USING INDEMNIFICATION AGREEMENTS AS AN EFFECTIVE RISK-TRANSFER DEVICE

by
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The indemnification agreement is the most widespread and frequently encountered contractual risk-shifting device. An indemnification agreement is essentially where one party agrees to assume the liability of another party in the event that there is a claim for loss or damage. Through the use of an indemnification agreement, the manufacturer or owner of the product is not transferring a duty owed to the user or consumer, but rather, is simply transferring the liability that can arise out of the breach of such a duty. In effect, the manufacturer or owner remains liable, but the contractor has assumed the obligation to pay for any loss or damage that arises out of that liability.

An indemnification agreement is often referred to as a hold-harmless agreement. Regardless of its title, one party (the indemnitor) agrees to indemnify the other party (the indemnitee) from the liabilities that are associated with the business the parties are conducting. An indemnification agreement is, in effect, merely a contractual device to transfer the risk from one party to another.

Many states have statutes that address contribution and comparative negligence, which may impact both the common law and implied indemnity with respect to the enforcement of indemnification agreements. This only highlights the importance that parties to a contract should place on clearly expressing their intent with respect to contractual indemnity. Both parties must expressly state their rights and obligations under the contract in order to make the indemnification agreement enforceable under the law of the state governing the contract at issue.

The following is a summary of the categories of indemnification agreements, as well as the enforceability of such agreements in court.

Categories Of Indemnification Agreements

A. Broad Form Indemnification Agreements

With a broad form indemnification agreement, the indemnitor agrees to assume an unconditional obligation to hold the indemnitee harmless for all liabilities associated with the indemnification agreement, including the indemnitee s sole negligence, regardless of which party is actually at fault. This type of indemnification agreement transfers the entire risk of loss. The parties, however, must show a clear intent that the indemnitor assumes an unqualified obligation to hold the indemnitee harmless for all liabilities that may arise. It is often advantageous to add an exception clause to exempt the indemnitor from covering damages or loss associated with the gross negligence or intentional misconduct of the indemnitee.

B. Intermediate Form Indemnification Agreements

With an intermediate form indemnification agreement, the indemnitor assumes all the liabilities of the indemnitee related to the agreement between the two parties except where the loss or damage is the result of the indemnitee s sole negligence. If there is any fault whatsoever on the part of the indemnitor, no matter how small, the indemnitor is obligated to indemnify the indemnitee for the full amount of any damages or loss.

C. Limited Form Indemnification Agreements

The limited form indemnification agreement is often referred to as the comparative fault indemnification agreement. The limited form indemnification agreement obligates the indemnitor to indemnify the indemnitee only to the extent of the indemnitor s own fault in the loss or damage. In the context of an employment contract, the inclusion of a limited form clause would subject the indemnitor/employer to liability in excess of the workers compensation remedies that are in place.

D. Hybrid Indemnification Agreements

A common type of indemnification agreement is the hybrid indemnification agreement. In effect, the hybrid agreement can be any combination of the three standard forms of agreement discussed above--broad, intermediate and limited. Each type of potential liability or exposure can be covered by any one form of indemnification provision. This can be an effective way to cover all losses and damages in some form or another and can also be used as a bargaining tool in negotiating the contract.

Treatment Of Indemnification Agreements By The Courts

A. Public Policy Rationale

Traditionally, the courts have viewed indemnity clauses with suspicion and believed that such clauses encourage carelessness on the part of the indemnitee. In fact, the view was once prominently held that if the indemnitee is allowed to easily shift his burden of due care to the indemnitor, the situation may encourage antisocial acts and a relaxation of vigilance toward the rights of others by relieving the wrongdoer of liability for his conduct. [1] However, most courts have now rejected this view. In fact, in most states, the courts will enforce all forms of indemnification agreements unless the state has an anti-indemnity statute in effect. The courts are willing to recognize that indemnification agreements serve a legitimate purpose. Presently,

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[1] Pisano, Charles M., *Judicial Interpretation of Indemnity Clauses,* 48 La. L. Rev. 169, 172 (September 1987) (quoting Sovereign Ins. Co. v. Texas Pipe Line Co., 488 So.2d 982, 986 (La. 1986)).

