

Client Alert

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New York Court of Appeals Clarifies Scope of Indemnity Language

Indemnity clauses are critically important in construction contracts. In New York, they play a key role in assigning risks under the state's strict labor laws, known as the "scaffold laws." Laborers injured on construction projects cannot sue their employers directly (a consequence of New York's Workers' Compensation law), but they can sue the project owner and others. Owners counter this risk by requiring contractors to defend and indemnify them for claims "arising out of" or "connected to" the contractor's work.

In *DiBrino v. Rockefeller Center North, Inc.*, (2025 WL 3670593), an owner sought to enforce a typical indemnity provision against one of its subcontractors after a laborer was hurt using the subcontractor's ladder. But the laborer did not work for the subcontractor, was not authorized to use the subcontractor's ladder, and the subcontractor was not aware that the laborer was using their ladder. As a result, the Court of Appeals ruled that the subcontractor owed no indemnity to the owner – the laborer's unauthorized use of the subcontractor's ladder did not *arise out of, or result from, the performance of the subcontractor's work*. Notably, the contract also included a broader indemnification clause, but the Court refused to apply it because doing so would render the more restrictive indemnification provision meaningless – a violation of basic rules of contract interpretation.

The *DiBrino* ruling creates uncertainty about whether owners subjected to scaffold law claims are covered by their contractual indemnity clauses. And it will influence future contract negotiations, as owners and construction managers will seek to ensure that there is no gap in their indemnification provisions. It also serves as a reminder to lawyers that more is not always better – successive, seemingly repetitive, indemnity provisions will not act as "belts and suspenders," but may vitiate the very protection they are intended to provide.

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