



## Ohio Revised Code

### Section 3964.177 Agreements between company and protected cell; requirements; failure to comply.

Effective: September 17, 2014

Legislation: House Bill 117 - 130th General Assembly

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(A) If a protected cell captive insurance company enters into an agreement with respect to a protected cell of the protected cell captive insurance company, the directors shall ensure that both of the following are met:

(1) The other party to the transaction knows, or ought reasonably to know, that the protected cell captive insurance company is acting with respect to a particular protected cell.

(2) The minutes of any meeting of directors held with regard to the agreement clearly record the fact that the protected cell captive insurance company was entering into the agreement with respect to the protected cell in question and that the obligation imposed by division (A)(1) of this section has been, or will be, complied with.

(B) If a protected cell captive insurance company fails to comply with division (A) of this section, then both of the following shall apply:

(1) The directors of the protected cell captive insurance company shall be personally liable for the liabilities of the protected cell captive insurance company and the protected cell under the act, matter, deed, agreement, contract, instrument, or arrangement that was executed, notwithstanding any provisions to the contrary in the protected cell's organizational documents or in any contract with the protected cell captive insurance company or otherwise.

(2)(a) The directors of the protected cell captive insurance company shall have a right of indemnity, in the case of a matter on behalf of or attributable to a protected cell, against the assets of the protected cell, unless the directors were fraudulent, reckless, negligent, or acted in bad faith.

(b) The directors shall have a right of indemnity against the general assets of the protected cell captive insurance company, in the case of a matter not on behalf of or attributable to a protected



cell.

(C) Notwithstanding division (B)(1) of this section, a court may relieve a director of all or part of the personal liability required under division (B)(1) of this section if the director can demonstrate either of the following to the satisfaction of the court:

(1) The director was not aware of the circumstances giving rise to the liability and therefore was not fraudulent, reckless, or negligent and did not act in bad faith.

(2) The director expressly objected, and exercised the rights available to the director, whether by way of voting power or otherwise, to try to prevent the circumstances giving rise to the liability.

(D) If, pursuant to division (C) of this section, a court relieves a director of all or part of the director's personal liability under division (B)(1) of this section, the court may order that the liability in question instead be met from the assets of the protected cell or the general assets of the protected cell captive insurance company as the court finds appropriate.

(E) Any provision in the organizational document of a captive insurance company or any other contractual provision under which the protected cell captive insurance company may be liable shall be void if it purports to indemnify the directors of a protected cell captive insurance company despite fraudulent, negligent, reckless, bad faith, or other conduct that would otherwise exempt them from indemnification by virtue of division (B)(2)(a) of this section.

(F) The duties of a director of a protective cell captive insurance company under this chapter shall be in addition to and not in lieu of, those under any other applicable law.