most courts have concluded that where two parties enter into a contract that is unambiguous, and they are aware of the facts and the consequences of the terms of the contract, the parties will be held responsible for their contractual obligations pursuant to the indemnification agreement. Public policy and

> [e]quitable consideration[s] require the strict interpretation that the courts have given to . . . indemnity clauses. If the indemnitee is allowed indemnification from his own negligence, a great burden is placed upon the indemnitor. The indemnitor is usually in no position to prevent the risk by controlling the conduct of the indemnitee, yet he is assuming the liability. This extreme burden should not be imposed upon an indemnitor absent an unequivocal finding that the risk was expressly bargained for and accepted. [2]

The importance placed on clear and unequivocal language in an indemnification agreement is discussed in more detail below.

B. Enforceability of Indemnification Agreements

1. Clear and Unequivocal Approach

At present, the majority of states follow the clear and unequivocal approach. Whether or not a particular court will enforce such an indemnification agreement in favor of an indemnitee, depends, in part, on the following factors:

a. Whether the clause addresses the liabilities for which the indemnitee claims indemnity (i.e. those obligations that the indemnitor has assumed under the indemnification agreement);
b. Whether the indemnification agreement is written with clear language that clearly indicates that the parties intended the indemnitee to be indemnified for its sole negligence; and
c. Whether the indemnity clause comports with any applicable anti-indemnity statutes in effect.[3]

If the indemnification clause meets these requirements, most courts will enforce the agreement in favor of the indemnitee. However, there must be a direct relationship between the injury, loss or damage that occurred and the risk indemnified against. Accordingly, the claim must be carefully examined by the indemnitor to make sure that it falls within the scope of the obligations imposed by the indemnification agreement.

Clearly, the best way to assure that the injury, loss or damage complained of falls within

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[2]Pisano, Charles M., *Judicial Interpretation of Indemnity Clauses*, 48 La. L. Rev. 169, 172 (September 1987).

[3]International Risk Management Institute, *Contractual Risk Transfer: Strategies for Contract Indemnity and Insurance Provisions*, Vol. I (August 1995).

the scope of the risk that is covered by the indemnification clause, is for the parties to use clear and unequivocal language in the indemnification provisions. The U.S. Supreme Court, in *United States v. Seckinger*,[4] in effect, held that in the absence of clear and unequivocal intent to the contrary, an indemnification agreement will be construed as comparative fault indemnification (i.e. limited form indemnification).

Many courts agree that in order to meet the clear and unequivocal standard, it is not necessary that the parties make any reference to the indemnitee s own negligence or even to use the word negligence in the indemnification provisions.

> The indemnity agreement need not contain talismanic words . . . including the negligence of the indemnitee . . . . [I]t therefore is settled that the clear and unequivocal language requirement does not require the word negligence to be explicitly contained in the indemnity agreement[,] . . . [a]s long as the indemnity agreement unambiguously and clearly states that the indemnitor is to indemnify the indemnitee for any and all claims for personal injury and property damage, then it does cover even the negligent acts of the indemnitee. [5]

On the other hand, although magic words are not necessary, they are certainly beneficial to both parties since

> the primary principle in the interpretation of the indemnity contract is clarity. The party seeking indemnity must have a contract that clearly includes the specific risk for which indemnity is being sought. Although the law does not require that a contract delineate each and every risk, courts have generally looked for talismanic language --that is, certain specific terms reflecting the parties intention that the indemnitee be indemnified for claims caused by its own negligence, strict liability, punitive damages, . . . or for defects or conditions pre-existing the contract, etc. [6]

Thus, to ensure that the courts will interpret the indemnification agreement as a broad form agreement, the contract should clearly state that the indemnitor agrees to indemnify the indemnitee for all claims resulting from or in any way connected with the services performed, even though contributed to or in any way connected with joint or concurrent fault or negligence on the part of the indemnitee.[7]

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[4]397 U.S. 203 (1970).

[5]Southern Railway Co. v. General Television Arts, Inc., 556 F.Supp.86 (N.D. Ala. 1982).

