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State high court rules on who pays staff's legal bills

Premium content from South Florida Business Journal - by Paul Brinkmann

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A recent Florida Supreme Court ruling set a standard for when a non-Florida corporation has to pay for an employee's legal bills.

The high court ruled that Banco de Venezuela (BIV) is not required to pay legal expenses for **Esperanza de Saad**, Miami-based VP who pleaded guilty to money structuring charges dating back to 1998.

The ruling could be viewed as having a narrow effect, except for the fact that South Florida has so many foreign corporations and no shortage of fraud. The ruling also highlights the fact that the 3rd District Court of Appeal previously ruled against BIV and in favor of de Saad, which many had considered a significant aberration from accepted law elsewhere in the U.S.

"It's very significant," said **Carol Licko**, an attorney with Hogan Lovells who argued the case for BIV. "The 3rd DCA had gone the other way. So it is odd that it hasn't been addressed previously."

De Saad's attorneys argued that Florida law applied to her request for indemnification or coverage of her legal defense. But the Supreme Court ruled that, as a Venezuelan corporation, BIV was not subject to Florida law about internal corporate policy. Even if the bank were subject to Florida law, the court ruled, it would not have to pay because de Saad eventually admitted her crime. And, the crime was not something she was doing in the normal course of her duties as a bank officer.

A further aspect of the ruling provided that BIV did not have to pay de Saad's salary when she was on leave without pay, pending the outcome of her criminal case.

Licko worked on the case with **Jessica Ellsworth** in Hogan Lovell's Washington, D.C., office.

"Outside of the 3rd DCA ruling, almost every state had reached the same decision as the Supreme Court. The 3rd DCA was the outlier," Ellsworth said. "What the Supreme Court

held is that non-Florida corporations are not subject to regulation by Florida law in matters of organization and internal affairs. The court said that would be governed by the place where company is based."

Florida law still applies to foreign corporations doing business in the state, but this case was about the internal organization of the corporate parent.

A 2002 ruling by the 3rd DCA also held that Florida law could govern foreign corporations' internal policy, but that ruling was not challenged. So the Supreme Court's new ruling sets a high-court precedent that becomes law going forward, Licko said.

"It's really anticompetitive to think that the 3rd DCA would rule in that way, putting a huge hardship on any out-of-state company coming into Florida," she said. "A big corporation would have to adopt all-new internal rules."

Case presented a unique problem

The de Saad case created a unique problem because a jury convicted her of money laundering, but a judge had overturned the conviction. She was charged with helping BIV – essentially owned by the Venezuelan government – launder \$4 million in drug trafficking proceeds. The trial judge said a government sting had apparently entrapped her. The government appealed the case.

De Saad eventually pleaded guilty to a lesser charge. She paid a fine, received probation and agreed to never again work as an officer at a bank. So she technically beat the government's case in one regard, but pleaded guilty later. The trial court ordered BIV to pay \$4.5 million in indemnification for legal fees and \$1.1 million in contract damages.

Bowman Brown, a partner with **Shutts & Bowen** in Miami, represents many banks. He said the Supreme Court was correct in overturning the lower court ruling. He said the outcome is what he would have expected, and he believes the Supreme Court did the right thing.

"I think it's significant the [Supreme Court] clarified this area of the law, but it corresponds with what I think the law was," Brown said.

He said foreign banks would take note of the case.

De Saad's criminal defense attorney, **Joseph Beeler** of Miami, said he was disappointed with the ruling. De Saad was only seeking indemnification for fees she incurred in her successful defense against the more serious money laundering charge, Beeler said.

Ellsworth said the ruling is the first time the Florida Supreme Court has looked at the state's indemnification law.

"The court was clearly offended that someone would demand payment for legal fees after pleading guilty," Ellsworth said. "She was trying to argue that, because she beat other charges, they should have to pay."

