Court of Appeal, Fourth Appellate District, Division Two
Kevin J. Lane, Clerk/Executive Officer
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ENSEMBLE REAL ESTATE SERVICES, INC., Cross-complainant and Respondent, v. SAN ANTONIO COMMUNITY HOSPITAL, Cross-complainant and Appellant.	E069714 (Super.Ct.No. CIVDS1210739) OPINION

APPEAL from the Superior Court of San Bernardino County. Brian S. McCarville, Judge. Affirmed.

Horvitz & Levy, Frederic D. Cohen, H. Thomas Watson, Jason R. Litt; Davis, Grass, Goldstein & Finlay and Jeffery W. Grass for Cross-complainant and Appellant.

Lewis Brisbois Bisgaard & Smith, John S. Lowenthal, Jeffry A. Miller, Ernest Slome and Lann G. McIntyre for Cross-complainant and Respondent.

In November 2005, cross-complainant and appellant San Antonio Community Hospital (the Hospital) leased an office suite in a building in Fontana. Cross-complainant and respondent Ensemble Real Estate Services, LLC (Ensemble) was the property manager for the building. The lease included a clause providing the Hospital would indemnify Ensemble for injuries arising out of the Hospital's occupancy of the building. In December 2011, smoke entered the building's ventilation system due to a broken supply fan on the building's roof. An employee of the Hospital, Eric Cioco (Cioco), suffered smoke inhalation and was hospitalized. While hospitalized, Cioco was injured by an incorrectly inserted IV.

Cioco sued Ensemble. Ensemble cross-complained against the Hospital for express contractual indemnity under the lease. Cioco settled with Ensemble for $2,550,000, and Ensemble's insurers paid the settlement. The lawsuit on the cross-complaint proceeded. A jury found (1) the reasonable amount of attorney's fees and costs arising from Cioco's lawsuit was $187,248; and (2) the reasonable amount of the settlement for Cioco's lawsuit was $500,000. The trial court found the lease required the Hospital to indemnify Ensemble because Cioco's injuries arose from the Hospital's use and occupancy of the building. The trial court entered judgment in favor of Ensemble in the amount of $687,248.

The Hospital raises three issues on appeal. First, the Hospital contends the trial court erred by permitting the lawsuit to proceed with Ensemble as the named cross-plaintiff. Second, the Hospital asserts Ensemble lacked standing to pursue an indemnity

cause of action. Third, the Hospital contends the trial court erred in interpreting the indemnity provision in the lease. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. LEASE

In November 2005, Sierra Medical Properties, LLC (Sierra) leased a medical suite (the Suite) to the Hospital. The lease defined the premises to be leased as "Suite 220 on the second floor of the Building." The lease defined the term "building" as "that certain office building comprising a part of the Project, together with any related land, improvements, parking facilities, common areas, driveways, sidewalks and landscaping." The lease defined the term "Project" as "Sierra San Antonio Medical Plaza, as located or to be located at 16465 Sierra Lakes Parkway, Fontana, California, and including both the Building and rights under appurtenant easements"

The lease included an indemnity provision that reads: "[The Hospital] hereby agrees to defend (with counsel reasonably acceptable to [Sierra]) and indemnify and hold [Sierra] and its Related Parties harmless for, from and against any and all: (a) liabilities, claims of damage or injury arising from [the Hospital's] or its Related Parties' use and occupancy of, and activities on, the Premises and Project; (b) claims, liabilities or damages arising from any failure of [the Hospital] to perform its obligations under this Lease, or arising from any act or negligence of [the Hospital] or its Related Parties; and (c) costs, attorneys' fees, expenses and liabilities incurred by [Sierra] in connection with any of the foregoing (including those incurred in or relating to any action or proceeding brought against [the Hospital])."

The lease defined "related parties" as Sierra's or the Hospital's "employees, guests, invitees, principals (whether shareholders, members, partners, officers or otherwise), successors, assigns and agents." Ensemble was Sierra's property manager for the building.

