

Recent NJ Appellate Court Decision is First to Uphold Contractual Indemnification in Instances of Alleged or Proven Negligence

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The published Appellate Division opinion issued on January 16, 2013 in *Sayles v. G&G Hotels, Inc.* stands after the New Jersey Supreme Court denied G&G Hotels' petition for certification on May 9, 2013. This ruling represents an important win for litigation partner **Brian Kornbrek** and associate **Thomas Murphy**, who represented defendant Howard Johnson International, Inc. ("HJI") in this case.

The Appellate Division decision is significant in that it is the first published decision in which the Appellate Division approved a broad indemnification provision which provided for indemnification even for acts of one's own negligence. While the New Jersey Courts had previously indicated that such clauses were enforceable, prior Appellate Division decisions had found the clauses at issue to be unenforceable.

The underlying case involved a 2006 accident in which two men fell through a third floor window at a Howard Johnson hotel in Atlantic City, resulting in the death of one man and severe injuries to the other. The plaintiffs sued G&G as the owner and operator of the hotel, as well as HJI as the franchisor of the Howard Johnson brand.

HJI filed a crossclaim for contractual indemnification against G&G. Prior to trial, and notwithstanding the trial judge stating that he found the indemnification provision to be poorly drafted and "not a model of clarity," HJI successfully obtained summary judgment declaring that G&G was contractually obligated to defend and indemnify HJI for the underlying personal injury claims. G&G settled all of plaintiffs' claims during trial, but subsequently appealed the contractual indemnification ruling in favor of HJI.

The Appellate Division decision in this case reaffirms the rights of parties to contractually arrange their risks of liability including situations where the negligence of the indemnified party is alleged or proven. In doing so, the Court explained that an indemnification does not fail just because it is complex or could have been clearer. Rather, the Court must look to the intent of the parties, and in this instance, found it clear that the indemnification provision was broad and included indemnification for HJI's own alleged or proven negligence. The Appellate Division also awarded HJI its fee on the appeal, as well as any unreimbursed fees in the trial court.

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