

Manage Risk with Hold Harmless Agreements and Contractual Liability Insurance

Lawsuits are a common occurrence in our litigious society. An effective way to limit your liability is to specify your responsibility in a contractual relationship. Risk can be transferred contractually by including "hold harmless" clauses in agreements.

In a hold harmless agreement, one party agrees to protect or "indemnify" another from claims brought by a third party for financial loss or damage. A good example is a general contractor who hires a subcontractor to complete a job for a third party. To protect himself, the general contractor may require the subcontractor to sign a hold harmless agreement. The agreement would indemnify the general contractor if any problems arose from the subcontractor's work.

Read...Before You Sign on the Dotted Line

In a hold harmless agreement, the indemnitor (the party that has assumed the liability) is responsible for all financial loss. Some hold harmless clauses are very broad. Surprisingly, they may include liability even if the indemnified company was solely responsible for the damage. On the other hand, a contractual liability insurance policy can protect the indemnitor, but may not cover all aspects of liability.

In our example above, the hold harmless agreement gives the general contractor the right to collect for damages paid to the third party to the extent enforceable under the law. However, the indemnified party should exercise caution. The ability to uphold indemnification agreements differs from state to state because state laws vary as to what risks may be transferred. Also, some courts have ruled indemnification clauses unenforceable if they were not clear and precise.

Protect Your Assets

With a general liability policy, contractual liability insurance is automatically provided. The coverage is created to pay to a third party damages assumed as part of an "insured contract." However, the definition of an insured contract is limited, and coverage is written as an exception to an exclusion. That means the policy excludes coverage except for specific circumstances. Additional policies, such as professional liability insurance, may be required to cover exposures that are not covered under general liability policies.

Usually, general liability insurance covers only bodily injury or property damage. But, once again, these are subject to exclusions, conditions and limitations, and the injury or damage must have occurred after entering into the contract.

Furthermore, the liability must be one that would be imposed without the contract or one that is assumed in a hold harmless or indemnity agreement that falls within the definition of insured contract under the policy. General liability policies do not cover breach of contract.

Before signing any contract, it is wise to talk to an attorney, so that you do not assume liability that is not covered under your general liability insurance policy. Take time to carefully read your insurance policy endorsements, and don't be afraid to ask your insurance agent to explain anything you do not understand. Your agent will help you determine the type of coverage your business needs to protect your assets.