

BILL ANALYSIS

Senate Research Center
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H.C.R. 161
By: Burnam (Davis, Wendy)
Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Benbrook Water Authority, a governmental subdivision of the State of Texas is a party in the lawsuit *Benbrook Water Authority v. Carter & Burgess, et al.*, Cause No. 352-207733-04 in Tarrant County, Texas, in which a witness in the litigation, John Cook, has been threatened with liability by the opposing parties to the Benbrook Water Authority in the litigation if Mr. Cook comes forward with factual and expert testimony in the case on behalf of Benbrook Water Authority.

In an effort to protect John Cook from any legal liability to the opposing parties in the above-referenced litigation, now or at any time, however remote the possibility of liability on John Cook's part might be, the Benbrook Water Authority wishes to hold John Cook harmless by contractually indemnifying Mr. Cook against any claims he may face as a consequence of his truthful testimony offered in the cited litigation.

To be certain of the enforceability of a contractual agreement, the terms of which are disclosed below, Benbrook Water Authority wishes to have its immunity from suit waived to the extent John Cook is compelled to enforce the terms of the agreement in a court of law and has executed a Hold Harmless and Indemnity Agreement between Benbrook Water Authority and John Cook, that reads as follows:

- (1) "This Indemnification Agreement is by and between Benbrook Water Authority ("Indemnitor") and John Cook ("Indemnified Party") and is effective the 13th day of March, 2009.
- (2) The Texas Board of Professional Engineers Licensing Requirements (board) for engineers who practice engineering in the State of Texas contain the following provision:

"§137.55 Engineers Shall Protect the Public

- (a) Engineers shall be entrusted to protect the health, safety, property and welfare of the public in the practice of their profession. The public as used in this section and other rules is defined as any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with the engineering work on the license holder.
- (b) Engineers shall not perform any engineering function which, when measured by generally accepted engineering standards or procedures, is reasonably likely to result in the endangerment of lives, health, safety, property or welfare of the public. Any act or conduct which constitutes incompetence or gross negligence, or a criminal violation of law, constitutes misconduct and shall be censurable by the board.
- (c) Engineers shall first notify involved parties of any engineering decisions or practices that might endanger the health, safety, property or welfare of the public. When, in an engineer's judgment, any risk to the public remains unresolved, that engineer shall report any fraud, gross negligence, incompetence, misconduct, unethical or illegal conduct to the board or to proper civil or criminal authorities.

(d) Engineers should strive to adequately examine the environmental impact of their actions and projects, including the prudent use and conservation of resources and energy, in order to make informed recommendations and decisions."

(3) In consideration of the preceding regulation, and of Indemnified Party's voluntary testimony in the above cause in fulfillment of his duties as embodied in the regulation, Indemnitor and Indemnified Party have entered into this Agreement.

(4) Indemnitor agrees to indemnify, defend, and hold harmless the Indemnified Party from and against any and all claims, demands, causes of action, damages and rights of recovery of any type or description (collectively, the "claims"), which may be asserted against the Indemnified Party by any person, arising directly or indirectly from Indemnified Party's testimony in whatever form in the above styled and numbered cause against Carter & Burgess, Inc. Indemnitor expressly acknowledges that the indemnification obligation created hereby includes, without limitation, the obligation to indemnify the Indemnified Party with respect to claims which may arise out of the Indemnified Party's testimony herein, but shall not extend to claims caused by the Indemnified Party's willful misconduct.

(5) Indemnitor and Indemnified Party believe that, based upon allegations made in open Court by the representatives of Carter & Burgess, Inc. in the above styled and numbered cause to the effect that Indemnified Party is a "disgruntled ex-employee," that Carter & Burgess, Inc. may choose to attempt to sue Indemnified Party for coming forward in this cause to effectively intimidate Indemnified Party from testifying truthfully herein. The purpose of this Agreement is to avoid such intimidation by Carter & Burgess, Inc. in the ensuing weeks and months.

(6) Indemnitor hereby waives any and all immunity from suit and immunity from liability which may impair the enforceability of this agreement by Mr. John Cook, his heirs or representatives.

(7) This Agreement is performable in Tarrant County, Texas. Benbrook Water Authority."

RESOLVED

That the Legislature of the State of Texas, Mr. John Cook, his heirs, and representatives are, in the event a legal dispute arises with Benbrook Water Authority over the terms of the Hold Harmless and Indemnity Agreement entered into between Benbrook Water Authority and John Cook effective on March 13, 2009, granted permission to sue the Benbrook Water Authority.

That any immunity from suit that might shield the Benbrook Water Authority is hereby waived.

That by the Legislature of the State of Texas, John Cook is granted permission to sue the Benbrook Water Authority subject to Chapter 107 (Permission to Sue the State), Civil Practice and Remedies Code.

That the president of the board of directors of the Benbrook Water Authority shall be served process as provided by Section 107.002(a)(3) (relating to service of citation and other required process must be made on the attorney general and on a person named in the resolution as a representative of the affected state agency), Civil Practice and Remedies Code.