

# **Biz Legal Contract Term EXPLORED: Indemnification and Subrogation Clause**

## ***Intro/Definition***

Aaaghhh--- no two (2) terms give lawyers a bigger headache than indemnification and subrogation. These areas of law are "man-made" legal concepts to shift responsibilities and rights to other parties.

I have placed these two provisions together because of how related they are and it's easier to explain their concept together.

- **Indemnification-** This means payment of money from one party (payor) to another (payee) even though the payor may not have caused the loss suffered by the payee. (Think your automobile company when you cause an accident; they pay the injured party)
- **Subrogation-** Describes the situation where one party steps into the shoes of another party to obtain the same rights and benefits as this party against a third party. (Think your automobile company when you get into an accident; they go after the tortfeasor, not you)

## ***Points to Consider***

### **Indemnification**

1. Indemnification is Voluntary- This means that unless this indemnification clause is in the contract, correctly written, there are NO automatic rights to indemnification. Once in a contract, indemnification becomes an obligation.
2. Indemnification is primary (even as to a guarantor)- A guarantor promises to pay the debt of another if the primary person does not pay (will discuss later). Indemnification simply says "I will pay" regardless of anyone else paying and is the FIRST required to pay, even if there is a guarantor.

### **Subrogation**

1. Subrogation is most common in insurance policies.
2. Although the concept is straightforward, this is a highly technical area of law as it relates to damages and who can sue in whose name and how to divide the damages that are awarded. CONSULT AN ATTORNEY!

## ***In Georgia...***

### **Indemnification**

In Georgia, the words of a contract of indemnification are construed AGAINST the indemnitees. That means that if payments are being made on your behalf, and there is some ambiguity in the contract language where the court could reasonably believe there was NO agreement to indemnify, you may find that you have to pay for damages to a third party, not the payer (i.e. insurance co.). Moral of the story: Make sure indemnification language is accurate and strong; consult an attorney!

### **Subrogation**

1. Subrogation can be waived in lease agreements.
2. Under GA law, car insurers are required to provide UM coverage UNLESS expressly rejected by insureds. Therefore, the GA Leg. has granted UM insurers a right to subrogation by statute.

### **General Advice**

Plainly stated: consult an attorney. These clauses become highly important when talking about auto, health, and worker's compensation insurance. Don't do this on your own!

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