

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

LORIANN BUSSE and LISA CARPENTIER,  
ALEXANDRA RENEE CARPENTIER;  
DEVAN MICHELE CARPENTIER; and  
MARIE JOSEE CARPENTIER, A Minor  
Through Her Mother and Next Best Friend  
LISA CARPENTIER,

Plaintiffs,

v.

JEFFREY BUSSE; LAVERN T. BUSSE;  
BUSSE FINANCIAL ADVISORS, LLC;  
BUSSE FAMILY LIMITED PARTNERSHIP;  
AB BI NOTE LIMITED PARTNERSHIP;  
LAVERN T. BUSSE AND AUDREY BUSSE  
FOUNDATION and Nominal Defendants: LTB  
2002 IRREVOCABLE TRUST; LTB 2002  
IRREVOCABLE TRUST U/D/O DECEMBER  
20, 2002 F/B/O LORIANN BUSSE; LTB 2002  
IRREVOCABLE TRUST U/D/O DECEMBER  
20, 2002 F/B/O ALEXANDRA RENEE  
CARPENTIER; LTB 2002 IRREVOCABLE  
TRUST U/D/O DECEMBER 20, 2002 F/B/O  
DEVAN MICHELE CARPENTIER; and LTB  
2002 IRREVOCABLE TRUST U/D/O  
DECEMBER 20, 2002 F/B/O MARIE-JOSEE  
CARPENTIER,

Defendants.

CIVIL NO. LACV083022

RULING ON THIRD PARTY  
DEFENDANT BUSSE INVESTMENTS,  
INC.'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT

Third Party Defendant Busse Investments, Inc. ("BI") filed a Motion for Partial Summary Judgment with a Memorandum and Statement of Undisputed Facts on September 8, 2016. Third-Party Plaintiff, Jeffrey Busse ("Jeff"), filed a Resistance to BI's Motion for Partial Summary Judgment with a Memorandum and Response to BI's Statement of Undisputed Facts on September 30, 2016.<sup>1</sup> BI filed a Reply to Jeff's Resistance on October 3, 2016.

Oral argument on BI's Motion for Partial Summary Judgment was held telephonically on November 21, 2016. The parties appeared telephonically by their attorneys of record. The Court has

<sup>1</sup> Jeff's Resistance was timely filed pursuant to Court Orders entered on September 22, 2016 and September 26, 2016 that granted the parties' requests for an extension of Summary Judgment Resistance Deadlines.

considered counsels' briefs, the parties' exhibits, and the applicable law, and now makes the following ruling:

**Factual Background and Proceedings**

The Cross-Petition filed by Third-Party Plaintiff, Jeff, asserts a claim for statutory indemnification against BI. It is undisputed that Jeff's third party claim against BI for indemnification for legal fees and litigation expenses incurred in connection with these consolidated lawsuits is exclusively based on Iowa Code sections 490.852 (directors) and 490.856 (officers). There are no provisions in BI's Articles of Incorporation or any other written agreements that provide any basis for indemnification.

Jeff's Cross-Petition against BI asserts a claim for statutory indemnification "for all costs and expenses, including attorneys' fees and costs, which may be imposed or reasonably incurred by him in connection with or arising out of any claims included in the Plaintiffs' Petition by reason of Jeff having been an officer or director of BI." (Cross-Petition, ¶ 6). Plaintiffs' original Petition in this case asserted thirteen separate counts, including two counts that are directed at Defendant Lavern T. Busse only. By a Supplement to the Petition, filed June 9, 2016, Plaintiffs added another count directed at Jeff, Count XIV ("Breach of Fiduciary Duty Re: Life Insurance Trust"). Only one of those counts directly refers to Jeff's role as a director and officer of BI—Count X ("Breach of Fiduciary Duty" – Busse Investments, Inc.) (*See* Petition, Count X, ¶¶ 213-217). Through discovery, BI alleges it learned that Jeff seeks statutory indemnification for any judgments against him and all legal fees and expenses that have been, or will be, incurred in connection with this litigation. BI, by motion for partial summary judgment, requests the Court to limit Jeff's statutory indemnification claim to reasonable expenses incurred in connection with the defense of only those claims that are asserted against Jeff because of his role as an officer or director of BI.

