

Duties and liabilities of indemnity holder

The rights of indemnity holders in a contract of indemnity are not absolute, and he has certain duties as well. The most important liability is that he must abide by all the conditions of the contract of indemnity. He/she should not violate the contract. It is the duty of indemnity holders to foresee and try to avoid the loss, if possible. As discussed above, the liability of the indemnifier only arises when the indemnity holder has suffered any loss. He/she cannot force the indemnifier to pay the money before there is any loss.

Illustration

A promises B to pay for losses in his business. B had a godown in which the goods were stored. A fire occurred in the area where B's godown was located, but luckily he suffered no loss as the fire did not burn his goods or godown. Though there was a possibility of his goods being damaged in the fire, A is not liable to pay the money because there has been no loss to B.

The mere possibility of loss does not entail the indemnifier's liability. He is only liable when the indemnity holder has suffered the actual loss.

Types of the contract of indemnity

Broad indemnification

The indemnifier makes a promise to cover all parties' damages, including those of the third party, under the broad indemnification. Even though the third party is completely at fault, he promises to cover the losses. The term "caused in whole or in part" is one of the primary signs of an indemnity contract in the broad form of indemnification.

Intermediate indemnification

Under the intermediate indemnification, the indemnifier agrees to cover only damages caused by the promisor's and promisee's actions. Unlike broad indemnification, it does not include the losses sustained as a result of the actions of a third party. Except in cases where that party is completely at fault, the intermediate form indemnifies a party for its own negligence. The term "caused in part" is one of the primary signs of an indemnity contract in the intermediate form of indemnification.

Limited indemnification

The indemnifier promises to cover only losses brought on by his action under the limit of indemnification. Losses incurred as a result of the promisee and third party's actions are not covered by the contract of indemnity. The term "only to the extent" is one of the primary signs of an indemnity contract in the limited form of indemnification.

Can the clause of force majeure relieve the obligation of indemnity

While reading about a contract of indemnity, a question might occur in your as to 'Whether the clause of force majeure is capable of relieving the obligation of the party to indemnify or not?' This issue was considered by the New South Wales (NSW) Supreme Court in the case of [*Woolworths Group Ltd. v. Twentieth Super Pace Nominees Pty Ltd atf the Byrns Smith Unit Trust t/as SCT Logistics \(2021\)*](#). In this case, the defendant SCT was engaged in the transportation of goods on behalf of Woolworths. However, the goods were damaged due to the derailment of the train in extreme weather conditions. As a result, Woolworths claimed the losses incurred as indemnity mentioned in their contract. On this, the defendant (SCT) argued that the force majeure clause in the contract i.e., Clause 7.2 of the

contract, relieves him of his obligation to pay. This is because the goods were damaged in a force majeure event.

The Supreme Court in this case denied the arguments presented by the defendant and held that according to clause 13.1 of their contract, SCT is liable to indemnify Woolworths for any loss, destruction, theft or damage of goods. It was also observed that this liability remains until the goods have been accepted by Woolworths at the delivery location. Justice Henry further stated that in order to take advantage of force majeure clauses, a connection between the force majeure event and the performance of the contract must be established and it must be shown that there has been a delay in the performance. However, in this case, the defendant was asked to indemnify Woolworths.

Types of indemnity

Express indemnity

Written indemnity is another term for an express indemnity. The obligations of both parties should be specified in an express indemnity clause. Where there is an express indemnity, the terms and conditions defining the indemnification clause are provided in writing. The contract should explicitly state and explain the terms and conditions of the contract. An indemnity attorney may be required to assist with the indemnification agreement's drafting.

Insurance indemnity contracts are among the indemnity contracts that are most frequently used. Also, such contracts are widely included in construction contracts by businesses that operate in the construction sector. Another sector that calls for well-written indemnity contracts is agency contracts.

Implied indemnity

The only distinction between an express indemnity contract and an implied indemnity contract is that the latter is not in writing. Instead, implied indemnity contracts are those that are made as a result of the conduct of the concerned parties. In an implied indemnity contract, the extent of the obligation is determined by the circumstances, conduct, and actions of the parties. For instance, in a master-servant relationship, the master must pay for any injuries the servant sustains. However, the servant must have received the injuries as a result of obeying the master's orders.

The [*Adamson v. Jarvis*](#) decision from 1872 established the standard for implied indemnity. In this case, the plaintiff, an auctioneer, sold certain items on someone else's orders. The commodities turned out not to belong to the person, and the real owner held the auctioneer accountable for the items. In response, the defendant was sued by the auctioneer for the loss he had incurred as a result of following his directions. It was decided that because the auctioneer carried out the defendant's orders, he had a right to believe that the defendant would indemnify him if his actions were improper. According to the court's decision, if a servant is injured while carrying out implied orders, the master is responsible for compensating the servant.