

# A Softball Player's Injury Raises a Contractual Question for the Courts: Is an Indemnification Clause Enforceable?

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In the unpublished Appellate Division case of Matthew Domenick v. County of Middlesex, the Plaintiff, Matthew Domenick tripped and fell during a softball game on County property and sustained injuries. As a result, Domenick instituted a personal injury action against the County and alleged that it was negligent in the preparation and maintenance of the softball field which in turn caused him to sustain injuries. The County then filed a third-party complaint against a company known as Melnick, who sponsored the softball game and had entered into a contract with the County to use the property. That contract is important because it included a “hold harmless” or “indemnification clause.”

## What is an Indemnification Clause?

An indemnification clause typically states that one party agrees to indemnify, “hold harmless” and defend, the other party. Indemnifying someone typically means you agree to be legally responsible for something you do or fail to do if that action or inaction causes some type of harm to the other party. The clauses are language specific and need to be worded with specificity for them to be enforceable.

## The Specifics of this Contract's Indemnification Clause

The contract between the County and Melnick contained the following clause:

In consideration of the granting of permission by the Middlesex County Office of Parks and Recreation to the applicant for the use of the facilities set forth above, the applicant hereby shall defend, indemnify and save harmless the County of Middlesex against all claims arising from the conduct of activities for which this application is made.

## Legal Arguments

During the course of the litigation, both the County and Melnick moved for summary judgment. Citing the above underlined language, the County contended that Melnick was required to defend and indemnify the County against all claims arising from the activities for which the application was made. Melnick contended that the indemnification clause was deficient in that it failed to specify that Melnick was required to indemnify the County's own fault or negligence.

### What Did the Trial Court do?

The trial court dismissed the County's complaint against Melnick because it agreed with Melnick that the indemnification clause failed to explicitly state that Melnick would indemnify the County for the County's own negligence.

### What did the Appellate Division do?

The County appealed and argued that the trial court erroneously applied the law and overlooked the party's true intent behind the indemnification clause. After reviewing the cases governing contract law and indemnification clauses, the Appellate Division agreed with the trial court that the clause failed to explicitly state that Melnick would indemnify the County for the County's own negligence. Thus, because the contract failed to use precise language the indemnification clause was not enforceable.

The takeaway? Personal injury cases are complex and often intertwine with contract law and additional parties who may have responsibility. The [personal injury attorneys](#) at Einhorn Barbarito frequently deal with cases involving contracts and indemnification clauses and know the necessary parties to add to a lawsuit. Contact us for an in-depth review of your case.