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# Doron F. Eghbali Entertainment Law

## [Indemnification Provisions in Entertainment Contracts](#)

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Probably, one of the salient prudent concerns in any contract is what happens if the other party breaches the warranties, representations or other promises. Who pays for such breach? How could one party allocate and minimize risks to the extent possible? Seemingly, the most prudent approach would be indemnification. Let us explore, in some detail, indemnification provisions, especially in the context of entertainment contracts.

### WHAT IS INDEMNITY?

In legal jargon, indemnity or indemnification would mean when one party holds harmless the other party, and probably all related third parties, against all claims, suits, liabilities, losses, costs, expenses, damages and recoveries incurred because of the breach as set forth in the contract. Note, this is a *very simplistic* description of indemnity and indemnity could be and *usually* is much more *sophisticated and comprehensive*.

### WHAT ARE *SOME* CONSIDERATIONS IN DRAFTING INDEMNIFICATION PROVISIONS?

#### 1. *FAIRNESS OR LACK THEREOF*

Probably, in negotiating contracts especially with respect to indemnification provisions, fairness plays a significant role as to how far one party may be prepared to concede to the other party and hold the other party harmless of certain suits, expenses or damages. In fact, one party concedes in hopes such concession might induce concessions from the other party, too. Nonetheless, contract negotiation is not always fair and one party might wield disproportionate bargaining power. Such disproportion, in fact, might induce the one with higher bargaining power not to be fair, unfortunately.

Nonetheless, even when one party wields disproportionately lower bargaining power in contract negotiations, it could be helpful to request some reciprocity. Such request might place the party with disproportionate power in an awkward position of at least explaining, even tersely, the reason for their rejection.

## ***2. RESTRICTIONS ON INDEMNIFICATION OR LACK THEREOF***

Probably, there are several ways for indemnification provisions to be restricted to protect one party to the extent possible and "fairly" allocate risks among parties involved.

- One such restriction technique might be to restrict indemnification to the amount received in any contract.
- One such restriction technique might be to employ descriptive and prescriptive words, to the extent possible.
- One such restriction technique might be to restrict liability to the amount actually settled or adjudicated with the consent of the party indemnifying.

It is extremely important to note such restriction techniques could be jointly or individually employed, as the contractual obligations require.

## ***3. CONDITIONS OF RESTRICTIONS OR LACK THEREOF***

There might be some procedural conditions to restrict indemnification.

- A condition that any settlement **MUST** be first approved by the party indemnifying in advance and in a signed writing.
- A condition that the party indemnifying **MUST** receive the notice of any claim from which indemnification may be demanded.
- A condition that the indemnifying party be in control of defense. Despite the fact such condition may reasonably face vehement objections from the party seeking indemnification, the party indemnifying prudently might seek to protect its interests.

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