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CIVIL IMMUNITY FOR DELAWARE SCHOOL BOARD MEMBERS

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In recent years, an avalanche of civil actions have been filed against educational institutions in the State of Delaware. Many of these actions name not just the institutions themselves, but also the individual members of the boards that manage the educational institutions. While many legal defenses to these claims are available, one that is often overlooked is the immunity afforded to unpaid workers of certain tax-exempt organizations. This immunity applies to individuals affiliated with both public and private organizations, and therefore is an important consideration for anyone serving on the managing board of an educational institution.

The grant of immunity is found in Title 10, section 8133 of the Delaware Code which provides that:

"No volunteer of an organization shall be subject to suit directly, derivatively or by way of contribution for any civil damages under the laws of Delaware resulting from any negligent act or omission performed during or in connection with an activity of such organization."

"Volunteer" is defined in the law as any trustee, ex officio trustee, director, officer, agent or worker who is engaged in an activity without compensation.

"Organization" includes any not-for-profit organization and governmental agency exempt from federal income tax.

"Compensation" under the statute is any remuneration for services rendered, but does not include remuneration in the form of access to services of the organization at no or a reduced cost or reimbursement for costs actually incurred and does not include any remuneration which an ex officio trustee receives by way of salary for a position which requires, among other duties, serving as an ex officio trustee.

The statute defines "Activity" as any decision, act or event undertaken by an organization in furtherance of the purpose or purposes for which the organization was organized.

There are limited exceptions to the immunity afforded by section 8133. First, if the individual defendant caused injury by operation of a motor vehicle immunity is waived up to the limits of any applicable insurance coverage. Second, there is no immunity where the individual defendant engaged in willful, wanton or grossly negligent conduct. Third, the immunity is available only to individual defendants and not the organization they serve. While individual defendants are immune from liability, the organization may still be liable for their conduct. Finally, the immunity provided by this statute applies only to claims brought under Delaware state law and has no application to claims brought under federal law.

Public School Board members serve without compensation by operation of law, 14 Del. C. §1046, and public school districts are "organizations" for purposes of section 8133, thus the immunity clearly applies to public school board members. Application of this statutory immunity to private sector defendants is less certain and will depend on the particular facts of the case. Nevertheless, the immunity afforded by section 8133 should not be overlooked when an individual school board member faces a claim for conduct in the course of managing an educational entity in Delaware.

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