

Indemnifying for Negligence Makes a Mess

David Tollen of Tech Contracts Academy has some advice on using fault-triggered indemnities: Avoid them where possible and recognize that a fault-triggered indemnity might not do its job, which is to provide rules for dispute-free cooperation between the parties.

These fault-triggered indemnities create two problems – both related to the indemnitor’s obligation to *defend* the case, he explains. Those two problems are refusal to defend, and conflict of interest.

“[I]n a fault-triggered indemnity, the parties have opposing interests. The indemnitor wants to show that it did nothing wrong so it can escape responsibility. The indemnified party wants to establish the indemnitor’s fault, to keep it in the case. That makes cooperation difficult,” according to Tollen.

Read the article.