B. INJURY

The Suite was the first developed suite within the building. The Hospital used the Suite as a "time share suite, which was leased on a time share basis to different physicians to use on scheduled dates and times." The Hospital had no responsibility for maintaining the building's the ventilation system.

Ensemble contracted with Precision Air to perform repair work on the building's heating, ventilation, and air-conditioning (HVAC) system. In particular Precision Air was "to perform quarterly maintenance of the water source heat pumps located in the plenums throughout the building."

In 2011, Precision Air replaced "the supply air fan hub" as part of its work at the building. "The fresh air supply vents face east on the roof." On December 6, 2011, "[t]he fresh air supply fan hub came loose. It snapped. It was grinding metal on metal, which produced smoke but no fire or flames. Because that is part of a system that feeds fresh air from the outside of the building into the building to mix with other air to keep the air in the building fresh, it pushed [smoke] into the vent system."

Cioco was employed by the Hospital as a public safety officer at the Suite. Cioco patrolled all the hallways of the building but was denied "access to into [*sic*] some of the suites." On December 6, 2011, Cioco was performing his interior rounds of

the building when he noticed a suite filled with smoke. Cioco pulled the building's fire alarm and called 911. Cioco then began evacuating the patients and staff by ushering them toward the stairwell. After Cioco evacuated people from the second floor, he then "began [his] sweep of the hospital . . . to make sure that no one was trapped or no one was stuck."

Cioco suffered chest discomfort, coughing, a tight throat, difficulty breathing, and burning eyes. Cioco reported his symptoms to the director of public safety, who directed Cioco to reenter the building to locate a missing employee. Cioco complied and found the missing employee. After Cioco "couldn't take" his symptoms any longer, he was "rushed to urgent care" and then transported to the Hospital's emergency room. At the Hospital, Cioco was intubated and spent "a couple days" in intensive care. While in the Hospital, Cioco "noticed that on [his] left arm, located around an IV that was inserted, that [his] left arm was swollen and there [were] fluids coming out of the IV site." Cioco was discharged from the Hospital "after three days."

On December 12, Cioco went to Dr. Smart complaining that "his hand was extremely sore and hard to touch." Dr. Smart referred Cioco to Dr. Brown, who had treated Cioco in the Hospital. Dr. Brown "believed that there had been an infiltration of the IV, which means that [the solution] had not stayed in the [vein]. It had been outside of the [vein] and had caused an irritation of the hand." If an infiltration was not treated promptly, it could cause nerve damage. Dr. Huang, a physical medicine and rehabilitation specialist, diagnosed Cioco with complex regional pain syndrome

(CRPS). The main symptom of CRPS was hypersensitive nerves, which equated to severe pain.

Cioco "complained of constant burning pain that is occasionally sharp and dull at the same time" in the inner portion of his left forearm. Cioco also suffered numbness and tingling in his left hand and fingers. The pain caused Cioco to be unable to sleep. Over time, the pain continued and extended—travelling up Cioco's arm.

C. LAWSUITS

1. *CIOCO'S COMPLAINT*

In October 2012, Cioco sued Ensemble for product liability, premises liability, and negligence. Cioco alleged he was injured as a result of the "defective HVAC unit and the defective smoke damper." Cioco alleged, "Ensemble was negligent in its use and maintenance of the [building]. Specifically, Ensemble failed to inspect and maintain the HVAC system and smoke damper. As a result of this negligence, the HVAC motor burned out and the smoke damper system failed to prevent smoke from being blown into the [Hospital]." Cioco asserted, "As a direct and proximate result of Ensemble's negligence, Cioco sustained serious injuries and damages including lost wages, pain and suffering, permanent disability, and medical expenses."

