is additional material in the case worth a read – any California lawyer doing securities litigation should be aware of the case as it will most certainly be raised in a fair amount of demurrer briefing papers.

The case is a reminder that agreeing to take a seat on a board of directors should not be taken lightly. There are numerous factors that must go into the decision process about whether to take a seat on the board in the first place.

Once the decision is made to join a board, California law often *assumes* that the director is taking an active role in the business. A director that does not plan to take an active role should decide whether the seat on the board is worth the potential liability, particularly in light of the decision in *Hellum*.

The Hellum v. Breyer opinion can be read in its entirety at:
<http://www.scribd.com/doc/54984386/A-127660>.

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