[6]Quay, Jeanette H., and Lynn M. Luker, *Transferring Risk By Contractual Indemnity: A View From Oil and Energy*, 65 Def. Couns. J. 371, 372 (July 1998).

[7]Quay and Luker, *supra*, at 372 (citing Melancon v. Amoco Production Co., 834 F.2d 1238, 1248 (5th Cir. 1988); Roberts v. Williams-McWilliams Co., 648 F.2d 255 (5th Cir. 1982)).

2. Express Negligence Approach

Although only a minority of states follow the express negligence approach, it appears to be a growing trend. The express negligence approach is a more stringent standard that some states apply before they will conclude that an indemnification agreement expresses the parties intent to indemnify the indemnitee for its own negligence.

> [T]he express negligence doctrine provides that parties seeking to indemnify the indemnitee from the consequences of its own negligence must express that intent in specific terms. Under the doctrine of express negligence, the intent of the parties must be specifically stated within the four corners of the contract. [8]

Courts following the express negligence standard hope to prevent the danger associated with the signing of a document without thorough review in its entirety for clauses which may be hidden in boilerplate provisions. Keep in mind, however, that where the indemnitee is not seeking indemnity for its own negligence, the express negligence doctrine will not apply.[9]

3. Other Miscellaneous Rules of Construction

a. Ambiguity Construed Against the Drafter of the Agreement

If the language utilized in the indemnification agreement is ambiguous and is subject to more than one interpretation, any ambiguity will be construed against the party that drafted the provision. This is a basic tenet of contract interpretation.

b. Burden of Proof on Party Seeking Indemnification

The party that is seeking to be indemnified will bear the burden of proof to convince the court that the parties intended that the indemnitee actually be indemnified for the injury, loss or damage at issue.

c. Reading Contract as a Whole

The courts will generally look at an indemnification agreement in the context of the contract as a whole. Accordingly, all of the terms and provisions of the contract will be considered in determining the parties intent.[10]

Additionally, the courts will also look to the insurance requirements stated in the contract to try to determine the parties intent. The majority of jurisdictions which follow the clear and

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[8] Ethyl Corp. v. Daniel Construction Co., 725 S.W.2d 705 (Tex. 1987).

[9] Man GHH Logistics GMBH v. Emscor, Inc., 858 S.W.2d 41 (Tex.App. 1993).

[10] See, e.g., R.E.M. IV v. Robert F. Ackerman & Assoc., 313 N.W.2d 431 (Minn. 1981).

unequivocal approach view the presence of insurance requirement provisions as an indication that the parties intended the indemnitor to indemnify the indemnitee for its own negligence, even if it is not specifically stated.[11]

d. Indemnitee s Defense Costs

What happens if the indemnification agreement provides for indemnity but not for defense costs? There is conflicting authority over whether the duty to defend implicitly includes the payment of costs and attorney s fees, however, those cases that permit

> recovery of attorney s fees and costs[,] do not allow recovery of fees and costs incurred in enforcing the claim for indemnity, absent a specific contractual provision to that effect. Better drafted contracts will specifically identify prosecution or breach of contract enforcement costs and fees as an obligation undertaken by the indemnitor. [12]

e. Obligation to Name Another Party as an Additional Insured

It has become commonplace for contracting parties to include a requirement that one party add another to its liability insurance policy as an additional insured so that the party named as an additional insured may obtain protection from liability under the terms and conditions of the policy, even if the indemnity provision is unenforceable. [13]

Problems can arise, however, if [a]n improperly constructed additional insured endorsement . . . result[s] in the additional insured being covered for *all* of its activities, not just the undertakings described in the contract[,] . . . . [thus] use of an unrestricted additional insured endorsement can increase the insurer s exposure greatly without the benefit of a corresponding increase in premium.[14] Accordingly, proper care must be taken in the construction of an additional insured endorsement because the use of [s]uch an endorsement may create, in effect, a separate insurance policy covering the additional insured regardless of the contractual relationship between the loss at issue and the named insured. [15] The key is to be sure that [e]very additional insured endorsement furnished in compliance with contractual requirements . . . [is] tailored specifically to the purposes of the contract. Careful underwriting will insure that

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[11]See, e.g., R.E.M. IV, *supra*.

