



The ABCs of Indemnity Agreements and Additional Insured Endorsements

Understanding your business's risk exposures is the cornerstone to managing them. Whether your business relies on outside vendors to provide goods and services, or you're a provider of goods and services to your clients, you should be aware of how to take contractual precautions to protect your business against potential losses or damages. An indemnity agreement secured by an additional insured endorsement is a risk-transfer tool that can help insulate your business from potential risks.

To support the terms of the indemnity agreement, the contract will often include insurance requirements. These spell out the insurance required by the various parties entering into the contract. It is common for one party to include another as an additional insured under its Commercial General Liability (CGL) policy. For example, owners or general contractors of construction projects commonly require those who are actively involved in the project operations, such as subcontractors, to sign a contract and name them as an additional insured on their CGL policy to limit their liability for damages caused by the subcontractor.

It is a common practice to enter into contractual agreements with those involved in a project to formalize the terms and responsibilities for all parties. These contracts often include an indemnity agreement, also known as a hold harmless agreement, as a means to transfer the risk of future losses or damages from one party to another.

There are basically three kinds of indemnity or hold harmless clauses typically contained in contracts.

1. *Limited* - obligates the indemnitor (the party paying compensation) to hold harmless the indemnitee (the party receiving compensation) only for the indemnitor's own negligence.
2. *Intermediate* - obligates the indemnitor to hold harmless the indemnitee for all liability except that which arises out of the indemnitee's sole negligence.
3. *Broad form* - obligates the indemnitor to hold harmless for all liabilities, including the indemnitee's negligence.

Carefully review the indemnity agreement prior to finalizing the contract to determine the extent of your company's liability. Once the scope is understood, you may want to negotiate the terms to limit your exposure. The application and enforcement of an indemnification agreement does, however, depend upon the statutory and common law of the jurisdiction in which enforcement is sought.

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Additional insured status

When reviewing the insurance requirements section of a contract, pay particular attention to the additional insured requirements. There are numerous additional insured endorsements. The specific additional insured endorsement, required in the contract, must be reviewed in order to determine the scope of coverage. Contact Bollinger Insurance to obtain sample endorsement wording.

The Insurance Services Office (ISO) released new additional insured endorsements in 2004. The intent of the endorsements is to provide liability coverage for additional insureds (typically the general contractor or project owner) with respect to damages caused by the named insured (subcontractor). The endorsements do not provide coverage for the additional insured's sole negligence, but they can provide coverage for the additional insured's contributory negligence. Make sure that the actual additional insured endorsement satisfies contract requirements.

What's in a name?

Don't be confused—additional insured coverage is different than “additional named insured” coverage. An additional named insured usually is an affiliate of the primary insured. You will not be able to add or be added as an additional named insured. If this is part of the contract, it should be removed.

Understanding your coverage

Understanding the terms of the contract, the extent of liability assumed in the indemnity agreement, and the insurance requirements—including the coverage provided or afforded by the additional insured endorsement—are critical to minimizing future liabilities and exposure to losses.

Keep in mind, the liability assumed in the indemnification agreement of the contract can be broader than the coverage provided under the additional insured endorsement. A comparison of the two should be done to determine what is covered by insurance and what is not.

Many businesses choose to transfer or accept risk through contracts, purchase orders and lease agreements. However, not all contracts or endorsements are created equal. Contact us at 800-526-1379 to learn more about contractual risk transfer and how it can be a part of your overall risk management program. ◇

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