

A Quick Overview of Indemnity Clauses

The Three Types of Indemnity Provisions. There are three common types of indemnity provisions. They are commonly referred to as Type I, Type II, and Type III. Type I indemnity agreements are strongest for the person(s) being indemnified, aka the indemnitee. Type III would be the most fair to the person providing indemnification, aka the indemnitor. Thus, the best type of indemnity clause for you would be Type III.

Type I. Type I indemnity provisions are those which specifically include losses arising from the indemnitee's own active negligence. These generally also bar equitable contribution. This means that you, as the indemnitor could be held completely liable for losses resulting solely as a result of indemnitee's own negligence. Under this scenario you could not seek contribution from the indemnitee.

However, Type I indemnity agreements in construction contracts are unenforceable, if they purport to indemnify for loss arising from the sole negligence or willful misconduct of the indemnitee. The purpose of this rule is to ensure that all parties involved with construction disputes – and their insurers – share liability according to fault (subject to some statutory exceptions).

Type II (aka General Indemnity Agreement). Type II indemnity agreements are those that do not specifically address the indemnitee's active negligence – such as an agreement to hold the indemnitee harmless from “all claims or causes whatsoever.” Type II provisions are interpreted to apply only the the indemnitee's passive negligence, and therefore do not bar equitable contribution claims based on an indemnitee's active negligence or wrongdoing.

Type III. Type III indemnity agreements are those that only provide indemnity for the indemnitor's negligence. Essentially, this is like a type II, but where the indemnitor is not liable for passive negligence of the indemnitee. These are less common and may not be well received by General's. However, if you have a good working relationship with the General, they may be receptive to such indemnity provisions.

Warnings about the Types. Just because one person calls an indemnity agreement a Type I, II or III, or calls it a General Indemnity Agreement, does not mean it is so. Indemnity provisions can be complex and there are rules of interpretation. Thus, if you are unsure about what a particular clause means you should consult with us and/or your liability insurer. This

information is general but should provide you a basis of knowledge for reading and discussing these provisions in future contracts.

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