
From: Hosay, Robert H. [RHosay@foley.com]
Sent: 10/24/2019 1:32:37 PM
To: Hyde, Kevin E. [KHyde@foley.com]
Subject: RE: Scampi - Indemnification Provision

I can handle it.

From: Hyde, Kevin E.
Sent: Thursday, October 24, 2019 1:22 PM
To: Hosay, Robert H. <RHosay@foley.com>
Subject: Re: Scampi - Indemnification Provision

Their individual employment contracts were done by an attorney in Tampa. I referred that attorney to them. we did not draft any of them. are you going to be on the call at 2:30? Tim and Tom will be on for the questions related to co-ops. Do you need me?

Sent from my iPhone

On Oct 24, 2019, at 12:10 PM, Hosay, Robert H. <RHosay@foley.com> wrote:

I think I just turned all of their employment contracts on their head. We have to do some more analysis. I'm working on it. Wanted you to be in the loop. I believe Pillsbury did them, but I'm not certain. If you have any background on this issue and Florida government employment contracts please let me know. That's it for now. Enjoy the wedding!

From: Hyde, Kevin E.
Sent: Thursday, October 24, 2019 12:56 PM
To: Hosay, Robert H. <RHosay@foley.com>
Subject: Re: Scampi - Indemnification Provision

What do you need e to do on this?

Sent from my iPad

On Oct 24, 2019, at 10:51 AM, Hosay, Robert H. <RHosay@foley.com> wrote:

FYI since employment contracts are involved. This could be a big deal for current employment contracts.

From: Hosay, Robert H.
Sent: Thursday, October 24, 2019 9:39 AM
To: 'Nunn, Veronica T.' <veronica.nunn@pillsburylaw.com>; Grossman, Benjamin J. <BJGrossman@foley.com>; Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Cc: Lima, Augusto C. <augusto.lima@pillsburylaw.com>
Subject: RE: Scampi - Indemnification Provision
Importance: High

I believe as currently drafted this may expose the JEA by waiving its sovereign immunity and likely creating an argument for unlimited liability. We need to take time to look at this closely. We likely need to expressly include the two monetary caps found in sec. 768.28 as limits on indemnification.

An unlimited indemnification clause poses a substantial risk of waiving their sovereign immunity protections. The Florida Supreme Court addressed the exposure of a state agency under a contractual indemnification clause in *DOT v. Schwefringhaus*, 188 So. 3d 840, and rejected both of the contentions by the agency as to why it should not be subject to unlimited liability – first rejecting the idea that the indemnification clause was invalid, and second rejecting the argument that liability under the clause was limited to the sovereign immunity limits under section 768.28. In short, their reasoning was that the state has an implied waiver of sovereign immunity on contract claims because, by authorizing state entities to contract, the legislature was also necessarily authorizing the entities to carry out their resulting contractual obligations. By agreeing to an indemnity clause, the entity would be essentially converting tort claims (which would have otherwise been subject to the sovereign immunity limits) into contractual claims (which are not) by assuming the contractual obligation to indemnify for the claims, and would then have the contractual obligation to indemnify in an unlimited amount.

One way that may be worth exploring getting around the log jam would simply be proposing to limit the indemnification obligation to the same monetary limits applicable to tort claims under Florida's limited sovereign immunity waiver set forth in section 768.28(5), Florida Statutes (\$200,000 on any individual claim or judgment, \$300,000 aggregate for all claims or judgments arising out of the same incident or occurrence). The explanation for why we want to do so would, I think, simply be that we want to ensure that we are not inadvertently waiving the sovereign immunity protections for tort claims that we would otherwise have the benefit of.

From: Nunn, Veronica T. [<mailto:veronica.nunn@pillsburylaw.com>]
Sent: Wednesday, October 23, 2019 10:37 PM
To: Hosay, Robert H. <RHosay@foley.com>; Grossman, Benjamin J. <BJGrossman@foley.com>
Cc: Lima, Augusto C. <augusto.lima@pillsburylaw.com>
Subject: Scampi - Indemnification Provision

**** EXTERNAL EMAIL MESSAGE ****

Hi Robert and Benjamin,
Please find attached a working draft of an Employee Indemnification and Protection Agreement to be used in connection with appointing the Negotiating Team.

Can you please review Section 1.6 re: Indemnification? Specifically we want to ensure that the statutes cited are sufficient for the agreement to be able to be executed (given the laws that prevent general indemnification by a government entity).

Goal is to circulate this tomorrow if possible. Happy to discuss by phone if easier than marking-up (we're reviewing simultaneously).

Thanks in advance,
Veronica

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