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If you're considering entering into a contract that contains an indemnification clause, there are a few tips that you should follow to make sure you are legally protected. First and foremost, you need to read the clause so that you can be certain that you fully understand its language. For instance, if the clause includes language about defending against claims, you need to be sure whether this means you will be defended from all claims or just reasonable claims.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in my newsletter, which can be viewed on *The Legal Strategist* tab of my web site, please contact my office at 713.526.1883.

Scott Barrett

Texas Esoteric Facts

Texas still owns all of its public lands. If the federal government wants to create a park or cut a stand of timber, it must first ask the state's permission.

Feature Topic: Understanding Indemnification Clauses

An indemnification clause is a common, and important, element of commercial contract. This clause is used to transfer the risk of potential liability from one party, called the "indemnitee" to the other, called the "indemnitor". This transfer of liability is for ***third party*** claims. Claims between the parties based upon the contract, such as breach of contract for failure to pay or failure of delivery, is not covered by the indemnification clause. Basically, you are covering the losses of the indemnified party to a third party (a non-party to the contract) that are a result of your actions.

Here is an example: A third-party falling on a set of stairs and suing the owner of the building (indemnitee) for their injuries on the ground that the stairs were not built according to building code. The owner, if they had an indemnity provision in their contract with the contractor (indemnitor), would look to the contractor to reimburse the owner for any amounts the owner has to pay the third-party.

There are different types of indemnification clauses that can be inserted into a contract. For instance, if your contract includes a mutual indemnification clause, it means that both contracted parties have agreed to cover losses of the other for third party claims that they have caused. With one-way indemnification, only one party is indemnified, meaning only their losses would be covered.

As with most contracts, what is included in the indemnification clause is a negotiation point. Here are some considerations:

- **Who gets protected?** This can be specific or very broad. It could cover just the businesses that are legally 'party' to the contract or it may also cover a wide range of related parties such as officers, directors, employees, and affiliates.
- **What triggers the obligation?** The trigger for indemnification could be really narrow or very broad.
- **Is there a carveout from the indemnification obligation for matters resulting from the fault of the other side?** If the fault rests with the other party, have you included language that your company can't then be sued by them for any losses or damages they may have suffered as a result of their own actions?
- **What are the indemnification procedures?** There should be clear and concise language saying you have control over the defense of any matter (since your are the party paying the legal bills).

If you would like more information on this or any other topic relating to a indemnification clauses, please contact Scott Barrett to set up a consultation.