2. *ENSEMBLE'S CROSS-COMPLAINT*

Ensemble cross-complained against Precision Air, Sierra, and the Hospital. Ensemble brought 10 causes of action, including implied indemnity, equitable indemnity, comparative contribution, and express contractual indemnity. Ensemble alleged, "Should [Ensemble] be held liable to [Cioco] for the injuries and damages

[Cioco] allegedly sustained, then such liability would be solely of a passive, secondary, vicarious and derivative nature, as compared with the direct, primary, active and affirmative acts and omissions of [Precision Air, Sierra, and the Hospital], and each of them, such that [Ensemble] is entitled to be indemnified by [Precision Air, Sierra, and the Hospital], and each of them, for any and all amounts which [Ensemble] is forced to pay in this lawsuit by judgment or by settlement entered into in good faith, including costs, expenses and attorneys' fees."

3. *SETTLEMENT AND RELEASE*

Cioco, Ensemble, and Ensemble's insurers settled. Cioco agreed to dismiss his lawsuit in exchange for $2,550,000. Ensemble's insurers included Firemans Fund Insurance Company and ACE Property & Casualty Insurance Company. Ensemble's insurers paid the $2,550,000 settlement to Cioco and paid for the cost of Ensemble's defense.

D. MOTION FOR SUMMARY JUDGMENT

The Hospital moved for summary judgment on the cross-complaint. The Hospital asserted that Ensemble, as Sierra's property manager, was responsible for maintaining the building's HVAC system. The Hospital contended it was not required to indemnify Ensemble for Ensemble's negligence in maintaining the building's HVAC system. The Hospital asserted the malfunctioning HVAC system "ha[d] nothing to do with [the Hospital's] use and occupancy of the [Suite]," and therefore, the indemnity clause of the lease was not triggered.

Ensemble opposed the Hospital's motion. Ensemble asserted Cioco's injuries arose from evacuating patients and staff from the building. Thus, Ensemble contended that Cioco's injuries arose from the Hospital's use and occupancy of the Suite, and therefore the Hospital was required to indemnify Ensemble.

The trial court noted that the Hospital moved for summary judgment rather than summary adjudication. The trial court found the Hospital failed to address all the issues raised in Ensemble's cross-complaint, such as "the implied covenant employed equitable indemnity [*sic*] and breach of duty to [Ensemble]." The trial court explained that all of the issues alleged in the cross-complaint had to "be taken care of" before summary judgment could be granted. The trial court denied the motion.

E. PRETRIAL

1. *MOTION IN LIMINE*

The Hospital filed a motion in limine to preclude Ensemble from introducing evidence of damages until Ensemble proved it had standing to sue the Hospital for indemnity. The Hospital asserted Ensemble suffered no damages because it did not pay for the settlement or defense in Cioco's lawsuit. The Hospital argued, "[I]t is clear Ensemble has sustained no damage. Therefore, unless Ensemble can establish it has standing to recover anything in this action, any evidence of the money paid for settlement, and any evidence of attorneys' fees and costs, should be precluded."

Further, the Hospital asserted Labor Code section 3864 provides that an employer is not liable to a third party for an employee's injury unless the employer has

a written agreement with the third party.[1] The Hospital contended it did not have a written agreement with Ensemble; rather, it had a written agreement with Sierra. The Hospital asserted that because Ensemble lacked a written agreement the Hospital could not be held liable to Ensemble.

Ensemble opposed the Hospital's motion in limine. Ensemble asserted its insurers could proceed with Ensemble's case in Ensemble's name pursuant to Code of Civil Procedure section 368.5 (section 368.5).[2] Ensemble contended its insurers' rights of subrogation arose by operation of law, and its insurers could sue in Ensemble's name. Therefore, Ensemble asserted its insurers had standing and could use Ensemble's name in the lawsuit.

Ensemble contended Labor Code section 3864 did not preclude its lawsuit. Ensemble asserted it was sufficient that the Hospital and Sierra signed a lease agreement that provided for indemnification for their agents. Ensemble contended Ensemble was Sierra's agent and therefore included in the lease's indemnity provision.

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[1] Labor Code section 3864 provides, "If an action as provided in this chapter prosecuted by the employee, the employer, or both jointly against the third person results in judgment against such third person, or settlement by such third person, the employer shall have no liability to reimburse or hold such third person harmless on such judgment or settlement in absence of a written agreement to do so executed prior to the injury."

