

Construction Law Practice Tip: Claybar v. Samson Exploration Is the Texas Indemnity Case to Watch

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PRACTICES Construction Litigation, Litigation

The law in Texas is that “[g]enerally, indemnity agreements do not apply to claims between the parties; rather, they apply to claims made by others who are not parties to the agreement. In *Claybar*, the appellant (plaintiff below) argued compellingly, if not persuasively, against this “no first party indemnity” rule, which several Texas appellate courts have followed for decades. Claybar lost in the Beaumont Court of Appeals and filed a petition for review with the Texas Supreme Court. Perhaps confident of the Court’s likely disposition of Claybar’s petition, Samson waived its response. But the Supreme Court might have other ideas. On June 15, 2018, it requested that Samson file a response to Claybar’s petition. *Claybar* is the Texas indemnity case to watch in the Texas Supreme Court.

Claybar leased parts of his land to Samson for oil and gas operations. Samson’s subcontractor, Kinder Morgan Treating, LP (“KMT”), operated an amine treating plant on the lease and allegedly spilled chemicals that contaminated the soil. Claybar asserted that it had to sue KMT in negligence to hold it accountable for the spill and resulting ground pollution, accruing in the process nearly \$1 million in legal expenses. Claybar eventually settled with KMT for its property damages and then sought indemnity from Samson for its legal expenses. The Claybar-Samson contract contained the following indemnity provision:

[Samson] shall indemnify [Claybar] against any claims, damages, demands, liabilities, and costs (including reasonable attorneys’ fees) to the extent arising from or related to the negligence or misconduct of [Samson] or its employees, agents, contractors, or invitees in the course of their exercise of rights granted by this instrument, but not to the extent caused by [Claybar], or its employees, agents, contractors, or invitees.

Claybar and Samson disagreed on whether this language covered Claybar’s offensive legal expenses. Claybar argued, *inter alia*, that the indemnity provision’s “plain language” gave him the right to recover. Samson counter-argued that the “provision only serve[d] to indemnify Claybar against claims from third parties,” which was not the case here. For example, under Samson’s reasoning, the provision would have applied to claims asserted against Claybar by a neighbor afflicted by the chemical spill. By agreement, the two parties filed cross-motions for summary judgment in the trial court. The judge ruled for Samson and against Claybar, holding that the indemnity provision did not apply to Claybar’s claims against KMT and Samson. On appeal, and now in its petition to the Supreme Court, Claybar argued three main points.

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[Claybar v. Samson Exploration Is the Texas Indemnity Case to Watch.PDF](#)