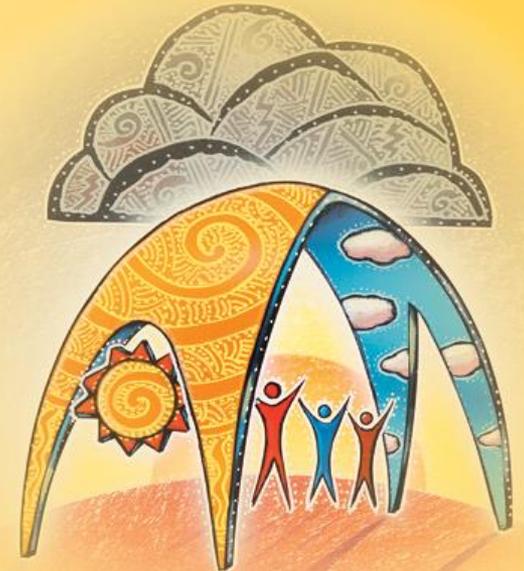




DIFFERENT WORKS

**RLI PROFESSIONAL SERVICES GROUP
LEARNING EVENT
PSGLE 133**

**Indemnification Clauses in
Professional Services
Agreements**



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Course Description & Learning Objectives

*Winning the job or a new client means **success** to your firm.*

*You've likely signed the professional services agreement without much scrutiny as to **what your liabilities may be.***

Indemnification clauses are standard in these agreements, right?

*In reality, these provisions are often overlooked because **most firms don't think they can be changed.***

In this webinar we'll:



Disclaimer

All provisions in this presentation are furnished solely for **educational purposes**.

Nothing herein is **intended as legal advice**, nor as a means of establishing an attorney-client relationship.

Laws and regulations may **vary considerably by jurisdiction**. Accordingly, you are advised to **consult a knowledgeable attorney** before making any contractual modifications.

— *A Wise Lawyer*



What is Unique about Professional Services Agreements?

Professionals with
'common law' duties
to your client

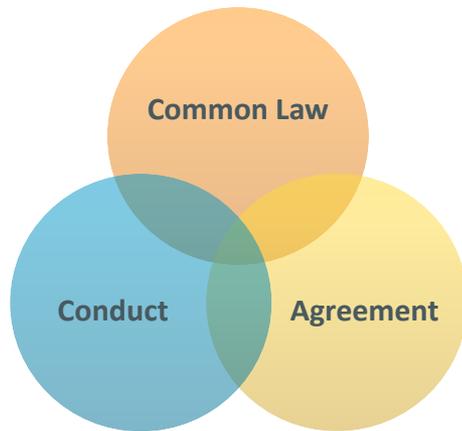
You are generally
insured for your
failure to perform
your services in
accordance with the
'common law
standard of care'

If you agree to meet a
higher standard or
assume liability by
contract you wouldn't
otherwise have had
you may be
uninsured!



Standard of Care

Ethical or legal duty of a **professional** to exercise the level of **care, diligence, and skill** prescribed in the code of practice of **his or her profession**, or as other professionals in the **same discipline** would in the **same or similar circumstances**.



--The Business Dictionary



What is an Indemnification Clause?

An **indemnification** is a contractual obligation by one party (**indemnitor**) to pay or compensate for the losses, damages or liabilities incurred by another party to the contract (**indemnatee**) or by a third party.



Three Types of Indemnifications

BROAD

INTERMEDIATE

LIMITED



Broad Form Indemnifications

Sample Broad Form Indemnification

“To the fullest extent of the law, Consultant shall indemnify, defend and hold harmless Client, its officers, employees, agents, representatives, consultants, and contractors from and against any and all loss, costs, penalties, fines, damages, claims, expenses (including attorney’s fees) or liabilities ...arising out of, resulting from, or in connection with the services contemplated by this Contract...”



Broad Form Indemnifications

Broad form indemnification provisions often include a

“duty to defend”

and a

“duty to hold harmless.”



Intermediate Indemnifications

Sample Intermediate Indemnification

“Consultant agrees to hold harmless and indemnify Client from **any and all liability**, arising out of Consultant’s negligence, **whether it be sole or in concert with others**, in connection with performance of the services described herein.”



Limited Indemnifications

Sample Limited Indemnification

“Consultant agrees to indemnify
Client from and against liability

caused by Consultant’s
negligent performance of services.”



