

Ways to Make Sure the Indemnity Clause You Just Negotiated Is Not Your Enemy

When indemnity is mentioned, most owners, designers and contractors think of protection from third party claims asserted by parties with whom they have no contractual privity, **points out a post** by Saul Ewing Arnstein & Lehr.

But **Garry R. Boehlert** and Trevor Ashbarry explain that, depending on the language used, indemnity provisions also can cover first party claims asserted by parties in privity of contract. To the surprise of many, such clauses may cover actions for breach of contract in addition to claims for negligence.

They add, “regardless of how carefully you may have considered the pros and cons of including a prevailing party clause in your contract, the indemnity clause you have negotiated may unwittingly permit recovery of attorneys’ fees for first and third party claims – even if the clause makes no mention whatsoever of attorneys’ fees.”

Read the article.