

Insurance and Indemnification

The University of Texas School of Law
Continuing Legal Education
Bernard O. Dow Leasing Institute
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WHAT IS AN INDEMNITY PROVISION?

- Contractual agreement of one party to protect another party from claims or losses for which the other party would otherwise be responsible
- Shifts risk of financial responsibility
- Relates to third-party claims, not claims brought by one contract party against the other

WHY AN INDEMNITY?

- One party may be in a better position to **control** the risk or **finance** the risk
- Customary in industry
- One party may be maintaining the insurance
- Bargaining power

TYPES OF INDEMNITY PROVISIONS

- Limited Form: Only to the extent of indemnitor's own negligence or fault
- Intermediate Form: Limited Form plus to the extent of indemnitee's partial or concurrent negligence (usually excludes indemnitee's sole negligence)
- Broad Form: Limited Form, plus Intermediate Form, plus covers indemnitee's sole negligence

WHEN INSURANCE AND INDEMNITIES GO WRONG

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Case Study: Deepwater Horizon



In re Deepwater Horizon, 470 S.W.3d 452 (Tex. 2015)

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