

Environmental Assessment/Service Contract: Federal Court Addresses Scope of Indemnity for Alleged Negligence



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The District Court of Maryland (“District Court”) in an April 9th Opinion addressed an issue involving a contract dispute stemming from an environmental assessment. *See District of Columbia Water and Sewer Auth. v. Samaha Assoc*, 2024 WL 1537982.

The question considered was whether to grant the Defendant’s motion to dismiss cross-claims for contractual indemnity and breach of contract.

The District of Columbia Water and Sewer Authority (“DC Water”) sought to construct a Fleet Maintenance Facility. It hired Samaha Associates (“Samaha”) to conduct architectural and engineering related services on a potential land purchase and construction project that DC Water was considering undertaking. Under this agreement Samaha was responsible for conducting a Phase I Environmental Assessment (“Phase I”) on the project site property.

Samaha subcontracted the Phase I out to Adtek Engineers, Inc. (“Adtek”). Adtek subsequently subcontracted the Phase I out to ECS Mid-Atlantic, LLC (“ECS”).

ECS performed the assessment and issued a report to DC Water. The report stated that ECS found no evidence of recognized environmental conditions in connection with the property.

Relying on the ECS report, DC Water purchased the property and began performing construction and site work. DC Water subsequently encountered environmental conditions that disrupted the work and required remediation. This resulted in significant damages to DC Water’s project.

The damages included:

- Increased construction costs.
- The need to remove and replace unsuitable soils and debris.
- Associated environmental testing.
- Construction delays.

DC Water brought a suit against Samaha, Adtek, and ECS for damages incurred due to its reliance on ECS’s Phase I. Adtek cross-claimed against ECS, and ECS filed a motion to dismiss Adtek’s cross-claim.

Importantly, when Adtek was negotiating with ECS, the Adtek representative altered a portion of the “Terms and Conditions” included in the ECS’s contract proposal. The Adtek representative inserted language that read:

“The Terms and Conditions with Adtek’s client shall apply to this agreement.”

Adtek was attempting to have the Adtek/ECS contract incorporated and adopted into the “Terms and Conditions” of the Samaha/Adtek subcontract.

The Samaha/Adtek subcontract included similar incorporating language, applying the “Terms and Conditions” of the DC Water/Samaha agreement. Among the portions marked out by the Adtek representative was ECS’s standard indemnification clause. However, the adopted and incorporated agreements included an indemnity clause that was largely similar to the one provided by ECS.

Therefore, Adtek was alleging that because of this provision ECS would be obligated to indemnify Adtek from any liability arising from ECS’s negligent performance of services if the ECS Phase I was found to have breached the standard of care.

The District Court’s decision whether to grant or deny ECS’s motion to dismiss Adtek’s cross-claim for indemnity and breach of contract against ECS rested on whether the original “Terms and Conditions” included in the DC Water/Samaha agreement were properly incorporated downstream into the Adtek/ECS subcontract.

The District Court found that Adtek properly incorporated the upstream contracts including, among other things, the language from indemnity clauses, and that ECS’s subsequent performance of the Phase I evinced acceptance of that contract.

Notably, the District Court pointed to the similarity between the ECS indemnity clause that was replaced by the Adtek representative and the indemnity clause incorporated from the DC Water/Samaha contract as further illustration of ECS’s understanding and acceptance of the responsibility associated with the agreement.

Finally, the District Court found that DC Water sufficiently alleged proximate causation of their damages resulting from ECS’s breach of contract because it was reasonable to infer that if DC Water had known the environmental condition of the property it may affected its decision regarding the purchase of the property and planning of the Project.

Therefore, the District Court denied ECS’s motion to dismiss Adtek’s cross-claim.

A copy of the Memorandum Opinion can be downloaded [here](#).