



INSURANCE ROUNDTABLE

May 19, 2021
11:55 AM – 12:15 PM

PROTECT YOUR
ORGANIZATION WITH
CONTRACTUAL RISK
TRANSFER



Your Speaker



Daniel J. Healy, Esq.

Partner

Anderson Kill, LLP

(202) 416-6547

dhealy@andersonkill.com

Disclaimer

The views expressed by the participants in this program are not those of the participants' employers, their clients, or any other organization. The opinions expressed do not constitute legal, tax, or risk management advice. The views discussed are for educational purposes only, and provided only for use during this session.

Risk Transfer in Context

- Risk Transfer is an aspect of Risk Management.
 - Prevention, mitigation, avoidance...
 - Or have someone else pay for it
- Indemnity agreement
- Insurance coverage
- Both?

What is an “Indemnity Agreement”?

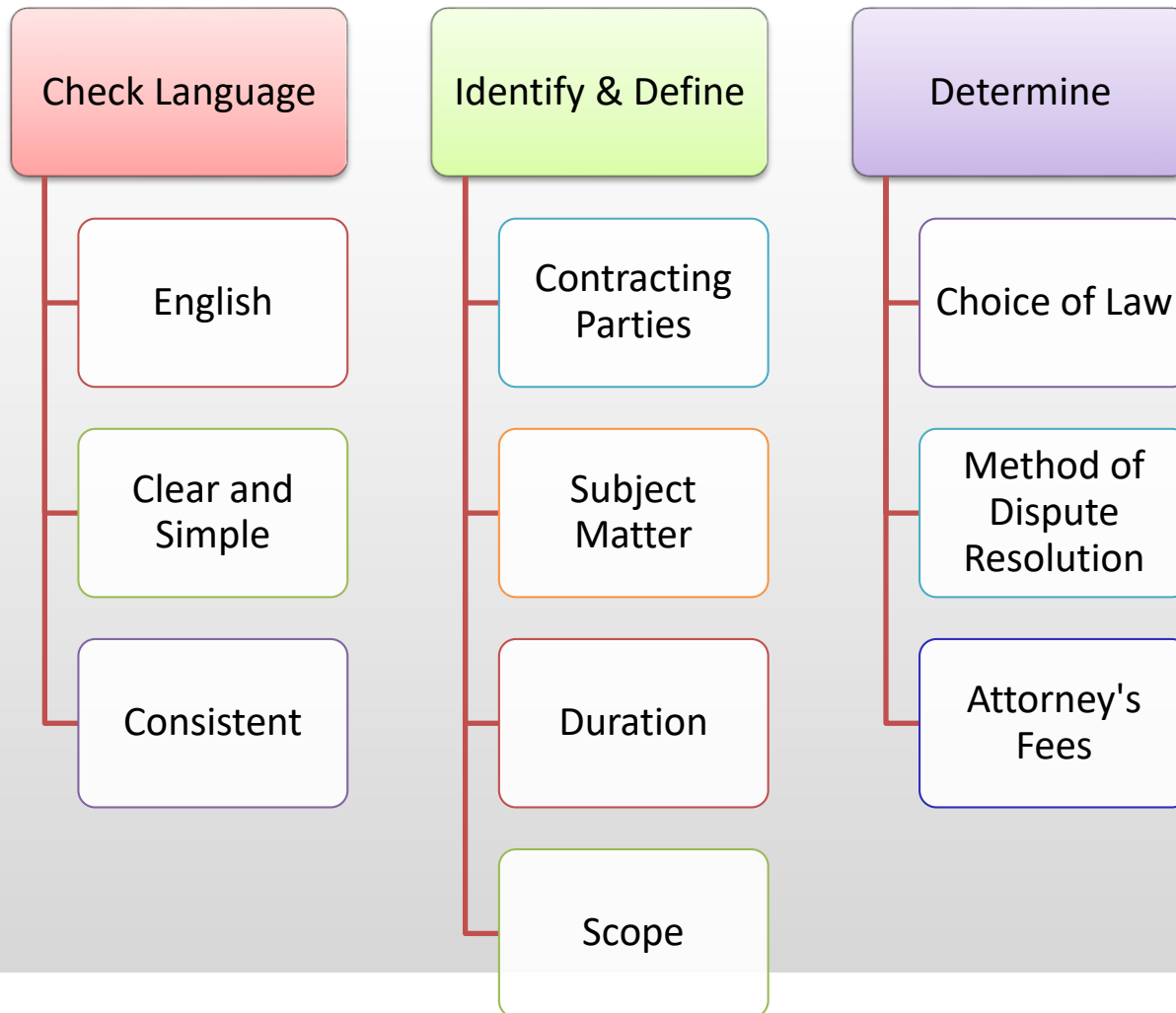
- A contractual provision in which one party agrees to answer for any specified or unspecified liability or harm that the other party might incur.
 - Not the same as insurance
- Also termed “hold harmless” clause. [*Black's Law Dictionary*, 8th Ed.]
- Where would the risk fall without a transfer?

Indemnitor indemnifies indemnitee

Basic Types of Indemnity Agreements

- Broad Form
- Intermediate
- “Limited Form”

Drafting Indemnity Agreements



Issues to Consider



Defense
counsel

Consent to
settle

Limitation of
Liability

Insurance Provisions

- Who is covered?
- What types of policies?
- Limits?
- Trigger of coverage?
- Duty to defend? (and control of defense)
- Primary and non-contributory?
- Exclusions
- Settlement issues?

“Additional Insured” Positives

- Protection outside of Indemnity Agreement
- Protection even if court apportions liability to Additional Insured for acts of Named Insured
- Same rights to defense as Named Insured
- Generally not responsible for policy premiums
- May not be responsible for loss-reporting

“Additional Insured” Negatives

- The race to the limits
- Possible loss of control of defense
- May be prejudiced by late notice by Named Insured
- Risk of policy cancellation, etc., by Named Insured
- Likelihood of “Other Insurance” disputes

Takeaways:



Beware of the Certificate of Insurance

Insurance Policies - read the fine print

Indemnity Agreements: not one size fits all

Indemnity Be Clear (Who, When, Scope)



Thank You

Rhonda D. Orin, Esq.

(202) 416-6549

rorin@andersonkill.com

Daniel J. Healy, Esq.

(202) 416-6547

dhealy@andersonkill.com