[2] Section 368.5 provides, "An action or proceeding does not abate by the transfer of an interest in the action or proceeding or by any other transfer of an interest. The action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding."

At the hearing on the motion in limine, the Hospital asserted Ensemble no longer existed and there was no evidence that it assigned its rights to its insurers. Ensemble asserted that when an insurer has paid money on behalf of an insured, then the insurer may sue in the name of the insured pursuant to section 368.5. Further, Ensemble asserted it changed form to an Arizona limited liability company that is registered to do business in California. The trial court found there was sufficient evidence "to allow the current business vehicle of defendant cross-complainant to go forward." The trial court denied the Hospital's motion in limine.

2. *QUESTION FOR THE JURY*

The parties debated what issues would be submitted to the jury. The Hospital contended the jury should be asked "whether or not Mr. Cioco was injured by way of a use[,] activity or occupancy of the premises."[3] Then, if the jury answered "yes," it would go on to the issue of damages.

Ensemble asserted that the issue of whether Cioco was injured due to a use, activity or occupancy of the Suite was a question of contractual interpretation that needed to be answered by the court. Ensemble asserted that the answer depended on how "use" and "occupancy" are defined by the lease, which "is the Court's province, it's not the jury's province." Ensemble asserted the only question for the jury was whether Ensemble's settlement with Cioco was reasonable.

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[3] The lease included an indemnity provision that reads: "[The Hospital] hereby agrees to . . . indemnify . . . for, from and against any and all: (a) liabilities, claims of damage or injury arising from [the Hospital's] or its Related Parties' *use and occupancy of, and activities* on, the Premises and Project." (Italics added.)

The trial court found that the "use" and "occupancy" issue involved a question of law for the trial court. The trial court concluded that the jury would resolve the issue of the reasonable amount of Cioco's settlement. The trial court explained that the bench trial and the jury trial would occur on a dual-track, in that the bench trial would take place during downtime within the jury trial. The court told counsel, "[I]f you're telling me, Judge, you're nuts, that shouldn't be the way we should be doing it, then I want to hear that." The Hospital responded, "Yeah, that's what I'm saying. I see that being addressed by a motion for non-suit, which I assure the Court I will make." The court replied, "I can see it in your back pocket."

F. TRIAL

1. *MOTION FOR NONSUIT*

During the jury trial, the Hospital moved for nonsuit and a directed verdict. The Hospital asserted Cioco's injuries arose from the defective HVAC unit, which was not within the Hospital's control. Therefore, the Hospital reasoned that Cioco's injuries did not arise from the Hospital's use and occupancy of the Suite. As a result, the Hospital asserted it was not required to indemnify Ensemble. Alternatively, the Hospital asserted that Ensemble failed to show it had standing because it failed to offer proof of damages.

Ensemble asserted the Hospital's lack of control over the HVAC system was irrelevant because "courts will enforce indemnity agreements even for losses for which the indemnitor had no control." Ensemble asserted Cioco's injuries arose from the Hospital's use and occupancy of the Suite because "he was exposed to the smoke while

he was on patrol." In regard to standing/damages, Ensemble asserted that its insurers could "continue the case in Ensemble's name."

The trial court said, "[T]he language we talked about, use, occupancy, at least in the Inland Empire, what can be more important to somebody than not just having the place to establish a business but the use and employment of both an HVAC, and air-conditioning and heating system, during our various times of years where we have temperatures, as it is right now, over a hundred, and sometimes when it gets cool enough where we actually do need to turn the heater on."

The court continued, "The Court finds that specifically the HVAC system was on the property and certainly part of the use and occupancy of the [property], such that its failure, if any, would trigger an indemnity provision. [¶] Next, was Mr. Cioco actually injured in this particular case. His testimony was that while he was working for [the Hospital] on the demised property, that during his normal or during his rounds he smelled smoke, opened the door and he was confronted with the smoke, which led to his eventual hospitalization. [¶] He initially retreated from the area, was directed to go back and may have suffered additional harm with respect to the smoke. And I believe he so testified and indicated at that time he needed to get some type of assistance."

