

Corporate Sustainability and Social Entrepreneurship: Part Four

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<http://commercialcounselor.com/>

Fourth in a Series of Articles

We began this series of articles by asking tough questions:

Do corporations exist solely to maximize shareholder value and profit? Or do corporations also exist to serve a broader interest, to achieve “social good”?

Is there one bottom line or two? Can profit and social good co-exist and complement one another? Or are these concepts necessarily at odds?

Does the law of corporate governance permit social good as a primary focus and aim of corporate action?

We can’t resolve all differences of opinion and legal analysis in a series of short articles, but it is clear that those who argue for corporate sustainability and social entrepreneurship have substantial arguments to support their position.

There is a growing acknowledgment, if not consensus, that a double bottom line, i.e. pursuing profit while doing social good, is not only possible but consistent with the law of corporate governance.

Several years ago, one author claimed that “social entrepreneurship projects are investments that add both social and financial value to corporations’ bottom line and are therefore within the scope of the business judgment rule, and . . . the board of directors has a duty to be informed of the potential for social entrepreneurship in their company.” [[Sustainability Meets Profitability](#), Janet Kerr, November 1, 2007]

The author also noted that “[d]uring the 1980’s the large majority of state legislatures across the country passed corporate governance statutes which generally permit but do not require corporate officers and directors to consider the interests of non-shareholder constituents stakeholders) when making business decisions.”

Beyond this, many states have exculpatory provisions that protect directors from personal liability in many situations. Important among these is the Delaware General Corporation Law Code §102(b)(7), which permits language in a certificate of incorporation “eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director . . .”.

There are exceptions for acting in bad faith, breaching the duty of loyalty or personally benefiting from a transaction, but this kind of exculpatory language generally shields a director from personal liability, including liability from shareholder suits with regard to corporate decisions about sustainability and social entrepreneurship.

Thus, a more recent paper by The Conference Board and its Center For Sustainability, echoing earlier work, concludes that it is a “. . . misconception that the legal system does not protect socially outward-looking business decisions.” [[Sustainability Matters: Why and How Corporate Boards Should Become Involved](#) (2011)]

Read [Part One of this series](#) on Corporate Sustainability and Social Entrepreneurship.

Read [Part Two of this series](#) on Corporate Sustainability and Social Entrepreneurship.

Read [Part Three of this series](#) on Corporate Sustainability and Social Entrepreneurship.

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