

Desiree L. Wilfong succeeded in obtaining summary judgment against a co-defendant in a major jury action Philadelphia County on a contractual indemnity/defense provision in a lease. The lease between her client, an apartment complex, and its tenant, the co-defendant in this case, provided the tenant is strictly liable for injuries caused by her dog and the tenant will indemnify the complex for all costs resulting from any such injury. In this lawsuit, the tenant's dog bit a young child on the face in an outdoor common area of the apartment complex during the child's birthday party. The tenant was outside, near the birthday party, with her dog. There is evidence the child may have been annoying the dog and was under little to no supervision. The bite caused hospital visits, scarring, and pain and suffering. The apartment complex allowed the tenant to have a dog at her apartment, but was unaware the dog was a breed prohibited by the complex, based on the tenant's misrepresentation. The child's parents brought suit against the complex and its tenant, and made a six figure settlement demand.

The carrier for the tenant continually denied the tender of defense/indemnity claims advanced on behalf of the apartment complex. Before the case reached the deposition phase, we filed a motion for summary judgment based on the contractual language. Despite vigorous opposition by the tenant suggesting the requisite specificity did not exist in the lease and the motion was premature, a Philadelphia County judge granted the motion. Under the order, the co-defendant tenant was required to completely defend and indemnify the apartment complex for all injuries caused by the dog bite. This includes payment of any damages which may be assessed to the apartment complex as a result of the bite, and past and future costs of defense of the apartment complex. We recovered significant past fees and expenses for the client, and obtained full protection for future defense/indemnity.

The contractual cross claim asserted by the apartment complex against the tenant, as well as the early tender of its defense to the tenant, were critical to the success of the motion. Although the indemnification provision was sparse, its intent was clear, which was also critical to the determination of the matter. Since the interpretation of the indemnification provision was an issue of law, the motion was filed and decided early in the case, prior to depositions. Although the tenant argued additional discovery was necessary to determine the intent of the contract, the intent of the parties is to be determined by a court, and only from the express language of the writing itself. As such, additional discovery was unnecessary. The court was likely more amenable to granting this motion as it was between two co-defendants, and plaintiff's case still stood against both parties with the granting of the motion. It is vital to zealously pursue risk transfer options early on in a case.