

IDAMANEIO V GROSS - HOW EFFECTIVE ARE INDEMNITY CLAUSES IN DOCTOR'S CONTRACTS?

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The judgement of the NSW Court of Appeal in *Idameneo v Gross*¹ dealt with some tricky contractual issues that can arise out of the now common arrangement whereby medical centres are operated by a corporate entity that contracts with the doctors practising there to provide medical services.

The factual background to the case is outlined in our [previous article](#). In addition to discussions regarding apportionment of liability between the medical practice and negligent doctors, the court considered the effect of the contracts between the doctors and the medical centre that provided them with rooms and administrative services in return for a percentage of their billings.

The contracts included an indemnity clause in favour of the medical centre requiring the doctors to indemnify the centre for;

“any liability whatever arising from the Doctor rendering medical services pursuant to or in connection with this Deed or other acts or a failure to act on the part of the Doctor, whether of a medical service nature or otherwise”.

The parties also pursued claims against each other for breach of contractual terms regarding the level of performance required under the contract.

The court concluded that the contractual indemnities related to acts or omissions of the doctors themselves. The doctors' claims for contribution from the medical centre related to the medical centre's omissions rather than their acts or omissions, and the contribution claims were therefore unaffected by the contractual indemnity. The clause was held not to amount to a complete indemnity in favour of the medical centre.

The court also rejected an argument on behalf of the centre that it was entitled to damages for breach of contract from the doctors because it concluded that the contract contemplated that each party would carry the burden of their own liability.

The case shows that if a medical centre wants an indemnity clause to cover it for its own negligence the words of the relevant indemnity clause will need to be very clear.

1 [2012] NSWCA 423

AUTHORS