

New Jersey Supreme Court Publishes First Opinion Addressing First-Party Indemnity Provisions

What You Need to Know

On May 30, 2024, the Supreme Court of New Jersey issued its decision in *Boyle v. Huff*, holding that an indemnification clause cannot apply to first-party claims unless the parties include specific language expanding the clause beyond the traditional scope of third-party claims, meaning claims in which the party seeking indemnification has been sued by a non-party to the contract.

The decision in *Boyle* mirrors the Court's seminal opinions in *Ramos v. Browning Ferris Industries of South Jersey, Inc.*, and *Azurak v. Corporate Property Investors*, which dealt with the issue of indemnification provisions in negligence cases. In those cases, the Court similarly held that an agreement must expressly reference the negligence or fault of the indemnitee to allow indemnification for an indemnitee's own negligence. These decisions illustrate the importance of clear and express language in drafting contracts to ensure that indemnification provisions reflect the true intent of the parties.

By way of background, the plaintiff in *Boyle*, a former trustee of a condominium association, filed suit against the association seeking reinstatement of his position after he was ousted from the board of trustees. As part of his complaint, the plaintiff sought indemnification from the association for fees and costs incurred in the litigation pursuant to a provision in the association's bylaws. The broadly phrased indemnification provision provided that the association indemnified every trustee "against all loss, costs and expenses, including counsel fees, reasonably incurred . . . in connection with any action, suit, or proceeding" by reason of his or her status as a trustee. The clause excluded actions where the trustee was found to have acted in bad faith or with willful misconduct.

The association argued that the plaintiff was not entitled to indemnification because the indemnification provision did not expressly state that it covered first-party claims. The trial court rejected this argument, reasoning that the plain language of the indemnification provision required reimbursement for the plaintiff's fees and costs because the provision did not limit its application to a third-party claim against a trustee. The Appellate Division affirmed, holding that the indemnification provision unambiguously applied to *all* losses incurred in connection with *any* action against the plaintiff in his role as trustee.

The Supreme Court, however, reversed the Appellate Division and found in favor of the association, thereby limiting application of the clause to third-party indemnity claims. Justice Michael Noriega, writing for a unanimous Court, found that the indemnification clause was ambiguous because the surrounding sentences applied to third-party claims. The Court, emphasizing that indemnification provisions are to be strictly construed against the indemnitee, found that the provision could only apply to an action against a trustee by another unit owner in the condominium, and not to a claim by one trustee against another trustee. In so holding, the Court made clear that it will not *presume* first-party indemnification in the absence of language precluding it. There must be an "affirmative indicia of the intent to indemnify to overcome the presumption that parties will each pay

their own way."

The decision in *Boyle* is significant because it is the first time that the Supreme Court of New Jersey expressly recognized that an indemnity clause *could* apply to a first-party action, declaring that "it is not axiomatic that indemnification is limited only to third-party claims." Although the Court has long held, as in *Ramos* and *Azurak*, that an indemnitee could be indemnified for its own fault when the indemnitee's negligence is specifically referenced in a contract with the indemnitor, the Court has now expanded the potential scope of indemnification to include first-party claims between the indemnitee and the indemnitor.

The key take-away from the decision in *Boyle* is to ensure that the terms of an indemnification clause are exceedingly clear and specific, such that any intent to include claims for first-party indemnification cannot be lost in a sea of ambiguity. Even where an indemnity provision is broadly worded to encompass *all* losses incurred in connection with *any* action against the plaintiff, as in *Boyle*, it will be construed against the indemnitee.

Please contact the authors of this Alert with questions concerning the issues considered in this matter, or to discuss your specific circumstances.

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