The court explained, "That the injuries, if any sustained, by Mr. Cioco were as a result of what occurred at the building leased by Ensemble to [the Hospital]. Hence, it, his injuries, triggered in the course for purposes of the motion to the Court and motion to the jury, that indemnity applies in this particular case.

"Second, the next, I think is the arising out of argument. . . . [¶] In my mind, there's not a question that the language in the contract, No. 1, which has been admitted into evidence talks about the subject property. That's the demised property from Ensemble to [the Hospital]. HVAC was located on that property, not adjacent to it but on that property, and that is something that is certainly always involved in the activity, use and occupancy of the project. So the Court finds that it is, in fact, covered."

In regard to standing, the trial court said, "I don't have an exact memory of when the matter resolved between Mr. Cioco and Ensemble. . . . I don't think there it would have been any reason at that juncture [*sic*] to have the insurance company named, because I don't know when the settlement actually came into play. . . . [¶] . . . I think it would be an exercise, not so much in standing but just in playing word games, to have amended just to bring in the name of whatever two insurance companies were involved." The trial court denied the Hospital's motions.

2. *VERDICT*

The jury found the reasonable amount of attorney's fees and costs arising from Cioco's lawsuit was $187,248. The jury found the reasonable amount of the settlement for Cioco's lawsuit was $500,000.

3. *JUDGMENT*

The trial court entered a judgment reflecting (1) Ensemble had standing to sue the Hospital; and (2) the lease required the Hospital to indemnify Ensemble because Cioco's injuries arose from the Hospital's use and occupancy of the Suite. The trial court entered a judgment in favor of Ensemble in the amount of $687,248.

DISCUSSION

A. SECTION 368.5

For the sake of providing context for our analysis *post*, we start our discussion by focusing on Code of Civil Procedure section 368.5 (section 368.5).

Section 368.5 provides, "An action or proceeding does not abate by the transfer of an interest in the action or proceeding or by any other transfer of an interest. The action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding."

It is unclear whether (1) a motion or amended pleading must be filed reflecting a successor-in-interest is proceeding with the case under the original party's name; or (2) the successor-in-interest can simply proceed with the case, under the original party's name, without a motion or amended pleading. (See *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 506, fn. 1 [implying an automatic process]; see *Casey v. Overhead Door Corp.* (1999) 74 Cal.App.4th 112, 121 [implying a motion is required], disapproved on another point in *Jimenez v. Superior Court* (2002) 29 Cal.4th 473, 481, fn. 1; see also *Hearn Pacific Corp. v. Second Generation Roofing, Inc.* (2016) 247 Cal.App.4th 117, 133-134 [implying a motion is required].)

The Hospital does not provide this court with statutory interpretation or legal analysis regarding the procedure that should take place when a successor-in-interest or party seeks to apply section 368.5. Therefore, this court will not resolve any issues concerning the procedures related to section 368.5. (Gov. Code, § 68081 [an appellate

court may not decide "an issue which was not proposed or briefed by any party to the proceeding"].)

B. INTERVENTION

The Hospital asserts that because Ensemble's insurers failed to intervene in the lawsuit with a subrogation claim, Ensemble's insurers were not parties to the case.

Intervention would have been a procedural possibility for Ensemble's insurers. The law provides, "It is the insurer's duty to protect subrogation rights. [Citation.] It is generally acknowledged the insurer's safest course to protect those rights is to seek intervention in the insured's lawsuit against the legally responsible third party. [Citation.] [¶] . . . In theory, there are two possible alternatives to subrogation: (1) a separate lawsuit against the responsible third party, or (2) recoupment of payments directly out of the insured's recovery from the responsible third party." (*Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 550.)

