

Contract **Indemnity - University Professor**

Where a plaintiff university, having settled a discrimination claim brought by a former student, now seeks indemnification from a defendant professor who committed the allegedly discriminatory acts, the university is entitled, under an indemnity clause in an agreement with the professor, to summary judgment on its indemnification claim.

Enforceable Agreement

"Plaintiff, Northeastern University, seeks a declaratory judgment that Defendant, Stuart Deutsch, indemnify Northeastern for monies paid to settle a third-party claim against Northeastern. Deutsch filed a counterclaim alleging fraud in the inducement (Count I) and breach of contract (Count II). This matter is now before the court on the parties' cross-motions for summary judgment. For the reasons set forth below, Deutsch's motion for summary judgment is denied and Northeastern's motion for summary judgment is allowed: ...

"On November 21, 1995, Deutsch's former student, Monir Al-Dhamen ('the student'), filed a claim against Northeastern with the Department of Education Office for Civil Rights ('OCR') alleging discrimination on the basis of national origin. Specifically, the student alleged that Deutsch had subjected him to 'different treatment' and that Northeastern did not adequately respond to the student's discrimination complaint filed through Northeastern's internal grievance procedure. On

October 21, 1996, Northeastern invited Deutsch to participate in settlement discussions with the student and OCR which Deutsch refused. Northeastern settled with the student for \$15,000 and filed the present action seeking reimbursement from Deutsch.

"Deutsch now contends that Northeastern failed to inform him of the pending OCR claim when he signed the Agreement and therefore, he is not liable. Furthermore, Deutsch claims that Northeastern told him that it did not have knowledge of any pending or potential third-party claims. ...

"In the present case, a question of fact arises over whether or not Northeastern told Deutsch that there were no pending or potential third party claims. The knowledge of the existence of third party claims would have influenced Deutsch's decision to sign the Agreement including the indemnity clause and thus is a material fact. Notwithstanding, the summary judgment record contains sufficient undisputed facts from which the court may reasonably infer that Deutsch knew or should have known of the student's claim, thereby making his claimed reliance unreasonable. ... In his deposition testimony, Deutsch states that he knew the student had filed a complaint with both Northeastern and the MCAD. Based on the facts presented, Deutsch was on notice that there were potential claims and therefore should have verified Northeastern's statement that it knew of no third party claims. Deutsch knew that complaints were often filed with the OCR in conjunction with MCAD. Deutsch could easily have verified whether there were

any pending claims before he signed the Agreement. Therefore, based on the undisputed facts presented, Deutsch's reliance on Northeastern's alleged fraudulent misrepresentation is unreasonable."

Northeastern University v. Deutsch
(*Lawyers Weekly No. 12-051-02*) (7 pages)
(*Connolly, J.*) (*Suffolk Superior Court*)
(*Civil Action No. 1998-4927-A*).