

# MARKS & WEINBERG, P.C.

## McNally & Nimergood v. Neumann – Kiewit Constructors, Inc.

648 N.W.2d 564 (Iowa 2002)

Any party that desires to be indemnified with respect to losses that result from its own negligence would be wise to make sure their contracts explicitly say so.

McNally & Nimergood (öLessorö) leased a construction crane to Neumann ó Kiewit Constructors (öLesseeö) pursuant to a lease which was a öbare rentalö-- meaning that the crane was leased without an operator. The agreement required Lessee to maintain the crane in good working order and to repair it as necessary.

When one of Lessee's employees was seriously injured by the crane, the employee sued Lessee for negligence, alleging that it failed to inspect the crane, failed to maintain and service the crane, and failed to properly operate the crane. The employee also sued Lessor for negligence, alleging that it failed to inspect and maintain the crane prior to its delivery. The employee's recovery against Lessee was limited by workers compensation laws and Lessee was quickly dismissed from the suit. Lessor subsequently settled the claim for \$500,000 and immediately began demanding indemnification from Lessee pursuant to the terms of the lease agreement.

The court noted that indemnification agreements are generally subject to the same rules of formation, validity and construction as other contracts. However, the court articulated



a special rule of construction that applied to indemnification contracts when the contract is claimed to relieve the indemnified party from liability resulting from its own negligence. In the instant case, Lessor's settlement was of claims that alleged negligence on the part of Lessor and this rule of strict construction was therefore applicable.

In some past cases, the court permitted a party to be indemnified for losses resulting from its own negligence when such negligence was explicitly addressed in the indemnification agreement. In other past cases, where the language was general and did not specifically mention the indemnified party's negligence, the court held that the agreement did not require indemnification for losses resulting from such negligence. The court erased any confusion that might have resulted from such past holdings by noting that such cases were not intended to create a fixed limitation on the court's rule of construction and that the key issue remains the clear intent of the parties. As such, Iowa courts are allowed to discern the intent of the parties even if the contract does not mention the negligence of the indemnified party. That flexibility did not help Lessor in this particular case and the court still held that the language did not manifest an intention for Lessee to indemnify Lessor for losses resulting from Lessor's own negligence.

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