

[Assignee May Pursue Claim for Indemnification for Unreimbursed Counsel Fees](#)

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In [Searles Valley Minerals Operations Inc. v. Ralph M. Parson Service Co.](#), 2011 DJDAR 1193 (2011), the [Fourth District Court of Appeal](#) decided an interesting contract indemnity case dealing with a fee award.

After concluding that there was no case law directly on point, that Court of Appeal concluded that an assignee of contract indemnification rights stands in the shoes of the indemnitee. So, if the indemnitor refuses to pay an indemnitee's defense costs, the indemnitee can pay the costs and seek reimbursement from the indemnitor.

Kerr-McGee Chemical Corp. ("KM") contracted with Ralph M. Parsons Service Co. ("Parsons") for the construction of a conveyor system. The contract had an indemnity provision in which Parsons agreed to defend and indemnify KM for claims arising from Parson's negligence relating to the equipment.

Later, another company ("Searles") bought the equipment and KM assigned its indemnity rights to Searles under the purchase agreement it had with Parsons. In 2001, a Searles employee was killed while operating the conveyor and a wrongful death claim was pursued by his heirs.

KM then tendered its defense to Searles and Parsons under the indemnity agreement. Searles accepted, but Parsons refused the tender. Searles incurred over \$800,000 in attorney fees, costs, and expenses in defending KM. Searles then sued Parsons for express indemnity, alleging that as an assignee of KM's indemnity rights, it was entitled to reimbursement from Parsons. The trial court disagreed and sustained Parson's demurrer without leave to amend.

The Court of Appeal reversed, noting that an assignee of contract indemnification rights stands in the shoes of the indemnitee. Thus, if the indemnitor declined to pay for the defense of an indemnitee, the assignee can pay the cost of defense and then seek reimbursement from the indemnitor because Searles was KM's assignee, and stood in KM's shoes. For these reasons, Searles was entitled under the indemnity agreement to recover the defense costs it paid for KM.