The possibility that Ensemble's insurers could have sought to intervene in the lawsuit does not explain why it was improper for Ensemble's insurers to rely upon section 368.5 as Ensemble's successors-in-interest. In the trial court, Ensemble and/or its insurers were clearly relying upon section 368.5. Therefore, it was incumbent upon the Hospital, in its briefing at this court, to explain why section 368.5 was an improper method for involving Ensemble's insurers in this lawsuit. The Hospital's decision to point to intervention as another procedural method for involving Ensemble's insurers in the lawsuit does not explain why the trial court erred by relying on section 368.5. In sum, because the Hospital fails to explain why Ensemble's insurers could not use

section 368.5 to become involved in the lawsuit, we are not persuaded that Ensemble's insurers were not parties to the case.

C. ENSEMBLE'S DAMAGES

The Hospital contends, "Absent a monetary loss, [Ensemble] had no basis for seeking contractual indemnity from the Hospital." The Hospital's argument lacks clarity. First, if the Hospital is asserting a lack of substantial evidence of damages, then that argument fails because the parties agreed that the jury would decide (1) whether the amount of attorney's fees and costs arising from Cioco's lawsuit were reasonable; and (2) whether the amount of the settlement for Cioco's lawsuit was reasonable. The jury was not asked to decide if Ensemble suffered damages, and therefore it would be unfair to examine the record for substantial evidence of Ensemble's damages.

Second, if the Hospital is asserting its motion for nonsuit should have been granted, then the Hospital needed to provide a statutory analysis of section 368.5. The Hospital's assertion—that Ensemble's claim fails because it did not suffer damages—relies upon the premise that it was Ensemble sitting at the cross-plaintiff's table during trial. As explained *ante*, the law is unclear regarding the operation of section 368.5. If section 368.5 is triggered by operation of law, then it was Ensemble's insurers sitting at the cross-plaintiff's table and proceeding under Ensemble's name. In that scenario, Ensemble's lack of damages would be irrelevant.

Because the Hospital fails to explain how section 368.5 operates, the Hospital's premise that it was Ensemble sitting at the cross-plaintiff's table fails. Because the premise fails, we cannot address the Hospital's assertion that Ensemble's lack of

damages is fatal to the judgment. (See *Central Valley Gas Storage, LLC v. Southam* (2017) 11 Cal.App.5th 686, 694-695 [when a point is asserted without meaningful argument, it " 'requires no discussion by the reviewing court' "].)

D. SUBROGATION CLAIM

The Hospital contends Ensemble could not pursue a subrogation claim on behalf of its insurers. The Hospital's contention includes the premise that Ensemble was sitting at the cross-plaintiff's table during trial. Because the Hospital failed to explain how section 368.5 requires a motion or amended pleading, we cannot conclude that Ensemble was sitting at the cross-plaintiff's table during trial (*Voices of the Wetlands v. State Water Resources Control Bd.*, *supra*, 52 Cal.4th 499, 506, fn. 1 ["As Duke's successor in interest, Dynegy is entitled to continue the action in Duke's name"]).

E. LEASE

1. *BUILDING OCCUPANCY*

At the outset, there is an issue that seems pertinent to the case but is not argued by the parties. The record indicates that the Hospital leased a second-floor suite within the building. Cioco said that when he patrolled the building, he could not enter some of the suites. It can be inferred from the evidence that the HVAC unit that caused the smoke was located on the building's roof.

Due to the foregoing evidence, we question if there were other tenants in the building or if Ensemble ever showed the building to prospective tenants. The parties do not raise an argument concerning other tenants or prospective tenants. Therefore, we

will analyze the issue raised on appeal with the assumption that the HVAC unit was running solely to benefit the Hospital, which was the only tenant in the building.

2. *INDEMNITY PROVISION*

The Hospital asserts "Ensemble's indemnity claim also fails as a matter of law" because the trial court "misconstrue[d] the plain language of the indemnity provision."