[12]Quay and Luker, *supra*, at 375 (citing Texas Eastern Transmission Corp. v. McMoran Offshore Exploration Co., 877 F.2d 1214 (5th Cir. 1989), *cert. denied*, 493 U.S. 937 (1989)).

[13]Quay and Luker, *supra*, at 382.

[14]Quay and Luker, *supra*, at 382 [emphasis added].

[15]Quay and Luker, *supra*, at 383.

such endorsements cover only designated liabilities contemplated by the parties. [16]

f. Certificates of Insurance

Certificates of insurance are an excellent way for the indemnitee to later avoid any problems. Utilizing a form questionnaire to confirm coverages that are required by the contract is always a good policy.[17] The following essential questions should be discussed with the insurer, its agents or brokers to eliminate any problems later on:

1. Is the company included as an additional insured on all policies required to be carried by the indemnitor?
2. Has the insurer waived subrogation against the company and its insurers in all the insurance policies required to be carried by the indemnitor?
3. Do all of the policies provide for a 30-day written notice of material change, cancellation or reduction?
4. Is coverage under all insurance required to be carried by the indemnitor primary and exclusive of any other existing valid and collectible insurance?
5. Do all policies have adequate territorial limits for the location of the work?[18]

Asking such pointed questions can help eliminate problems in the future and ensure proper coverage when needed.

Conclusion

In order to protect a company from unnecessary litigation and expense, it is essential that the principles set forth in this summary be considered when entering into risk-shifting contracts. The broad form agreement that specifically states that the indemnitor has an unconditional obligation to hold the indemnitee harmless for all liabilities associated with the contract at issue, including the indemnitee s sole negligence regardless of which party is at fault, is clearly the best indemnification agreement. Such agreements ensure that, regardless of which state law is governing the agreement (i.e. those utilizing a clear and unequivocal approach, or those utilizing an express negligence approach), the indemnitee is fully indemnified for any and all claims that may arise from that contract. Additionally, it is always a good policy to incorporate insurance requirements into the indemnification provisions.

Finally, where negotiating strategy makes such clear and precise language impossible, it is crucial that contracting parties refer to the standard that is applied in the state in which the agreement is going to be enforced. Appendix A, which outlines the standards of interpretation by state, is convenient for this purpose.

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[16] Id.

[17] Quay and Luker, *supra*, at 386.

[18] Id.

Mendes & Mount, LLP is always available to examine and discuss indemnification provisions and contracts before such contracts are executed to ensure that such agreements are in compliance with the laws of the state governing the contract and to help ensure the continued success of our clients.

APPENDIX A

INTERPRETATION OF INDEMNIFICATION AGREEMENTS BY STATE[19]