Red Flag Words

As a general rule, “Red Flag” words are **B.A.D.**

Breadth

- “Arising from”
- “Defend”
- “in whole or in part”
- “fees, costs, expenses”

Ambiguity

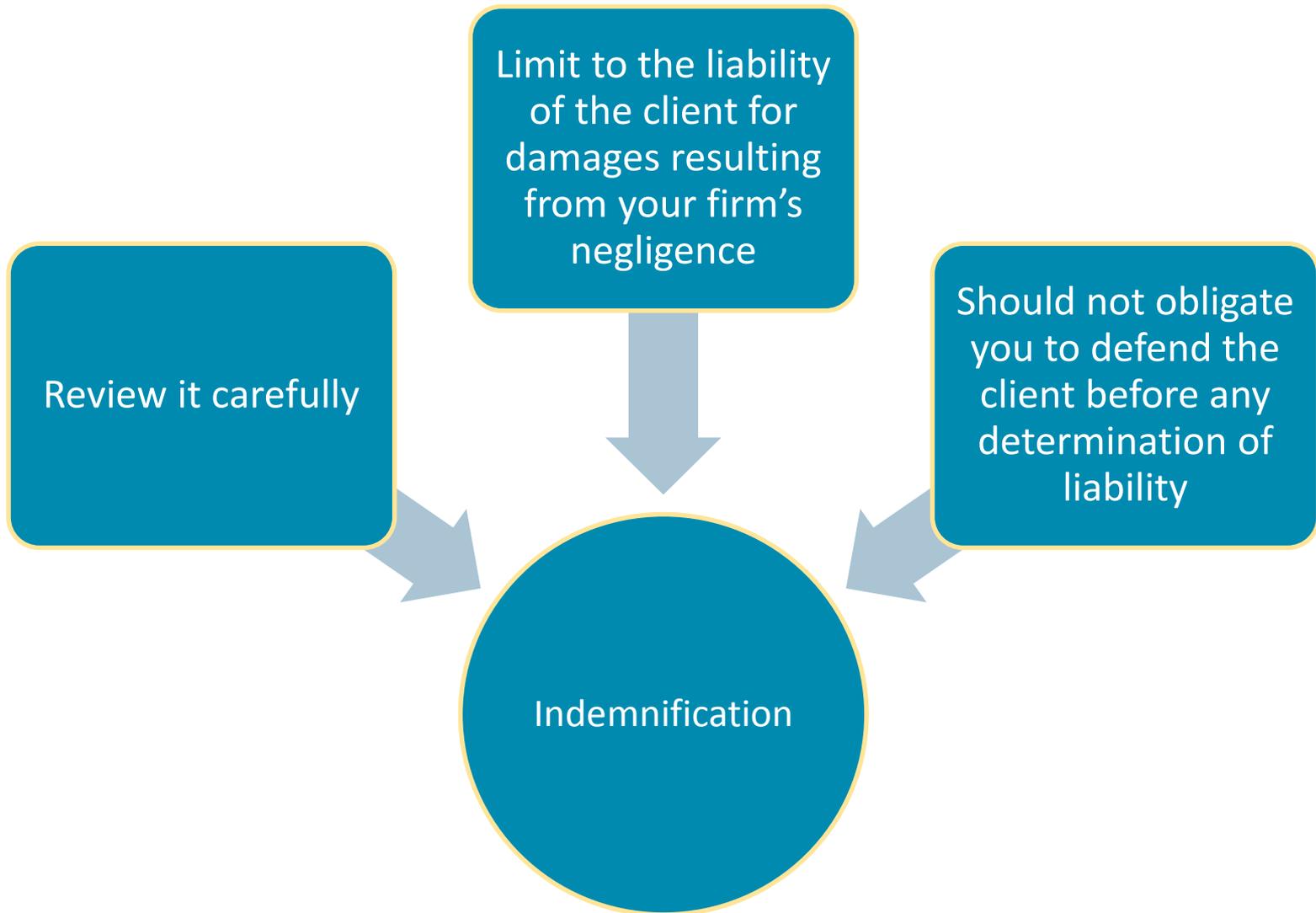
- “Agents”
- “Representatives”
- “Affiliates”
- “Assigns”
- “Insurers”

Degree

- “any”
- “all”
- “To the fullest extent”
- “highest”



Indemnification Clauses



Limiting the Scope of Indemnifications

Consult an Attorney

Establish Time Limits

Include Monetary
Caps

Establish when the
duty to indemnify
“kicks in”

Limit Number of
Indemnitees

Include Reciprocal
Terms



Indemnification Provision

The Consultant shall indemnify and hold harmless the Client, its officers and employees from and against damages, liabilities, losses, costs, and expenses, but only to the extent caused by the negligent acts, errors or omissions of the Consultant, or of those for whom the Consultant is legally liable, which arise out of the Consultant's performance of its professional services under this agreement.



Reciprocity

Sample Mutual Indemnification Clause

“Consultant agrees to indemnify the Client against all damages...
caused by the Consultant’s negligent performance
of professional services...

Client agrees to indemnify the Consultant against all damages...
caused by the Client's negligent acts.

**Neither the Client nor the Consultant shall be obligated
to indemnify the other party in any manner whatsoever
for the other party's negligence.”**



Contract Language Resources

- Attorneys
- Brokers
- Insurance Companies



Thank you for your time!

QUESTIONS??

This concludes the Professional Services Group
Learning Event

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