



## Limited Liability Under the Massachusetts Wage Act for Board Members and Investors

The Massachusetts Wage Act (Ch. 149, §§ 148-150) permits lawsuits for unpaid wages to be brought against a company's president, treasurer, or officers or agents having the management of the company. While the terms "president," "treasurer," and "officer" are relatively well-defined, until recently there was significant uncertainty about who qualified as an "agent having the management" of a company to be held personally liable under the Wage Act. In *Segal vs. Genitrix, LLC*, 478 Mass. 551 (2017), the Supreme Judicial Court (SJC) clarified the scope of personal liability for two groups of non-officers – investors and board members – finding that they cannot be held personally liable solely by virtue of their investment activity or acts performed in their official capacity as board members.

*Segal* was a case that came to court when the president of a dissolved company brought suit under the Wage Act for unpaid wages against the company's former investors and board members. *Segal*, an inventor, had assigned all of his cancer research intellectual property rights to Genitrix LLC, a biotechnology start-up,

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### SUPER LAWYERS

Five of the firm's attorneys were named Super Lawyers in 2017, including **Marc Laredo, Mark Smith, Matt Kane, Eric Sigman** and **Payal Salsburg**.



**Matt Kane** was selected for inclusion in the 24th edition of The Best Lawyers in America® for his work in Commercial Litigation.



**Payal Salsburg** was promoted to Senior Counsel at the firm. She continues to handle business litigation matters, e-discovery, corporate advice and counsel as well as ethics investigations.



**Greg Englund** joined Laredo & Smith as Of Counsel. With over 40 years of experience working with individuals, families, and business owners, Greg brings a robust estates & trust practice to the firm.

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and in exchange became the president and chief executive officer of the LLC. The start-up was funded by two investors through a separate entity.

As the president and sole officer of the LLC (which never employed more than five full-time employees), Segal was responsible for day-to-day operations, including supervising the laboratory, managing human resources, handling payroll, and writing checks on behalf of the LLC. He also served on the company's board of directors along with the two individual investors, neither of whom had any day-to-day responsibilities. After the LLC encountered financial difficulties, Segal decided to stop paying himself but continued working for the LLC for two more years with the hope that he would be paid upon the sale of the LLC's assets. After dissolution, Segal brought suit under the Wage Act against the investors and board members claiming that, as investors, they controlled the finances of the LLC, and as board members, each was an "agent" of the company for purposes of personal liability.

Applying the statute, the SJC found that neither defendant was a president, treasurer, or officer of the LLC and could not be personally liable on that basis. Personal liability would have to be based, if at all, on their being "agents having the management" of the company. The court found that while boards are regularly required to make difficult decisions that have an impact on the company's finances, such decisions are not acts of individual board members; rather, they act in a collective capacity. Similarly, imposing restrictions on investment funds does not qualify as management direction and control over existing resources. The Court also emphasized that Segal, the president and officer of the LLC, was the only person expressly identified by statute as responsible for Wage Act violations, and that it was Segal – not the investors or board members – who made the decision not to pay himself.

The *Segal* case is significant for Massachusetts investors and board members because it provides some assurance that they will not be "on the hook" for unpaid wages under the Wage Act so long as they act solely in those capacities and do not participate in the day-to-day operation and management of a business.

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