

Landfill Lease Agreement: New Jersey Appellate Court Addresses Indemnity Provision



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The Superior Court of New Jersey, Appellate Division (“Court”) addressed in a July 26th opinion the Town of Kearny, New Jersey’s claim for contractual indemnification against The New Jersey Sports and Exposition Authority (“NJSEA”) regarding remediation costs of a local landfill. See *John P. Keegan v. Town of Kearny*, 2018 WL 3579896.

The property at issue was a landfill on land owned by both John P. Keegan and the Town of Kearny.

The landfill became non-operational and was left “uncapped.” It leaked heavy metals and pollutants into nearby bodies of water.

The Town of Kearny leased the landfill property to NJSEA, formerly known as the New Jersey Meadowlands Commission. NJSEA accepted sole financial responsibility for capping and remediating the landfill and surrounding bodies of water. It also agreed to acquire title to Mr. Keegan’s portion of the property and cap and remediate it as well.

NJSEA subsequently condemned Mr. Keegan’s property and recovered nearly \$900,000 in a cost-recovery action under the New Jersey Spill Compensation and Control Act. See N.J.S.A. 58:10-23.11 to -23.24. Mr. Keegan filed for contribution from the Town of Kearny.

In response the Town filed a third-party complaint against the NJSEA arguing that its lease agreement provided the Town would bear no expenses from the remediation plan, and that the NJSEA would be completely financially responsible for the project.

The trial court:

1. granted NJSEA’s motion for summary judgment;
2. denied the Town’s cross-motion seeking enforcement of a hold-harmless clause in the lease agreement; and
3. dismissed the third-party complaint with prejudice.

On appeal, the Town of Kearny identified several provisions of the lease agreement with NJSEA that indicated NJSEA would bear all expenses for the remediation project. The Court quoted the trial court judge, noting that “none of the provisions of the lease agreement [relied on by the Town] meet the strict requirements of New Jersey law with respect to indemnification provisions and contracts.”

The Town of Kearny identified several provisions in the NJSEA lease agreement that specified NJSEA's acceptance of all financial responsibility and it would bear no cost. However, the Court affirmed the trial court's decision that none of the provisions used the term "indemnity," which is a contract law term requiring unambiguous language to ensure there is mutual assent. Indemnification agreements are interpreted in accordance with the general rules of contract interpretation. The provisions the Town of Kearny identified were deemed ambiguous. As a result, they were construed against the indemnitee.

The Court affirmed the trial court's decision to dismiss the Town of Kearny's third-party complaint against the NJSEA.

A [copy of the opinion](#) can be found here.