

MARKS & WEINBERG, P.C.

Kenneway v. CRC Evans Pipeline Int'l, Inc. 1996 WL 1186890 (Mass. Super., 2000)

Kenneway, an employee of Henkels & McKoy, Inc. (öHenkelsö), was injured while operating a compressor and generator unit leased by CRC Evans Pipeline International, Inc. (öCRCö) to Henkels. Kenneway brought products liability and negligence claims against CRC. CRC subsequently filed a third-party action against Henkels for contractual indemnification, based upon language contained in the lease agreement.

Henkels filed a motion for summary judgment in response to the third-party action, arguing that the indemnification clause in the agreement was rendered void by Chapter 149, § 29C of the General Laws of the Commonwealth of Massachusetts. Section 29C was created by the Massachusetts Legislature to provide ösubcontractors some relief from the common practice of requiring them to assume broad indemnification obligations as a part of doing business.ö It provides a ömeasure of protection to subcontractors in dealing with others in connection with a construction contract, thereby permitting a öshifting of the risk of loss for construction worker's injuries to the general contractor.ö

In short, an indemnification clause may not require a subcontractor to indemnify a general contractor for the general contractor's own negligence. The court, however, refused to recognize the lease agreement between Henkels and CRC as a general contractor/subcontractor construction contract. The court then held that it would not



expand the scope of § 29C to encompass a standard lease agreement, and thus, the indemnification clause would be enforced. Therefore, Henkelsø motion for summary judgment was denied.

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