

EXPLANATION RE: HOLD HARMLESS AGREEMENTS

MIEC policyholders frequently ask MIEC to comment on provisions in contracts requested by third parties that obligate the policyholder to indemnify or hold the third party harmless from liabilities that may arise in the performance of the contract. These provisions sometimes appear in contracts drafted by IPAs or other managed care entities, hospitals, or a variety of business enterprises.

It is important that policyholders understand that MIEC policies expressly exclude liability "...because of your written or oral agreement to hold harmless, indemnify or otherwise assume another's obligation or liability, if liability or the amount of damages sought or imposed upon you is greater than that, which would exist in the absence of such an agreement." In short, MIEC will not cover a third party's liabilities just because a policyholder has agreed to assume those liabilities. Policyholders who enter into such agreements must understand that they may be assuming personal obligations that are beyond their insurance coverage.

There are several reasons why MIEC excludes liabilities assumed in this manner. Professional liability insurance is not general liability coverage, which sometimes includes such exposures. Professional liability insurance is primarily intended to protect the insured professional from the risks of professional practice. The policy is not drafted or intended to protect third parties engaged in various activities that may be unknown to the insurer, and outside of the purposes of the policy. Claims may have nothing to do with professional negligence, and can arise from other circumstances entirely. Frequently, claims will involve situations in which the third party contends our policyholder is at fault, while our policyholder blames the third party. When such claims arise, MIEC's focus should be on its policyholder, rather than on a claimant relying on a contractual provision. Frequently, the third party's own insurance carrier seizes upon hold harmless provisions in order to escape liabilities that the third party has insured. Substantial defense costs outside of MIEC's control may be incurred, and the policyholder is left with the bill.

The decision to sign a hold harmless or indemnification provision is a business decision that only the policyholder can make. However, it is important to understand that such provisions can result in potential uninsured liability, often vaguely defined and posing substantial risks. At the very least, legal advice should be obtained before entering into such agreements.