

Indemnities



D. C. Toedt III

dc@toedt.com

www.OnContracts.com/About



Christopher D. Porter

chrisporter@quinnemanuel.com

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INDEMNITIES, IN GENERAL

What exactly *is*
an indemnity obligation?

True or false:

The following is an acceptable conventional phrasing: *Alice hereby indemnifies Bob against any damage Bob might incur if it rains tomorrow.*

Are indemnity obligations limited to third-party claims, as opposed to first-party claims?

Is a "hold harmless" obligation
any different?

How does an *indemnity*
relate to a *warranty*?

True or false:

IF: Alice agrees to indemnify Bob against damage arising from occurrence of Event X;

THEN: This reduces the risk to the parties associated with the (possible) occurrence of Event X.

Must a protected party prove
negligence or other fault
by the indemnifying party?

FACTS:

1. Alice's company is hiring Bob's company to do some work in her factory.
2. Alice's draft of the contract requires BobCo to indemnify AliceCo for any harm that might occur to any of his employees while at Alice's factory.

FILL IN THE BLANK: Alice should also consider inserting a provision requiring Bob to enter into and maintain this type of ancillary contract to make sure there is a pot of money available if necessary to support Bob's indemnity obligation.

Will a contractual indemnity be excluded from the indemnifying party's insurance coverage?

Does an indemnity obligation
extend to the protected party's
own negligence?

Do indemnity obligations extend beyond foreseeable, ordinary-course losses (etc.)?

Is an indemnity obligation
even a good idea?

Should consequential damages,
etc., be indemnified?

Must an indemnifying party carry insurance to cover the indemnity?

Can liability for an indemnity obligation be limited?

Must an indemnifying party provide a defense against third-party claims?

DEFENSE OF CLAIMS

How can a protected party invoke
a defense obligation?

What if the protected party
doesn't timely ask for defense?

What must an indemnifying party do to defend against a claim?

How much must an indemnifying party do to defend against a claim?

What if a protected person
never *asks* for a claim defense?

What must a protected person do
in its own defense?

Who pays for a protected person's cooperation in a claim defense?

Should an indemnifying party
allow the protected party
to conduct its own defense?

May a protected person
engage its own counsel?

When may a protected person
take over control of its defense?

Who should call the shots
in settlement talks?

Can an indemnifying party agree
to a consent judgment?

What may a protected party admit or waive in the case?

May a *protected person*
settle a defended claim?

Can liability for a defense obligation be limited?

Exercise