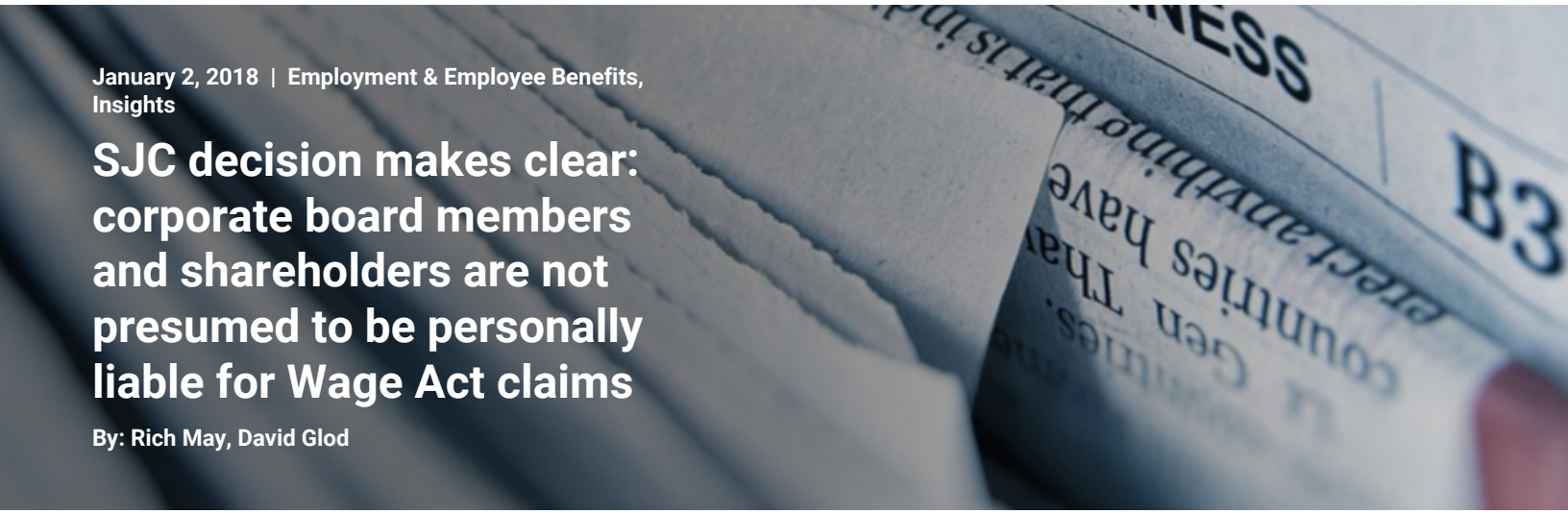

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SJC decision makes clear: corporate board members and shareholders are not presumed to be personally liable for Wage Act claims

By: Rich May, David Glod

In a decision issued December 28, 2017, the Supreme Judicial Court ruled that board members and shareholders of a company are not presumed to be personally liable for the company's failure to pay wages.

The decision, *Segal v. Genitrix, LLC, et al.*, came before the SJC on a petition for direct appellate review following a jury verdict for the Plaintiff. It provided an opportunity to examine the section of the Wage Act (G.L. c. 149, § 148) providing that the president and treasurer, together with "any officers or agents having the management" of the company are deemed to be "employers" who are liable to employees for violations of the Act.

The SJC reversed the Plaintiff's verdict against two board members of Genitrix, finding that they were "not designated as company officers and had limited agency authority." In fact, the only officer "having the management of the company" was the Plaintiff himself, who was the company's president and sole officer. While the decision follows from the plain language of the Wage Act, it may come as a surprise to some practitioners—as it has sometimes been assumed that personal liability attaches broadly to all officers and directors of a company. (A broad reading of the Act would not have been unwarranted, given that the SJC previously interpreted it to apply to employees of limited liability companies—disregarding the statutory language which only mentions corporations. See *Cook v. Patient Edu, LLC*, 465 Mass. 548 (2013).)

However in *Segal v. Genitrix*, the Court made clear that personal liability for Wage Act violations depends upon the defendant being empowered to act on behalf of the company by virtue of his status as an officer or some other agency relationship. The Court was careful to note that "[t]his is not to say that an individual director or investor can never be personally liable as an agent of the company. Rather, individual directors or investors may still be considered agents of the corporation if they are empowered to act as such, but any agency relationship stems from their appointment as an agent, not from their position as a director or investor." Thus, in analyzing personal liability for Wage Act claims against anyone other than the president or treasurer of a company, practitioners will need to

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conduct an agency analysis along the lines that the SJC has laid out.

The full decision can be found here.

Anyone with questions on the SJC's decision can contact Rich May, P.C. attorney David Glod.

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