STATE	CASE	STANDARD USED BY COURT
Alabama	*Craig Construction Co., Inc. v. Hendrix*, 568 S.2d 752 (Ala. 1990)	Clear and unequivocal.
Alaska	*C.J.M. Construction v. Chandler Plumbing & Heating*, 708 P.2d 60 (Alaska 1985)	Reasonable construction.
Arizona	*Washington Elementary School District v. Bagliano Corp.*, 817 P.2d 3 (Ariz. 1991)	Strictly construed . . . Clear and unequivocal.
Arkansas	*Arkansas Kraft Corp. v. Boyed Sanders Construction*, 764 S.W.2d 452 (Ark 1989)	Clear and unequivocal terms and to the extent that no other meaning can be ascribed.
California	*Ralph M. Parsons Co. v. Combustion Equipment Association*, 172 Cal.App.3d 211 (1985)	Language imposing obligation to indemnify for indemnitee s own negligence should do so expressly and unequivocally so that the contracting party is advised in definite terms of liability to which it is exposed.
Colorado	*Public Service Co. Of Colorado v. United Cable Television*, 829 P.2d 1280 (Colo. 1992)	Clear and unequivocal.
Connecticut	*Burkle v. Car and Truck Leasing*, 467 A.2d 1255 (Conn 1983)	Clear and unequivocal language.
Delaware	*Kreider v. Schumacher & Co.*, 816 F.Supp. 957 (D.Del. 1993)	Clear and unequivocal terms.
District of Columbia	*Rivers & Bryan v. HBE Corp.*, 628 A.2d 631 (D.C.App. 1993)	Must plainly appear from the agreement and if the intention is at all ambiguous, the standard is not satisfied.
Florida	*Cox Cable Corp. v. Gulf Power Co.*, 591 S.2d 627 (Fla. 1992)	Clear and unequivocal terms.
Georgia	*Kemira, Inc. v. A-C Compresser Corp.*, 755 F.Supp.1059 (S.D.Ga. 1991)	Plain, clear and unequivocal terms and the clause cannot be against public policy.
Hawaii	*Kole v. AMFAC, Inc.*, 665 F.Supp.1460 (D.D. Hawaii 1987)	Must have a clear and unequivocal assumption of liability . . . [h]owever, there is no necessary talismanic recitation required.
Idaho	*Bonner County v. Panhandle Rodeo Association, Inc.*, 620 P.2d 1102 (Idaho 1980)	Fact specific: while an explicit reference to indemnification for indemnitee s sole negligence is not required, it is dispositive.
Illinois	*Hader v. St. Louis Southwestern Railway Co.*, 566 N.E.2d 736 (Ill. 1991)	Clear and explicit language of the contract . . . or such intention is expressed in unequivocal terms. Express reference to negligence not required.
Indiana	*Moore Heating & Plumbing, Inc. v. Huber, Hunt & Nichols*, 583 N.E.2d 142 (Ind. App. 1991).	The language of the indemnification clause must reflect the indemnitor s knowing and willing acceptance of the burden [of indemnifying the indemnitee for its own negligence] and must express the burden in clear and unequivocal terms.
Iowa	*Thornton v. Guthrie County Rural Electric Cooperative Association*, 467 N.W.2d 574 (Iowa 1991)	Clear and unequivocal language.
Kansas	*Zenda Grain & Supply Co. v. Farmland*	Clear and unequivocal terms.

[19] Source: International Risk Management Institute, *Contractual Risk Transfer: Strategies for Contract Indemnity and Insurance Provisions*, Vol. I (August 1995).

