

## Construction Law Practice Tip: Indemnity Provision Details Matter

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**PRACTICES** Construction Litigation, Litigation

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In the usual construction contractual chain, the owner has a contract with a general contractor (“GC”), and likewise the GC with a subcontractor. Indemnity provisions typically ensure that the GC indemnifies the owner, and the subcontractor indemnifies the GC if, for example, an injured subcontractor employee sues the owner in a third-party over action (Figure). At least, that is the way it should have worked—but did not—when a Port Authority, Schneider Electric, and Oliver Communications entered into contracts to install security cameras on a bridge.

Burness, an Oliver employee, sued the Port Authority for an injury sustained on the job site. The Port Authority sought indemnification from Schneider, which eventually agreed to pay a settlement to Burness. Schneider then moved for summary judgment against Oliver for indemnification. The trial court granted the motion and awarded Schneider over \$1.2 million against Oliver, but the Amarillo Court of Appeals reversed and denied judgment for Schneider, for two reasons. As a threshold matter, the court reiterated that, under Texas law, “indemnity agreements are strictly construed in favor of the indemnitor.”

The subcontract obligated Oliver to “indemnify, save, and hold harmless” Schneider, its agents and employees, “and all parties indemnified by Contractor in Contractor’s Contract.” In this case, the “Contractor’s Contract” was the contract between the Port Authority and Schneider. Thus, Oliver was allegedly contractually obligated to indemnify Schneider and anyone Schneider was obligated to indemnify. But, after scrutinizing the owner-GC contract, the court determined that Schneider had no obligation to indemnify the Port Authority.

To read the full publication, click on the PDF linked below.

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