1. GENERAL RULES OF CONTRACTUAL INDEMNITY

Express contracts of indemnity are enforceable under Alabama law. If the parties to an agreement “knowingly, evenhandedly, and for valid consideration intelligently enter into an agreement whereby one party agrees to indemnify the other,” the agreement will be enforced if expressed in clear and unequivocal language.

That rule applies to indemnify the indemnitee’s own unintended wrongs. While ‘talismanic language’ is not a necessity, the intention to indemnify for the indemnitee’s own negligence must be clear from the instrument. The language must clearly and unequivocally contemplate indemnification for the sole negligence of the indemnitee. Applying this rule, an agreement to indemnify providing that it “shall apply regardless of the cause and even in the event of the sole, gross or concurrent negligence of [indemnitee]” was enforceable and did not run afoul of public policy, even though the indemnitor could not control the indemnitee’s activity giving rise to the claim. The potential inequity of such an outcome is tempered by the indemnitor’s ability to expressly exclude liability for the sole negligence of the indemnitee, which he can do through the clear and unambiguous terms of his indemnity provision.

An agreement that provided an indemnor would hold harmless another “from all damage suits and claims” gave rise to the duty to indemnify for the indemnitee’s negligence. But an agreement to indemnify that provided indemnification “from all liability, claims, lawsuits and demands” was ambiguous enough to prevent the Alabama Supreme Court from finding it clearly and unequivocally agreed to indemnify losses arising out of the indemnitee’s acts of negligence.

2. Indus. Tile, 388 So. 2d at 176; Holcim, 38 So. 3d at 727.
3. Indus. Tile, 388 So. 2d at 176; Holcim, 38 So. 3d at 727.
4. Indus. Tile, 388 So. 2d at 176; Royal Ins., 824 So. 2d at 753.
6. See Mobil Oil Corp. v. Schlumberger, 598 So. 2d 1341, 1346 (Ala. 1992) (internal quotations omitted).
7. Id. at 1344–46 (internal quotations omitted).
8. See McDevitt & Street Co. v. Mosher Steel Co., 574 So. 2d 794, 796–97 n.3 (Ala. 1991) (citing with approval Stewart and acknowledging the validity of an indemnity provision that disclaims the duty to indemnify when the negligent act “is caused by the sole negligence of a party indemnified hereunder”).
9. Nationwide, 643 So. 2d at 556–57 (agreement to indemnify property owner “from all damage suits and claims arising in connection with the property” and “from all liability for injuries to persons or property while in, on, or about the premises”).
2. EXCEPTIONS TO GENERAL RULES OF CONTRACTUAL INDEMNITY

Alabama law appears to have only one significant exception to the general rule that express contracts of indemnity are enforceable: “Agreements that purport to indemnify another for the other’s intentional conduct are void as a matter of public policy.”11 Where agreements do not purport to indemnify intentional conduct, however, Alabama courts will strive to effectuate the bargained-for intent of the parties contracting for indemnity. Therefore, non-public policy-related limitations on the scope of the indemnity arise out of the terms and conditions of the indemnity agreement and are subject to the rule articulated in *Industrial Tile, Inc. v. Stewart*—that clear and unequivocal language controls the scope of the agreement.12

While Alabama still adheres to a rule precluding contribution or common law indemnity between tortfeasors,13 Alabama courts will enforce written agreements between tortfeasors, where one agrees to indemnify another even for claims based on the other’s own negligence.14

3. INDEMNITY AGREEMENTS AS INSURED CONTRACTS

Often liability insurance policies exclude coverage for injuries or damage that the insured assumed in a contract or agreement.15 This “‘contractual exclusion’ . . . provision ‘traditionally serves to exclude indemnity types of liability, whereby the [insured’s] liability itself was assumed, rather than [where the insured breached a] warranty[,]’”16 Such provisions also typically contain exceptions of their own for “insured contracts,” allowing coverage where the underlying contract is a lease, license, easement, or warranty.17 But if the “insured contracts” defined by the policy include a contract through which the insured assumes tort liability over a third party’s actions, then the liability insurance policy will also indemnify the insured’s obligations to indemnify the third party, subject to other policy conditions and exclusions.18

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   The decision in *Titan Indemnity Co. v. Riley*, 679 So. 2d 701 (Ala. 1996), arguably calls into question the sturdiness of this exception to the general rule that an indemnity agreement’s clear and unequivocal language controls. In *Titan*, the Alabama Supreme Court found that “Alabama public policy does not prohibit the enforcement of a contract in which an insurer agrees to pay for injuries suffered by third parties as a result of intentional acts of the insured.” *Titan*, 679 So. 2d at 707. However, the ruling is likely limited to policies of insurance. *Id.* at 706. After all, the holding was based on the court’s earlier decision in *Burnham Shoes, Inc. v. West American Insurance Co.*, 504 So. 2d 238 (Ala. 1987), in which the Alabama Supreme Court held that an insurer was obligated to provide defense and coverage consistent with the terms of its policy, regardless of whether the policy purported to cover losses arising out of an insured’s intentional torts. *Burnham*, 504 So. 2d at 241 (overruled on other grounds). *Titan* extends the *Burnham* court’s reasoning only slightly to enforce an insurer’s contractual duty to indemnify an insured for its intentional acts, suggesting that it did not appreciate a difference between an insurer’s duty to defend and an insurer’s duty to indemnify. *Titan*, 679 So. 2d at 707, cf. *Ladner & Co. v. S. Guar. Ins. Co.*, 347 So. 2d 100, 102 (Ala. 1977) (insurer’s duty to defend is broader than its duty to indemnify).


16. *Id.* (some internal quotation marks and alterations omitted).

17. *Id.* at 364 n.1.

18. See generally *id.* at 364.