

# OREGON LAW UPDATE

## How Limited are LLC Members' Liability?

**From the desk of Josh Hayward: Are members or managers of a limited liability company vicariously liable for debts, obligations, or liabilities of the limited liability company, or does ORS 63.165(1) shield members or managers from liability?**

**Claims Pointer: ORS 63.165(1) immunizes LLC members or managers from vicarious liability for the LLC's obligations. However, a member or manager will remain responsible for his or her acts or omissions to the extent in which those acts or omissions would be actionable against the member or manager if that person were acting in an individual capacity.**

case in point...

Cortez v. Nacco Material Handling Group, Inc., 356 Or 254, --- P.3d --- (2014).

Sun Studs, Inc. was a lumber mill located in Oregon. In 2001, Swanson Group, Inc. ("Swanson") purchased Sun Studs, Inc., and reorganized that business as a limited liability company. Swanson was the sole member of Sun Studs, LLC ("Sun Studs"), and Swanson elected itself to manage the company. Swanson set general policies and priorities for Sun Studs. It provided Sun Studs with a safety manual, which stated general policies and served as a "template" that Sun Studs could customize to its particular operations. Swanson delegated day-to-day responsibility for safety at Sun Studs to Sun Studs' mill manager and HR director. It was up to Sun Studs' mill manager and HR director to identify and rectify any safety violations or unsafe workplace issues or safety hazard type issues at the worksite. Swanson executives did not visit Sun Studs to monitor safety conditions or set safety policy. However, if the Swanson executives did observe a safety violation they had authority to direct Sun Studs to correct the violation.

The plaintiff was an employee of Sun Studs, LLC. While the plaintiff was walking through a dark corridor at the lumber mill, another Sun Studs employee, who was driving a forklift, accidentally hit the plaintiff. The plaintiff suffered severe injuries as a result of the accident. After receiving workers' compensation benefits from Sun Studs, the plaintiff filed suit against Swanson Group, Inc., alleging Swanson was liable for negligently failing—or negligently failing to require Sun Studs—to provide a safe workplace and for failing to provide competent safety personnel. The plaintiff also alleged that Swanson was liable under the Employers Liability Law ("ELL"), which requires employers to take certain safety measures. (Discussion on the plaintiff's ELL claim in this case will be discussed in a separate case update.)

Swanson conceded for purposes of its motion for

summary judgment, that enough evidence exists that a jury could find that it was negligent in failing to require Sun Studs to provide a safe workplace, and that it had the authority, as the member-manager of Sun Studs, to require Sun Studs to provide safer conditions. Having conceded these facts solely for purposes of its motion for summary judgment, Swanson argued it was nevertheless immune from liability under ORS 63.165(1), a statute that provides immunity to LLC members and managers.

Under ORS 63.165(1), a member or manager of an LLC is not personally liable for a liability of the LLC solely by reason of being or acting as a member or manager. The court analyzed the text, context, and legislative history of the statute in determining whether the statute shielded Swanson from liability. The court concluded that unlike limited partners, members or managers who participate in or control the business of an LLC will not, as a result of those actions, be vicariously liable for the LLC's debts, obligations, or liabilities. However, a member or manager will remain responsible for his or her acts or omissions to the extent in which those acts or omissions would be actionable against the member or manager if that person were acting in an individual capacity.

Having concluded that the statute does not shield Swanson from responsibility for its own negligent acts in managing Sun Studs, the court addressed the question of whether, as a matter of Oregon negligence law, Swanson was liable for the plaintiff's injuries. The court concluded that Swanson's role was comparable to that of a corporate officer; and therefore, the negligence standards that apply to corporate officers and managers applied to Swanson. Applying that standard, the court found that as a matter of law Swanson was not negligent in overseeing and implementing the procedures. Therefore, Swanson was not liable, and the plaintiff's negligence claim against Swanson was properly dismissed.



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