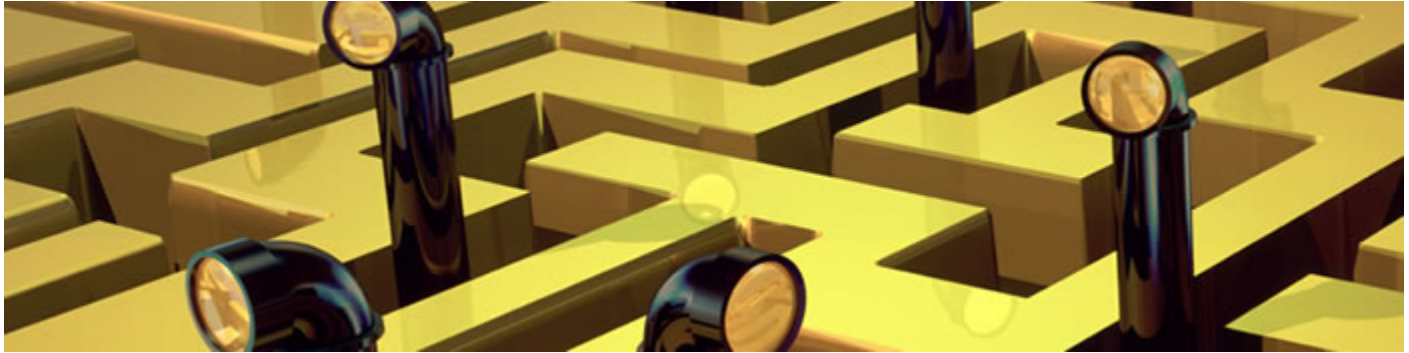


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MAYER·BROWN

## **Legal Alert: Florida Appeals Court Decision - BDO International can be liable for the actions of BDO Seidman LLP**

Yesterday the Florida Appeals Court delivered its conclusion on the question whether BDO International BV could be liable for a claim against its Member Firm BDO Seidman LLP.

BDO Seidman was last year found at first instance to have been negligent in a case brought against it by Banco Espirito Santo. The trial Judge found, however, that the bank failed to adduce sufficient evidence to allow the jury to consider whether BDO International managed and controlled BDO Seidman and therefore could also be held responsible for the alleged negligence.

The 3rd District Court of Appeal disagreed, saying that the trial Court erroneously held that as a matter of law BDO International could not be liable for the actions of BDO Seidman.

In reaching this conclusion the Court determined that a three part test should be used for determining whether BDO Seidman was a common law agent of BDO International (agency is one of several theories under U.S. law that makes one entity legally responsible for the acts of another):

- Did BDO International acknowledge that BDO Seidman would act for it?
- Did BDO Seidman accept the agency?
- Did BDO International control BDO Seidman?

The Court relied on four factors in concluding that BDO International acknowledged the agency, as follows:

- That the Articles of Association gave BDO International the right to "manage" and "control" BDO Seidman.
- That BDO International reserved unto itself the ultimate ownership of the manuals and software used by BDO Seidman.

- That the audit manuals used by BDO Seidman were promulgated by BDO International.
- That various BDO International reports described itself as, being, inter alia, responsible for implementing international quality control and training programs.

These factors were together enough to permit a jury to conclude that the US firm was the agent of BDO International within the assigned territory. Indeed, execution of the Member Firm Agreement was deemed by the Appeals Court to be enough to show acceptance of the agency by BDO Seidman.

Finally, the Court found sufficient evidence of control because, in short, BDO International had the ability both to require BDO Seidman's compliance with BDO procedures and to require BDO Seidman's cooperation; it exercised strict quality control over Member Firms and strict conditions had to be complied with to be part of the BDO network.

The Court gave the profession one glimmer of hope in its aside that: "The trier of fact would then still have to decide whether the agent's alleged negligence occurred within the scope of the Member Firm Agreement" - which strongly points to the benefit of incorporating within network arrangements contractual language negating agency.

We will be holding a Webinar shortly to explore the issues arising from this decision and the practical consequences for Global Networks. We will email you with the details.

Meanwhile, should you have any queries or require further information, please contact one of our Accountants' team:

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