

# MARKS & WEINBERG, P.C.

## **Economy Forms Corp. v. J.S. Alberici Constr. Co., Inc.**

53 S.W.3d 552 (Mo. Ct. App. 2001)

Are your lease indemnities conspicuous and do they expressly mention Lessor's own negligence?

A construction company that leased concrete forms from the manufacturer was not obligated to indemnify the manufacturer for costs from a lawsuit brought by one of the construction company's employees injured while working on the forms, because the lease agreement failed to expressly provide that the lessee shall indemnify the lessor from its own negligence. Economy Forms Corp. ("Economy"), a manufacturer of concrete forms used in construction, leased a number of its forms to J. S. Alberici Construction Co., Inc. ("Alberici"). The lease agreement was set forth in a one-page document. At the top of the back side of the agreement was the heading "WARRANTY TERMS AND CONDITIONS." In addition, there were twelve numbered paragraphs, one of which was an indemnification provision entitled "LIABILITY" that provided, in relevant part, that "[Alberici] shall be entirely responsible for and shall pay and exonerate [Economy] from liability for damages arising from injury to any persons as the result of the use or possession of the [concrete forms] . [Alberici] shall also indemnify [Economy] from any such claims, founded or unfounded and whether based upon alleged negligence or otherwise." Joseph Krispin, vice-president of Alberici, admitted that he did not read the



back page of the lease agreement before he signed it, stating that, at the time of signing, he did not consider Economy's "product warranties to be very important to Alberici."

In December 1989, an Alberici employee was injured while disassembling one of Economy's concrete forms. The employee brought a negligence and products liability claim against Economy. After judgment was entered in favor of Economy, it sued Alberici in an attempt to collect the costs of its defense pursuant to the indemnification provision in the lease agreement. The trial court entered a summary judgment in favor of Economy. The Missouri Court of Appeals reversed, holding that the indemnification provision was general and broad, and did not expressly provided that Alberici was obligated to indemnify Economy for Economy's own negligence. In addition, the appellate court concluded that the indemnification provision was inconspicuous because it was "buried" on the back page of the lease, under the main heading "WARRANTY TERMS AND CONDITIONS." Thus, because the indemnification provision did not provide in clear and unequivocal terms that Alberici was required to indemnify Economy from its own negligence, Economy was not entitled to reimbursement for the costs incurred in defending against the lawsuit brought by the Alberici employee

Marks & Weinberg, PC is a law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit [leaselawyer.com](http://leaselawyer.com) or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.

