

## **New Jersey Appellate Division Decides Trial Courts May Require Negligence And Contractual Indemnification Issues Be Tried Simultaneously Before A Jury**

August 12, 2015

In *Estate of D'Avila v. Hugo Neu Schnitzer East, et al.*, A-4439-11T2, A-4705-11T2, A-4713-11T2, decided August 10, 2015, the New Jersey Superior Court, Appellate Division, in a published decision, held that in certain complex matters involving a lengthy trial, where claims of contractual indemnification are asserted against a plaintiff's employer, such claims should be tried simultaneously with the plaintiff's negligence claims before a jury.

The Appellate Division further held that the court must issue carefully crafted instructions addressing the pivotal factual issues to be decided, and a verdict form that would require the jury to reach the issue of an employer's potential fault only when absolutely necessary to do so.

The plaintiff filed a suit against a job site owner, post-accident medical providers and other parties; the job site owner filed separate claims for contractual indemnification against the deceased plaintiff's own employer and another contractor. Because the worker's compensation statute permits an employer's liability for contractual indemnification the trial court permitted counsel for the decedent's employer to present evidence and argument at the jury trial, but did not permit the jury to consider an allocation of fault to the employer.

The Appellate Division reversed, holding that "the trial court erred here in allowing decedent's employer to participate in the jury trial while simultaneously disallowing the jury from ascertaining that employer's percentage of fault, if any, on the verdict form." The court limited its holding to certain factors present in the litigation, stressing the complex nature of the claims at issue, including negligence, medical malpractice and contractual indemnity, as well as the lengthy four month trial. In such cases, although a jury cannot typically be asked to apportion fault to the plaintiff's own employer, the Appellate Division held that, because an employer is not precluded from assuming a contractual duty to indemnify a third party, a simultaneous trial of both the negligence and contractual indemnity claims is appropriate. The Appellate Division balanced the policies that underlie the worker's compensation law, the exclusive remedy of injured workers against their employer, with the need for "consistency of outcomes, efficiency, and the avoidance of the needless consumption of time and resources to litigation." The court stressed the complex nature of the claims at issue, including negligence, medical malpractice and contractual indemnity, as well as the lengthy four month trial. Because it is likely that proper application of indemnity agreement may require factual findings, the Appellate Division held that the jury's function as fact-finder should include factual issues relative to contractual indemnification. The Appellate Division did, however, expressly stop short of holding that such a trial should address "discrete factual issues bearing upon insurance coverage" and expressly limited its holding to issues of contractual indemnification.

Should you have any questions, please feel free to contact James P. Lisovicz, Esq., Vincent E. Reilly, Esq. or Jason A. Pozner, Esq.