



California Corporate & Securities Law

Agency – One Of The “Three Great Relations In Private Life”

Posted In [Corporate Governance](#)

2-4-2011

Suppose you are sued and win. Then, your luck runs out with your spouse and your last, best friend. To make matters worse, you've run up big legal fees but have no insurance and no indemnification agreement. Moreover, no statute and no agreement requires the plaintiff to pay these expenses. Has your luck really run out?

The answer may be no if you are an agent of a California corporation. California Corporations Code § 317(d) requires a corporation to indemnify an agent against expenses actually and reasonably incurred to the extent the agent is successful on the merits in defense of a proceeding or in the defense of any claim, issue, or matter in a proceeding. Of course, there are a few important caveats.

First, not every proceeding is covered. The proceeding must be one described in subdivisions (a) or (b) of § 317. In general, this means that you must have been a party to a proceeding by reason of the fact that you are, or were, an agent of the corporation. In other words, simply establishing that you are a corporation's agent isn't going to be enough to entitle you to indemnification – you must also have been sued because you are, or were, the corporation's agent.

Second, you must be an “agent” of the corporation. Directors, officers and employees will clearly be agents of the corporation for purposes of the statute because § 317(a) defines “agent” specifically to include these categories. These aren't the only persons covered, however, because § 317(a) continues to define “agent” to include (albeit circularly) any “other agent of the corporation”.

So who might be included as any other agent? In *APSB Bancorp v. Thornton Grant*, 26 Cal. App. 4th 926 (1994), the Second District Court of Appeal held that while “under appropriate circumstances” an independent accounting firm may fall within the definition of “agent”, an accounting firm retained by a bank to conduct annual audits was not an agent for purposes of § 317(d). In a later case that hits a little closer to home, the Third District Court of Appeal held that a law firm that had successfully defended a malpractice suit by its corporate client was not an agent of that client. *Channel Lumber Company, Inc. v. Porter Simon*, 78 Cal. App. 4th 1222 (2000).

Please contact [Keith Paul Bishop](#) at Allen Matkins for more information kbishop@allenmatkins.com

<http://www.calcorporatelaw.com/>

But wait, there's more. Not only California corporations are required to indemnify agents pursuant to § 317(d). The statute also applies to pseudo-foreign corporations, as described in California Corporations Code § 2115.

Finally, what are the other two "great relations in private life"? Sir William Blackstone in his *Commentaries on the Laws of England* ([Book I, Ch. 14](#)) lists husband and wife and parent and child.

Please contact **Keith Paul Bishop** at Allen Matkins for more information kbishop@allenmatkins.com

<http://www.calcorporatelaw.com/>