Ohio Revised Code

Section 3964.174 Transactional liability.

Effective: September 17, 2014
Legislation: House Bill 117 - 130th General Assembly

(A) If a protected cell captive insurance company enters into a transaction with respect to a particular protected cell, or incurs a liability arising from an activity or asset of a particular protected cell, a claim by any person in connection with the transaction or liability extends only to the cell assets of the protected cell.

(B) If a protected cell captive insurance company enters into a transaction in its own right and not in respect of any of its protected cells, incurs a liability arising from an activity in its own right and not in respect of any of its protected cells, or incurs a liability arising from an asset held in its own right and not in respect of any of its protected cells, then a claim by any person or a liability in connection with this type of transaction, activity, or ownership shall extend only to the general assets of the protected cell captive insurance company.

(C) Except as provided by divisions (D) and (E) of this section, a protected cell captive insurance company shall not do either of the following:

(1) Satisfy a liability attributable to a particular protected cell of the protected cell captive insurance company from the general assets of the protected cell captive insurance company;

(2) Satisfy a liability, whether attributable to a particular protected cell or not, from the cell assets of another protected cell.

(D)(1) A protected cell captive insurance company may satisfy any liability attributable to a particular protected cell from the protected cell captive insurance company's general assets if both of the following conditions are met:

(a) The articles of incorporation, bylaws, code of regulations, or similar organization documents of the protected cell captive insurance company allow the protected cell captive insurance company to satisfy the liability.

(b) Satisfying the liability has been approved by two-thirds of the participants of the protected cell or, if the protected cell has more than one class of participants, two-thirds of each class of participants, unless the organizational document of the protected cell insurance company requires a greater percentage.

(2) Prior to a protected cell captive insurance company satisfying any liability attributable to a particular protected cell from the protected cell captive insurance company's general assets, the directors who authorize the satisfaction of the liability shall state as part of the authorization that, having inquired into the affairs and prospects of the protected cell captive insurance company, they have formed an opinion that includes both of the following:

(a) Immediately following the date on which the liability is proposed to be met by the general assets of the protected cell captive insurance company, the protected cell captive insurance company will be able to discharge its liabilities as they fall due.

(b) Having regard to the prospects of the protected cell captive insurance company, the intentions of the directors with respect to the management of the protected cell captive insurance company's business, and the amount and character of the financial resources that will, in their view, be available to the protected cell captive insurance company, the protected cell captive insurance company will be able to continue its business and will be able to discharge its liabilities as they fall due for a period of one year immediately following the date on which the liability is proposed to be satisfied by the general assets of the protected cell captive insurance company or until the protected cell captive insurance company is dissolved, whichever first occurs.

(E)(1) A protected cell captive insurance company may satisfy any liability, whether attributable to a particular protected cell or not, from the cell assets of another protected cell if it is permitted to do so by the articles of incorporation, bylaws, code of regulations, or other organizational document, as well as the participant agreement, of the protected cell whose assets are proposed to be used to satisfy the liability.

(2)(a) Prior to a protected cell captive insurance company satisfying any liability from the assets of a protected cell that is not responsible for the liability, the directors who authorize the satisfaction shall make a full inquiry into the affairs and prospects of the protected cell whose assets are proposed to be used to satisfy the liability to determine that both of the following are true:

(i) Immediately following the date on which the liability is proposed to be met by the cell assets of the protected cell in question, the protected cell will be able to discharge its liabilities as they fall due.

(ii) Having regard to the prospects of the protected cell, the intentions of the directors with respect to the management of the protected cell's business, and the amount and character of the financial resources that will in their view be available to the protected cell in question, the protected cell will be able to continue to carry on business and will be able to discharge its liabilities as they become due or until the protected cell is dissolved, whichever first occurs.

(b) If the criteria of division (E)(2)(a) of this section are met, the directors shall make a written authorization stating the outcome of their inquiry and shall submit the authorization to the superintendent for approval prior to satisfying the liability.

(F) A director who makes a statement under division (D) or (E) of this section without having reasonable grounds for the opinion expressed in the statement violates this chapter and may be removed by order of the superintendent.