

Supreme Court Overturns Decision in Kieffer -- Invalidates Ruling That Party Owes all Defense Costs in Connection with Slip and Fall Accident

The New Jersey Supreme Court has overturned the Appellate Division's decision announced in Kieffer v. Best Buy, et. al.. In Kieffer, the Appellate Division found that despite all defendants being dismissed via summary judgment in connection with a slip and fall accident, the defendant responsible for onsite cleaning was required to pay all defense costs incurred by the two co-defendants under indemnity agreements contained in cleaning contracts.

As way of background, on June 19, 2004, plaintiff slipped and fell inside a Best Buy store. Plaintiff contended that the aisle where she fell was very slippery. Accordingly, plaintiff sued Best Buy, who in turn filed a third party complaint against AIC, its cleaning contractor. In its third party complaint, Best Buy demanded that AIC provide a defense and indemnification. This demand was made under the Hold Harmless Clause of the contract which provided that AIC agreed to:

Indemnify, defend and hold harmless, Best Buy...from and against any and all losses, costs, obligations, liabilities, damages, actions, suits, causes of action, claims, demands, settlements, judgments, and other expenses, (including but not limited to cost of defense, settlement and reasonable attorney's fees) of whatever type or nature, including, but not limited to, damage or destruction to property, injury to any person or persons, which are asserted against, incurred, imposed upon or suffered by Best Buy by reason of, or arising from ...the acts or omissions of Contractor (its officers, directors, employees or agents).

Additionally, the contract provided that Best Buy was to be named as an insured under the AIC policy.

AIC had hired All Cleaning to perform the cleaning services at the Best Buy store in question. Accordingly, AIC filed suit against All Cleaning demanding a defense and indemnification pursuant to their contract. Under that agreement, All Cleaning agreed to:

hold harmless and indemnify [AIC], [their] officers, shareholders, directors, agents, attorneys, employees[,] and each of [their] customers from any connection with any act of negligence, omission, or conduct arising out of the operation of [their] performance or non-performances of the Services.

In the trial court, Best Buy moved for summary judgment against the plaintiff on liability and against AIC on its contractual indemnification claim. AIC opposed Best Buy's motion seeking contractual indemnification, but also cross-moved for summary judgment against plaintiff on the issue of liability and All Cleaning as to its contractual indemnification claim. The court granted summary judgment in favor of all three defendants with regard to liability. Further, the court granted summary judgment in favor of Best Buy and AIC regarding their respective contractual indemnification claims. The court awarded Best Buy \$25,790.09 in counsel fees and costs. Likewise, the court awarded AIC \$11,763.75 in counsel fees from All Cleaning. Ultimately, All Cleaning was found responsible for paying all attorney's fees.

The Appellate Division found that under the terms of All Cleaning's indemnity agreement, it was obligated "among other conditions to indemnify them for all claims, demands, or assertions, arising out of or arising from the performance of its cleaning services at the Best Buy stores on AIC's behalf and on behalf of AIC's customers, which would include Best Buy." The court further noted that "the language contained in both indemnity agreements does not require a finding of negligence on the part of All Cleaning as a condition precedent to trigger the indemnity provisions...rather all that is required is the plaintiff's claim relate to the subject matter of the service agreement." Accordingly, the Appellate Division upheld the trial court's decision.

In reviewing the Appellate Division's decision, the Supreme Court found that under the contract between All Cleaning and AIC, there was no legal obligation for All Cleaning to reimburse attorney fees when no negligence was found. Specifically, the Supreme Court noted that the indemnity requirements under the Best Buy/AIC contract and the AIC/All Cleaning contract were very different. Under the Best Buy/AIC contract, the duty to defend and indemnify arose in connection with any and all "actions, suits, causes of action, claims [and] demands." Under the AIC/All Cleaning contract, the duty to defend and indemnify arose in "connection with any act of negligence, omission, or conduct arising out of the operation of [All Cleaning's] business and [its] performance or non-performance of the service."

AIC argued that the language "connection with" and "arising out of" should be given the same meaning as the terms "claims" and "demands" set forth in the Best Buy/AIC contract. The Court did not accept this argument and found that "we cannot write a better contract for AIC than the one it drafted for All Cleaning's signature." Further "conspicuously absent from the language of this indemnification provision is the explicit obligation to reimburse the legal costs for the defense of suits, causes of actions, and claims that a court later determines to be unfounded." The key difference between the two contracts was that the AIC/All Cleaning contract was not broad enough to be triggered upon only a claim being made.

Under the general principals of contract interpretation and interpreting indemnity agreements, any ambiguity will be construed against the prospective indemnitee (the party who drafted the agreement). Accordingly, the Court found that AIC was not responsible for reimbursing attorney fees for Best Buy and AIC.

This case is another example of an indemnity provision not being drafted in a manner consistent with holdings announced in prior court cases. Specifically, if a party seeks to have another party indemnify them for not only the negligence of the other party, but their own negligence (or alleged negligence), it must be explicitly stated in the indemnity provision. Additionally, the provision must set forth that the duty to defend and indemnify arises not only upon a finding of negligence, but upon any claim being made our suit being filed alleging negligence.

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