

(2) MAY NOT INDEMNIFY THE [[DEFENDANT]] CORPORATE REPRESENTATIVE IN RESPECT OF ANY CLAIM, ISSUE, OR MATTER AS TO WHICH THE [[DEFENDANT]] CORPORATE REPRESENTATIVE WAS ADJUDGED LIABLE FOR NEGLIGENCE OR MISCONDUCT IN PERFORMING HIS DUTY TO THE CORPORATION, EXCEPT TO THE EXTENT THAT THE COURT IN WHICH THE PROCEEDING WAS BROUGHT OR ANY OTHER COURT OF EQUITY [[HAVING JURISDICTION]] IN THE COUNTY WHERE THE CORPORATION HAS ITS PRINCIPAL OFFICE DETERMINES ON APPLICATION THAT, DESPITE THE ADJUDICATION OF LIABILITY BUT IN VIEW OF ALL CIRCUMSTANCES OF THE CASE, THE [[DEFENDANT]] CORPORATE REPRESENTATIVE IS FAIRLY AND REASONABLY ENTITLED TO INDEMNITY FOR THOSE EXPENSES WHICH THE COURT CONSIDERS PROPER.

(D) REQUIRED INDEMNIFICATION AGAINST EXPENSES INCURRED IN SUCCESSFUL DEFENSE.

UNLESS THE CHARTER OF A CORPORATION EXPRESSLY PROVIDES OTHERWISE, TO THE EXTENT THAT A [[DEFENDANT]] CORPORATE REPRESENTATIVE SUCCESSFULLY DEFENDS ON THE MERITS OR OTHERWISE ANY PROCEEDING REFERRED TO IN SUBSECTIONS (B) OR (C) OF THIS SECTION OR ANY CLAIM, ISSUE, OR MATTER RAISED IN THE PROCEEDING, THE CORPORATION SHALL INDEMNIFY HIM AGAINST EXPENSES, INCLUDING ATTORNEYS' FEES, ACTUALLY AND REASONABLY INCURRED BY HIM [[WITH RESPECT TO]] IN CONNECTION WITH THE PROCEEDING.

(E) DETERMINATION THAT INDEMNIFICATION IS PROPER.

(1) UNLESS A COURT ORDERS OTHERWISE, ANY INDEMNIFICATION UNDER SUBSECTIONS (B) OR (C) OF THIS SECTION MAY BE MADE BY THE CORPORATION ONLY AS AUTHORIZED IN THE SPECIFIC CASE AFTER A DETERMINATION THAT INDEMNIFICATION OF THE [[DEFENDANT]] CORPORATE REPRESENTATIVE IS PROPER IN THE CIRCUMSTANCES BECAUSE HE HAS MET THE APPLICABLE STANDARD OF CONDUCT SET FORTH IN SUBSECTIONS (B) OR (C).

(2) THE DETERMINATION SHALL BE MADE:

(I) BY [[A MAJORITY OF A QUORUM OF]] THE BOARD OF DIRECTORS, BY A MAJORITY VOTE OF A QUORUM WHICH CONSISTS OF DIRECTORS WHO WERE NOT PARTIES TO THE PROCEEDING; OR

(II) IF THE REQUIRED QUORUM IS NOT OBTAINABLE OR IF A QUORUM OF DISINTERESTED DIRECTORS SO DIRECTS, BY INDEPENDENT LEGAL COUNSEL IN A WRITTEN OPINION; OR

(III) BY THE STOCKHOLDERS IN ACCORDANCE WITH THE CHARTER AND BYLAWS OF THE CORPORATION.