Although Count X includes the catchall phrase "by various acts, including but not limited to," Jeff, following the parties' summary judgment filings, acknowledges Plaintiffs' claims against him on

account of his role as an officer or director of BI are limited to Count X and the following alleged conduct: (1) Jeff, acting as an officer and director of BI, encumbered BI with a thirty-year obligation to further his own estate planning goals through the “MMB loans;” (2) Jeff, acting as an officer and director of BI, engineered a backup plan to keep BI saddled with debt over the long-term in the event that BI prepays its loan to MMB through the “BFLP Loan;” and (3) Jeff, acting as an officer and director of BI, prepaid a \$2.65 million debt that BI owed AB BI to help facilitate Lavern’s retribution against Plaintiffs.

### **Applicable Law and Analysis**

#### **I. Summary Judgment Standard**

A motion for summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Iowa R. Civ. P. 1.981(3) (2015). The moving party carries the burden of proving the absence of a fact issue. *McIlravy v. North River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002) (citations omitted). “If reasonable minds could differ on how to resolve an issue, then a genuine issue of material fact exists.” *Id.* However, speculation and mere allegations are not material facts. *Hlubek v. Pelecky*, 701 N.W.2d 93, 95-96 (Iowa 2005) (citations omitted).

In ruling on a motion for summary judgment, the court must look at the facts in a light most favorable to the nonmoving party. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record. *Id.* “An inference is legitimate if it is ‘rational, reasonable, and otherwise permissible under the governing substantive law.’” *Smith v. Shagnasty’s Inc.*, 688 N.W.2d 67, 71 (Iowa 2004) (quoting *McIlravy*, 653 N.W.2d at 328). But an inference based on “speculation or conjecture” is not to be indulged. *Id.*

If summary judgment cannot be granted with regard to the entire action, the Court may grant partial summary judgment on the material facts that “exist without substantial controversy and [determine] what material facts are actually and in good faith controverted.” Iowa R. Civ. P. 1.981(4). The court will deem these material facts that are not controverted as established at trial. *Id.*

## II. Statutory Indemnification

Iowa Code section 490.852 provides:

A corporation shall indemnify a *director* who was wholly successful, on the merits or otherwise, *in the defense* of any proceeding to which the director was a party *because* the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

IOWA CODE § 490.852 (2017) (emphasis added). Iowa Code section 490.856(1)(a) provides for statutory indemnification for an officer of corporations “[t]o the same extent as to a director.” IOWA CODE § 490.856(1)(a) (2017). Therefore, by the plain language of those statutes, statutory indemnification is only available for “reasonable expenses” that are incurred by a corporation’s director or officer for defending claims that are asserted against them because of their status as a director or officer.

It is undisputed that Plaintiffs’ claims against Jeff because of his status as a director and officer of BI are limited to Count X. Applying the plain language of Iowa Code sections 490.852 (director) and 490.856(1)(a) (officer), BI’s potential liability for statutory indemnification therefore should be and hereby is limited to Count X. *See Hawkeye Land Co. v. Iowa Utilities Board*, 847 N.W.2d 199, 210-11 (Iowa 2014) (quoting *State v. Beach*, 630 N.W.2d 598, 600-01 (Iowa 2001) (when a statute’s language is clear, Iowa courts look no further for meaning than its express terms). Accordingly, BI is entitled to partial summary judgment limiting Jeff’s statutory indemnification claim to reasonable expenses incurred in connection with the defense of Count X. The Court has determined by an Order filed today that Jeff has been fully successful in his defense of Count X. The Court will determine the

reasonableness of the expenses that Jeff incurred in connection with his defense of Count X in a post-trial proceeding.

**RULING**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Busse Investments, Inc. Motion for Partial Summary Judgment is GRANTED. Third-Party Plaintiff, Jeffrey Busse's claim for statutory indemnification against Third Party Defendant, Busse Investments, Inc., is limited to the reasonable expenses Third-Party Plaintiff, Jeffrey Busse, incurred in connection with the defense of Count X. The Court directs the clerk to provide copies of this Ruling and Order to the counsel of record.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** LACV083022  
**Case Title** (BC)LORIANN BUSSE & LISA CARPENTIER ET AL VS JEFFREY BUSSE

So Ordered



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John Telleen, District Court Judge,  
Seventh Judicial District of Iowa