	Industries, Inc., 894 P.2d 881 (Kan. 1995).	
Kentucky	*Reynolds Metals Co. V. J.U. Schickli & Bros*, 548 S.W.2d 841 (Ky. 1977)	Every presumption is against [the intention to indemnify the indemnitee for its own negligence] . . . but such clauses are not against public policy and in cases where it is not improbable that a party would undertake such an indemnification of another party . . . the clauses will be enforced.
Louisiana	*Perkins v. Rubicon, Inc.*, 563 S.2d 258 (La. 1990)	Contract of indemnity whereby the indemnitee is indemnified against the consequences of his own negligence is strictly construed . . . [and] such an intention is expressed in unequivocal terms.
Maine	*McGraw v. S.D. Warren Co.*, 657 A.2d 1222 (Me. 1995)	Clearly and unequivocally reflect a mutual intention by both parties to provide indemnity for loss caused by the sole negligence of the indemnitee.
Maryland	*Heat & Power Corp. v. Air Products & Chemicals, Inc.*, 578 A.2d 1202 (Md. 1990)	Express negligence: Contracts will not be construed to indemnify a person against his own negligence unless an intention to do so is expressed in those very words or in other unequivocal terms.
Massachusetts	*Urban Investment & Development Co. v. Turner Construction Co.*, 616 N.E.2d 829 (Mass. 1993)	Indemnity provisions are not read with any bias in favor of the indemnitor and against the indemnitee; rather such provisions are to be fairly and reasonably construed to ascertain the intention of the parties and to effectuate the purpose sought to be accomplished.
Michigan	*Chrysler Corp. v. Brencal Contractors, Inc.*, 381 N.W.2d 814, *appeal denied*, 393 N.W.2d 175 (Mich. 1986)	Intention is determined by considering not only the language of the contract but also the circumstances surrounding the contract, including the situation of the parties. Indemnity contracts are construed most strictly against the party who drafts them and against the party who is the indemnitee . . . .
Minnesota	*Oster v. Medtronic, Inc.*, 428 N.W.2d 116 (Minn.App. 1988)	Agreement seeking to indemnify a party for losses resulting from that party s own negligent acts are not favored in the law and are not construed in favor of indemnification, unless such intention is expresses in clear and unequivocal terms.
Mississippi	*City of Jackson, Mississippi v. Filtrol Corp.*, 624 F.2d 1384 (5th Cir. 1980)	Clearly and unequivocally.
Missouri	*Howe v. Lever Bros. Co.*, 851 S.W.2d 769 (Mo.App.E.D. 1993)	A contract of indemnity will not be construed to indemnify the indemnitee against losses resulting to him through his own negligent acts, where such intention is not expressed in unequivocal terms.
Montana	*Sweet v. Colborn School Supply*, 639 P.2d 521 (Mont. 1982)	[I]n order to uphold an indemnification agreement for damages caused by negligent acts of the indemnitee there must be clear and unequivocal terms . . . .
Nebraska	*Oddo v. Speedway Scaffold Co.*, 443 N.W.2d 596 (Neb. 1989)	An indemnitee may be indemnified against his own negligence if the contract contains express language to that effect or contains clear and unequivocal language that that is the intention of the parties.
Nevada	*Aetna Casualty & Surety Co. v. L.K. Comstock & Co., Inc.*, 488 F.Supp. 732 (D. Nev. 1980)	The traditional majority position is that strict construction should be applied to such indemnity contracts so that express or explicit reference to the indemnitee s own negligence is required. However, the more modern minority position [adopted by this court] is that strict construction should not be applied.
New Hampshire	*Commercial Union Assurance Co. v. Brown Co.*, 419 A.2d 1111 (N.H. 1980)	[P]arties intention to afford such protection [must be] clearly evident.
New Jersey	*Stier v. Shop Rite of Manalapan*, 492 A.2d 1055 (N.J. 1985)	Where the negligence of the indemnitee is the sole cause of the accident, recovery is denied against the indemnitor unless an intent to indemnify is unequivocally spelled out in a contact.

