

§1635. Special litigation committee

1. Stay of court proceeding upon appointment of special litigation committee. If a limited liability company is named as or made a party in a derivative proceeding, the limited liability company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited liability company. If the limited liability company appoints a special litigation committee, on motion by the special litigation committee made in the name of the limited liability company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the special litigation committee to make its investigation. This subsection does not prevent the court from enforcing a person's right to information under section 1558 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

[PL 2009, c. 629, Pt. A, §2 (NEW); PL 2009, c. 629, Pt. A, §3 (AFF).]

2. Composition of special litigation committee. A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.

[PL 2009, c. 629, Pt. A, §2 (NEW); PL 2009, c. 629, Pt. A, §3 (AFF).]

3. Appointment of special litigation committee. A special litigation committee may be appointed:

A. By the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and [PL 2009, c. 629, Pt. A, §2 (NEW); PL 2009, c. 629, Pt. A, §3 (AFF).]

B. If all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants. [PL 2009, c. 629, Pt. A, §2 (NEW); PL 2009, c. 629, Pt. A, §3 (AFF).]

[PL 2009, c. 629, Pt. A, §2 (NEW); PL 2009, c. 629, Pt. A, §3 (AFF).]

4. Determination by special litigation committee. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

A. Continue under the control of the plaintiff; [PL 2009, c. 629, Pt. A, §2 (NEW); PL 2009, c. 629, Pt. A, §3 (AFF).]

B. Continue under the control of the special litigation committee; [PL 2009, c. 629, Pt. A, §2 (NEW); PL 2009, c. 629, Pt. A, §3 (AFF).]

C. Be settled on terms approved by the special litigation committee; or [PL 2009, c. 629, Pt. A, §2 (NEW); PL 2009, c. 629, Pt. A, §3 (AFF).]

D. Be dismissed. [PL 2009, c. 629, Pt. A, §2 (NEW); PL 2009, c. 629, Pt. A, §3 (AFF).]

[PL 2009, c. 629, Pt. A, §2 (NEW); PL 2009, c. 629, Pt. A, §3 (AFF).]

5. Filing of determination with court. After making a determination under subsection 4, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the special litigation committee were disinterested and independent and whether the special litigation committee conducted its investigation and made its recommendation in good faith, independently and with reasonable care, with the special litigation committee having the burden of proof. If the court finds that the members of the special litigation committee were disinterested and independent and that the special litigation committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the special litigation committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection 1 and allow the action to proceed under the direction of the plaintiff.

[PL 2009, c. 629, Pt. A, §2 (NEW); PL 2009, c. 629, Pt. A, §3 (AFF).]

SECTION HISTORY

PL 2009, c. 629, Pt. A, §2 (NEW). PL 2009, c. 629, Pt. A, §3 (AFF).

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