

Examples of Unfair Risk Transfer in the Minnesota Construction Industry

Example 1: 2021 MN contract clause, from a MN general contractor(s) to a MN subcontractor.

“Subcontractor, to the fullest extent permitted by law, also agrees to indemnify and save harmless Contractor, its agents and employees from all claims caused by Subcontractor’s negligence and for Contractor’s vicarious liability or liability imposed by warranty arising out of the acts or omissions of the Subcontractor. Further, Subcontractor agrees to defend Contractor, its agents and employees from all claims including, without limitation, claims for which Contractor may be or may be claimed to be liable and to pay all legal fees and disbursements paid or incurred by Contractor in defense of such claims or to enforce the provisions of this paragraph.”

Key:

Green highlighting: Enforceable indemnity obligation, limited to Subcontractor’s fault/negligence.

Yellow Highlighting: Separate & enforceable defense obligation. It’s broader than indemnity and includes claims for which the General Contractor is at solely at fault, and the subcontractor is not.

Example 2 & 3: Recent unfair defense claims/settlements, from a Midwest insurance company.

- *“Insured Industry: Masonry contractor: Claim Specifics: Insured brought in to a third party complaint by general contractor. Numerous other subs named in complaint. The complained alleged construction defects at a townhome association. The insured's general liability policy provided defense and the coverage to hire experts to inspect the alleged construction defects. The experts stated that our insured had little, if any, impact on the defects. The insured's carrier contributed \$10,000 to a settlement, however, to avoid further litigation costs.”*
- *“Insured Industry: Construction company: Claim Specifics: Insured hired to perform ground/soil work for a GC building a new commercial building. The owner of the commercial building alleged defects. The GC sent our insured a demand to defend and indemnify them since the GC was an additional insured on the policy and that even if the alleged defect claim was only partly related to our insureds work, our insured is obligated to defend the GC against the entire claim. The claim is currently ongoing with investigation into liability and cause of defects. Our insured will likely go to mediation to resolve and stop litigation expenses.”*