"In general, [an indemnity] agreement is construed under the same rules as govern the interpretation of other contracts. Effect is to be given to the parties' mutual intent [citation], as ascertained from the contract's language if it is clear and explicit [citation]. Unless the parties have indicated a special meaning, the contract's words are to be understood in their ordinary and popular sense." (*Crawford v. Weather Shield Mfg., Inc.* (2008) 44 Cal.4th 541, 552.)

"Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person." (Civ. Code, § 2772.) "The extent of the duty to indemnify is determined from the contract." (*Myers Building Industries, Ltd. v. Interface Technology, Inc.* (1993) 13 Cal.App.4th 949, 968-969.)

The indemnity provision in the lease provides, in relevant part, "[Hospital] hereby agrees to . . . indemnify and hold [Sierra] and its Related Parties harmless for, from and against any and all: (a) liabilities, claims of damage or injury arising from [Hospital's] or its Related Parties' use and occupancy of, and activities on, the Premises and Project."

"California courts generally have given the terms 'arising out of' or 'arising from' their commonsense meaning, concluding that they connote more than mere causation. For example, our Supreme Court has explained that California cases have established that the 'arising out of the use' language found in insuring clauses of automobile liability policies 'has broad and comprehensive application, and affords coverage for injuries bearing almost any causal relation with the vehicle.' [Citation.] The court went on to state that '[s]ome minimal causal connection between the vehicle and the accident is, however, required.' [Citation.] So, too, other cases have equated 'arising out of' with ' ". . . origination, growth or flow[ing] from the event." ' [Citations.] As summed up by a federal court applying California law to determine the scope of an exclusionary clause and the key concept of 'arising from' or 'arising out of': ' " 'Arising out of' are words of much broader significance than 'caused by.' They are ordinarily understood to mean 'originating from' 'having its origin in,' 'growing out of' or 'flowing from" ' or in short, 'incident to, or having connection with.' " ' " (*Fibreboard Corp. v. Hartford Accident & Indemnity Co.* (1993) 16 Cal.App.4th 492, 503-504.)

The Hospital agreed to indemnify Sierra and its related parties, i.e., Ensemble, for an "injury arising from [Hospital's] use and occupancy of, and activities on, the Premises and Project." As set forth *ante*, "arising from" has a broad meaning. Heating and air conditioning operating in the Suite would be important to the comfort and health of the Hospital's staff and clients. As set forth *ante*, the Hospital was the only occupant of the building. Therefore, the HVAC unit was running because the Hospital occupied

the Suite. Because the HVAC unit was running due to the Hospital's occupancy, and the smoke started in the HVAC unit, Cioco's injury arose from the Hospital's occupancy of the Suite. Accordingly, we conclude the trial court did not err.

The Hospital asserts, "[A]n indemnity obligation does not arise merely because one of the indemnitor's workers is injured while in the zone of danger created by a third party's negligence." The trial court did not find that the Hospital had an indemnity obligation because Cioco was the Hospital's employee. Rather, the trial court found the Hospital had a duty to indemnify because use of an air conditioning system is an important aspect of occupying a building in the Inland Empire, i.e., the running of the HVAC system arose from the Hospital's occupancy. Because the trial court did not base the Hospital's duty to indemnify on Cioco being the Hospital's employee, we find the Hospital's argument to be unpersuasive.

The Hospital asserts it should not be required to indemnify Ensemble for negligence related to "an HVAC system under the landlord's exclusive control." The Hospital does not refer this court to any language in the lease limiting the Hospital's liability to areas of the building that it physically controlled. Accordingly, we find the Hospital's argument to be unpersuasive.

The Hospital contends the trial court erred by not construing the indemnity provision against Ensemble. The lease includes the following provision, "This Lease has been drafted and/or negotiated by each and all of the parties hereto, and therefore, any rules of construction, interpretation or the like, whether with respect to ambiguities or otherwise, shall not be applied in favor of or against any party hereto." The Hospital

fails to explain why this court should disregard the foregoing provision in the lease requiring a neutral interpretation of the lease's provisions. As a result of the Hospital's omission, we find the Hospital's argument to be unpersuasive.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

FIELDS
J.