



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

# Indemnity Clause/Bodily Injury: Federal District Court Addresses Whether Subcontractor Must Indemnify Contractor For Subcontractor Employee's Exposure To Toxic Fumes

## Arkansas Environmental, Energy, and Water Law Blog

05/26/2016

Co-Author: Emily O'Neal

A United States District Court (Washington, D.C.) addressed in a May 23<sup>rd</sup> opinion whether a subcontractor undertaking excavation and backfill work must indemnify the general contractor from claims by subcontractor's employee for his alleged bodily injury due to exposure to toxic fumes. *See Johnnie Parker, et al. v. John Moriarty & Associates v. Strittmatter Metro, LLC, v. Environmental Consultants and Contractors, Inc.*, 2016 WL 2992049.

A key focus of the decision is the indemnity provision in the subcontract between the contractor and the subcontractor.

Plaintiff Johnnie Parker, a construction worker on a project site in Washington, DC, was injured on the job and brought action against the general contractor of the project, Defendant/Third Party Plaintiff, John Moriarty & Associates of Virginia LLC ("JMAV"). Parker claimed that as a general contractor, JMAV was negligent and as result, he suffered serious injuries from exposure to toxic fumes while performing the excavation work.

JMAV subsequently filed a complaint against the subcontractor and employer of Parker, Strittmatter Metro, LC ("Strittmatter"), alleging claims of contractual indemnification and breach of contract.

At issue before the court was the indemnity provision in the Subcontract Agreement between JMAV and Strittmatter that provided:

"To the fullest extent permitted by the law of the District of Columbia, the Subcontractor [Strittmatter] shall indemnify and hold harmless the Owner, the Architect and the Contractor [JMAV] and all of their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, caused by, arising out of, in connection with, or resulting from the performance of the Subcontractor's Work under this Subcontract, where any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury or destruction of tangible property including the loss of use resulting therefrom, and is caused by or arises in whole or in part, from any

negligent or nonnegligent act or omission of the Subcontractor or any of its agents, employees, sub-subcontractors or others.”

Defendant JMAV moved for summary judgment on its contractual indemnification claim against Strittmatter based on the above agreement.

JMAV argued that the language in the contract was unambiguous and therefore, Strittmatter was obligated to fully indemnify JMAV as to any claims against JMAV regarding Parker’s injuries, regardless of whether Mr. Parker’s injuries arose out of JMAV’s negligence.

Strittmatter argued that their duty to indemnify JMAV was only triggered for claims arising out of the contracted work when Strittmatter’s conduct caused the damages.

The court decided that the language of the contract, including the provision referencing Strittmatter’s conduct, did not clearly reflect the parties’ intention to obligate Strittmatter for claims caused by or arising out of JMAV’s negligence. The court concluded that the provision was ambiguous. Because of this, the court denied JMAV’s request for summary judgment on its contractual indemnification claim against Strittmatter.

[Click here to download a copy of the Decision.](#)