

February 26, 1996 LB 681

being a particular action, and that particular action turns out, maybe realized ahead of time, maybe thought questionable ahead of time, but turns out to be malfeasance or negligence, something in the end that the court determines to be negligent.

SENATOR KRISTENSEN: Right.

SENATOR BEUTLER: The other three partners didn't say, go ahead and do that, they just sort of had knowledge of it, but didn't...

SENATOR KRISTENSEN: But acquiesced by silence?

SENATOR BEUTLER: ...acquiesced by silence. Tell us how that would be treated under this bill. Would those three partners be responsible for that act, too, or not?

SENATOR KRISTENSEN: I believe that becomes a fact determination, and that you will take into the factors of how much knowledge did they have? Did they have the opportunity to correct it? Quite frankly, you know you're settling in that meeting and the other partner says, you know, at ten o'clock this morning I'm going to go over to X, Y, and Z, and here it is eight o'clock in the morning, and they really have no opportunity to do anything because the dye is cast and done. I think that's a different fact situation than the other partner said, well you know, I've got a conflict of interest, but you know it's one of these we need to do anyway, let's go ahead and get it done. Everybody sits on their hands and says, well, that, you know, probably isn't right, but that's his doing, not mine, and they let it go. That fact situation is far more actionable and that's where the fact determination come in. This statute will be used as a defense perhaps by those...because I assume what happens is that you would sue all four, and those three others would assert, saying, look, we're subject to some protection because we didn't have sufficient knowledge, we didn't know fully what he was doing and so on. When you have equal partners, I think that's how it's happening. If it's a supervisor, I think you're done. I think if a supervisor...I'm not even sure they have to have actual knowledge, quite frankly, because I think they're...they've got an affirmative duty to know what their subordinates are doing.

SENATOR BEUTLER: But if the act was clearly malfeasance, and if