



Issue Update

FURTHER COMPARISON OF THE BCCA200 AND THE CCA1

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The CCA1's Indemnification Clause: The new indemnification clause is another important clause in the CCA1 contract that the contracting parties should understand and be familiar with.

Clause 12 stipulates that the subcontractor shall "indemnify" and "hold harmless" the contractor, the consultant and the owner from third party claims in certain situations. The clause mirrors the obligations assumed by the general contractor under the CCDC2.

In this context, "indemnification" and "hold harmless" simply mean that if another party sues the general contractor, the owner, the consultant or any of their employees, the trade contractor will be required to pay all costs related to such claims. This obligation includes the payment of any judgment that may be rendered against the indemnified parties, and any defence costs incurred to defend such third party claims.

The obligation to indemnify is triggered by claims that arise out of the trade contractor's performance of its work under the contract so long as such claims relate to bodily injury, disease or death, or to injury to or destruction of tangible property and if the claim is caused by the negligence of the trade contractor, or anyone for whose acts the trade contractor may be responsible.

The claim must be made within six years from the substantial performance of the trade contractor's work (or such shorter period as may be stipulated by statute).

The following is an example of how this clause might operate. A drywall contractor improperly installs a sheet of ceiling board. The board collapses and falls on a visitor to the site. Within two years of substantial performance of the drywall contractor's work, the injured visitor sues the general contractor for his injury. The general contractor could then call upon the drywall contractor to fulfill its obligations under the indemnification provision. The drywall contractor would be expected to pay the injured visitor's claim or assume the costs of defending it. The drywall contractor would also be expected to pay any costs that the general contractor had incurred to that date.

Why is this clause significant? In the example provided above, the general contractor would no doubt seek to recover any damages or costs from the drywall contractor regardless of the existence of the indemnity clause. However, the indemnity clause allows the contractor to recover every dollar spent in investigating or defending a claim as well as any damages paid to the injured visitor.

Another interesting feature of this clause is that the contractor waives its right to indemnification from the trade contractor for any claims not specifically provided for in the clause. For instance, delay damages do not appear to be provided for in the clause and this may limit the general contractor's entitlement to indemnification from its trade contractors for delay damages.

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