

Indemnification (Civil Claims)

	Statutorily permitted indemnification	Statutorily required indemnification	Statutorily permitted advances	Permitted changes from statute
3 rd party claims	<ul style="list-style-type: none"> • Good faith + • Best interests of corp + • By reason of service <p>Expenses, judgments, fines, & settlements</p> <p>DGCL 145(a)</p>	<ul style="list-style-type: none"> • Successful on merits or otherwise + • By reason of service <p>Good faith irrelevant (<u>Waltuch</u>)</p> <p>Expenses from a win; not amounts related to settlement (<u>Waltuch</u> is oddball case)</p> <p>DGCL 145(c)</p>	<ul style="list-style-type: none"> • Reasonable + • Agreement to pay back if not entitled to indemnification <p>DGCL 145(e) & (<u>Citadel</u>)</p>	<p>Pre-commit to indemnifying and advancing expenses when permissive</p> <p>DGCL 145(f) & (<u>Waltuch</u>)</p>
Deriv. claims	<ul style="list-style-type: none"> • Good faith + • Best interests of corp + • By reason of service + • Not adjudged liable* <p>Expenses only:</p> <ul style="list-style-type: none"> • Litigation expenses from a win • Expenses in reaching settlement (but not settlement amount) • Litigation expenses of a loss with court approval * <p>DGCL 145(b)</p>	<p>Same as above</p>	<p>Same as above</p>	<p>Same as above</p>