

CLIENT NEWS BRIEF

Appellate Court Refuses To Enforce An Indemnity Provision Included In Consultant Agreement It Considers To Be Unfair To Consultant Plaintiffs

On December 9, 2019, the Appellate Court filed its decisions in *Long Beach Unified School District v. Margaret Williams LLC*, holding that an indemnity provision included in a consultant agreement between the parties was unfair and therefore inapplicable to claims brought by the consultant, Margaret Williams, or her consultant company, Margaret Williams LLC, against the District.

Background

In 2006, Long Beach Unified School District prepared and entered into its standard form consultant agreement with Margaret Williams LLC to perform full-time consultant work related to construction management and environment compliance on District projects.

In October 2013, a general contractor illegally brought contaminated material on one of the District's construction sites. Based on this incident, a dispute arose between Ms. Williams and the District representatives assigned to the construction site as to how the contamination would be addressed, and Ms. Williams contracted arsenic poisoning. The District terminated the consultant agreement over its dispute with Ms. Williams.

Ms. Williams and her company brought an action against the District based on claims of retaliation and numerous causes of action for breach of contract and Ms. Williams' wrongfully caused arsenic poisoning. The District filed a cross-complaint alleging the company was required to indemnify the District against the company's and Ms. Williams' claims, according to the terms of the consultant agreement. The consultant agreement required the company "at its own expense, cost, and risk, [to] defend any and all claims, actions, suits, or other proceedings . . . that may be brought or instituted against the DISTRICT, its officers, agents or employees . . . and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof." Thus, according to the District, the company was required to indemnify the District even against claims brought by the company and Ms. Williams, and even if the District was at fault.

Ms. Williams and her company asked that the trial court strike the District's cross-complaint in its entirety. That motion was granted by the trial court, and the trial court's decision was then appealed by the District.

The Court's Unconscionability Test

The appellate court's opinion focused on Williams' argument that the District could not force the company to indemnify the District because the indemnity provision included in the consultant agreement was unconscionable. The court was required to determine if the indemnification provision was so one-sided in favor of the District that it should not be enforced, and it did so by analyzing multiple factors to consider both the provision's procedural unconscionability (the allegedly unfair fashion in which the contract was imposed) and its substantive unconscionability (the alleged unfairness of the contract's terms).

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- **Procedural Unconscionability:** The consultant agreement was presented to the company in a standard form, on a take-it or leave-it basis, with no negotiation. Based on these facts, the District was found to have the superior bargaining power and, according to the court, the company faced economic pressures to accept the contract as drafted. In addition, the court stated that, based on the terms of the agreement, the company was unfairly surprised to learn it would be required to pay for the District's defense and indemnity, since the agreement also included a requirement that each party pay their own costs and attorney's fees in any litigation arising from the agreement. For these reasons, the court found procedural unconscionability.
- **Substantive Unconscionability:** The court also considered the fairness of the consultant agreement's terms, and found a high degree of substantive unconscionability. The indemnity provision as drafted by the District, if enforced, would limit the company's opportunity to obtain meaningful recovery in numerous valid actions against the District. Further, because Ms. Williams was not herself a party to the consultant agreement, the company would, under the language of the agreement, be required to pay the cost of defending against her claims as well as the cost of any ultimate judgment awarded to Ms. Williams against the District. For these reasons, the court found the clause to be substantively unfair.

Based on the court's finding of both procedural and substantive unconscionability, it determined the provision could not be enforced because it would result in the unfair scenario of the company being required to pay for the entire lawsuit- required to defend its own lawsuit and indemnify any damages they may be due.

Takeaways

The court's decision in *Long Beach Unified School District v. Margaret Williams LLC*, reinforces the legal concept that if a provision of a contract is considered by a court to be unfair, the court has discretion to limit the provision's application to avoid an unfair result. Therefore, this decision acts as a caution against overly broad indemnification clauses. We recommend reviewing such clauses with legal counsel to determine their enforceability.

If you have any questions about indemnity provisions or contracting issues in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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