New Mexico	*Sierra v. Garcia*, 746 P.2d 1105 (N.M. 1987)	[S]tatute expressly voids indemnity contracts which attempt to indemnify the indemnitee for any loss arising in whole or in part from the indemnitee s negligence.
New York	*Facilities Development Corp. v. Miletta*, 584 N.Y.S.2d 491 (1992)	An indemnification agreement between sophisticated business entities will be construed as intending to indemnify either party for its own wrongdoing only when the language of the agreement clearly connotes an intent to provide for such indemnification.
North Carolina	*Candid Camera Video World, Inc. v. Mathews*, 334 S.E.2d 94 (N.C.App. 1985)	Indemnity against negligence must be made unequivocally clear in the contract, particularly in a situation where the parties have presumably dealt at arms length.
North Dakota	*Barsness v. General Diesel & Equipment Co., Inc.*, 422 N.W.2d 819 (N.D. 1988)	An indemnity agreement will not be construed to indemnify a party against the consequences of its own negligence unless the interpretation is clearly intended.
Ohio	*Tanker v. North Crest Equestrian Center*, 621 N.E.2d 589 (Ohio 1993)	Indemnity agreements purporting to relieve a party from the consequences of that party s own negligence must be expressed in terms which are clear and unequivocal where they are enforceable.
Oklahoma	*Wallace v. Sherwood Construction Co.*, 877 P.2d 632 (Okla.App. 1994)	Clear and unequivocal terms, but the court must also apply the rules generally applicable to contracts and attempt to ascertain the intention of the parties based upon the whole contract, and give effect to that intent if it can be done consistent with legal principles.
Oregon	*Cook v. Southern Pacific Transportation Co.*, 623 P.2d 1125 (Ore. 1981)	[I]ndemnity provisions are construed against holding that coverage extends to the negligence of the indemnitee, unless a contrary intention clearly appears, expressly . . . or out of the circumstances of the parties and their relationship.
Pennsylvania	*Ruzzi v. Butler Petroleum Co.*, 588 A.2d 1 (Pa. 1991)	Express negligence: [C]lear and unequivocal language. No inference from words of general import can establish such indemnification.
Rhode Island	*Corrente v. Conforti & Eisele Co., Inc.*, 468 A.2d 920 (R.I. 1983)	Language needs to be sufficiently specific and if arose from the contractually expressed intent of the parties, . . . [is] not against public policy.
South Carolina	*Federal Pacific Electric v. Carolina Production Enterprises*, 378 S.E.2d 56 (S.C.App. 1989)	[C]lear and unequivocal terms.
South Dakota	*Chicago & Northwestern Transportation Co. v. V&R Sawmill, Inc.*, 501 F.Supp. 278 (D.S.D. 1980)	The language of the agreement must be clear and unequivocal.
Tennessee	*Summers Hardware & Supply Co., Inc. v. Steele*, 794 S.W.2d 358 (Tenn.App. 1990)	Express negligence: The contract must express the clearest of language . . . . Mere general, broad, and seemingly all-inclusive language in the indemnifying agreement . . . will not be sufficient.
Texas	*Enserch Corp. v. Parker*, 794 S.W.2d 2 (Tex. 1990)	Express negligence: The express negligence doctrine provides that parties seeking to indemnify the indemnitee from the consequences of its own negligence must express that intent in specific terms. Under the doctrine of express negligence, the intent of the parties must be specifically within the four corners of the contract.
Utah	*Freund v. Utah Power & Light Co.*, 793 P.2d 362 (Utah 1990)	A party is contractually obligated to assume ultimate financial responsibility for the negligence of another only when that intention is clearly and unequivocally expressed.
Vermont	*Lamoille Grain Co. v. St. Johnsbury & Lamoille County Railroad*, 369 A.2d 1389 (Vt. 1976)	The failure of the contract to literally and specifically excuse the [indemnitee] for its own negligence [does not preclude] other verbage from having the same effect . . . .Where the language of

		the agreement is clear, the intention and understanding of the parties must be that which their agreement declares.
Virginia	*Richardson-Wayland Electrical Corp. v. Virginia Electric & Power Co.*, 247 S.E.2d 465 (Va. 1978)	Indemnity provisions should be read as a whole.
Washington	*Northwest Airlines v. Hughes Air Corp.*, 702 P.2d 1192 (Wash. 1985)	[C]lear and unequivocal terms. Express negligence not required, however, Washington currently requires . . . that more specific language be used to evidence a clear and unequivocal intention to indemnify the indemnitee s own negligence.
West Virginia	*Moore v. Chesapeake & Ohio Railway Co.*, 493 F.Supp. 1252 (S.D.W.Va. 1980), *judg. affirmed*, 649 F.2d 1004 (4th Cir. 1981)	Language must clearly and definitely show an intention to indemnify against certain loss or liability . . . the primary purpose is to ascertain and to give effect to the intention of the parties.
Wisconsin	*Dykstra v. Arthur G. McKee & Co.*, 301 N.W.2d 201 (Wis. 1981)	An indemnification contract must be strictly construed to determine whether it is indeed the intent of the parties that a negligent indemnitee be indemnified for its own negligent conduct.
Wyoming	*Northwinds of Wyoming, Inc. v. Phillips Petroleum Co.*, 779 P.2d 753 (Wyo. 1989).	Express negligence: An indemnification clause will not be construed to indemnify the indemnitee against losses resulting from its own negligent acts unless such intention is expressed in clear and unequivocal terms, or unless no other meaning can be ascribed to it. Mere general, broad, and seemingly all-inclusive language in the indemnifying agreement has been said not to be sufficient to impose liability for the indemnitee s own negligence. If the indemnitee means to throw the loss upon the indemnitor for a fault in which he himself individually shows, he must express that purpose beyond and peradventure of doubt. The test is whether the contract language specifically focuses attention on the fact that by the agreement the indemnitor was assuming liability for indemnitee s own negligence.