



Construction Indemnification

Insurance Requirements in Construction Contracts

As a final matter, to ensure an indemnitor is able to fulfill its indemnity obligations, construction contracts should include an insurance requirement provision, requiring the indemnitor to maintain insurance to cover any loss arising under the agreement. The insurance required should be relevant and proportionate to the risks inherent in the contract, and it should include contractual liability coverage for obligations arising out of the indemnification provision. Additionally, the indemnitee should expressly require the indemnitor to add the indemnitee to its insurance policy as an "additional insured." Otherwise, the indemnitor's insurer may refuse to provide coverage to the indemnitee, leaving the indemnitee to seek recovery from the indemnitor, which is often far more difficult or even impossible where the indemnitor is judgment proof.

To avoid this situation, the indemnitee should confirm compliance with the contract's insurance requirements provision. In order to do so, the

indemnatee should obtain full copies of the indemnitor's insurance policies. Importantly, the indemnitee should not rely on the provision of a Certificate of Insurance ("COI") as confirmation of compliance. COIs often contain disclaimers, and courts view them merely as evidence of intent to provide coverage, rather than binding contracts.

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