

Indemnification Resolution (updated February 14, 2014)

WHEREAS, on May 22, 1971, the Board adopted a Resolution concerning the indemnification of any person against whom any action is brought or threatened by reason of the fact that such person is or was a trustee, officer, agent or employee of Indiana University, or is or was serving at the request of Indiana University as a trustee, director, officer, agent or employee of any corporation, partnership, trust or other entity or enterprise; and

WHEREAS, on June 20, 1991, the Board adopted a Resolution amending the 1971 Indemnification Resolution, clarifying that the 1971 Resolution was not intended to apply to internal University dispute resolution procedures; and

WHEREAS, the 1971 and 1991 resolutions contain outdated language; and

WHEREAS, the Trustees of Indiana University believe it to be in the best interest of Indiana University to amend the 1971 and 1991 Resolutions to reflect the University's current practice.

NOW, THEREFORE, BE IT RESOLVED, that the Resolutions of 1971 and 1991 are hereby amended and adopted to read:

A. Definitions. As used in this Resolution:

1. "Action" means any actual or threatened lawsuit or other judicial, administrative or investigative proceeding, whether civil, criminal or otherwise, or any appeal or other proceeding for review of such Action. This term shall not include internal University proceedings or proceedings brought against the University by a Person (as defined herein) for any purpose other than the enforcement of the rights created by this Resolution.
2. "Person" means an elected or appointed Trustee, an officer, employee or agent of Indiana University, or an individual who is or was serving at the request of Indiana University in any capacity on a board of an entity controlled by Indiana University. This term shall not include independent contractors, medical professionals performing medical services, or persons consulting for private businesses.
3. "Indemnified Person" means a Person who meets the criteria set forth in Section B of this Resolution.
4. "Final Judgment" means a judgment, decree, or order which issues from a court or administrative body from which no further appeal may be taken, or one which is appealable and as to which the period for appeal has expired and no appeal has been taken.
5. "Settlement" includes a negotiated resolution of an Action, the entry of a judgment by consent, or by confession or upon a plea of guilty or of nolo contendere.
6. "Indiana University" (or "the University") means, unless the context otherwise requires, The Trustees of Indiana University.

B. Determination of Who is an "Indemnified Person."

Criteria: A Person against whom an Action is brought or threatened if such Action is based on that Person's acts or omissions so long as:

- a. the Person was acting within the scope of his or her duties of employment with or service to the University, and
- b. the Person was acting in good faith, and
- c. The Person's acts or omissions were not unlawful or in opposition to the best interests of Indiana University, and
- d. the Person must (i) give prompt written notice to the Vice President and General Counsel that an Action has been filed or threatened, but in no event later than the time required to provide sufficient time to respond to or defend said Action, and (ii) provide complete disclosure and cooperation in the defense of said Action, in the event that the University, pursuant to Section C.1., elects to pay costs of defense prior to any Final Judgment.

Determination: The Vice President and General Counsel in consultation with the Board of Trustees shall determine whether a Person meets the criteria to be deemed an Indemnified Person under this Resolution.

- a. In the case where a Trustee is the Person about whom an indemnification determination is being made, that Trustee shall be recused from discussion and decision.
- b. The Board of Trustees reserves the right to revoke its determination that a Person is an Indemnified Person if subsequently discovered information reveals that the Person did not

satisfy all criteria required by this Resolution. In that event, the Board of Trustees may seek restitution of expenses from the Person, including attorney's fees and costs, incurred prior to the revocation.

C. Payment of Defense Costs and Judgment/Settlement. Upon a determination that a Person is entitled to indemnification under this Resolution, the following costs and expenses shall be paid by Indiana University:

Defense Costs. Indiana University shall bear the cost of defending the Indemnified Person in the Action by, at its option:

- a. Upon making a determination that a Person is an Indemnified Person under this Resolution, the University may provide the reasonable costs and expenses, including reasonable attorneys' fees, associated with defense or settlement of the Action on behalf of the Indemnified Party. Indiana University shall have sole authority over litigation and settlement strategies and decisions for those proceedings for which it is providing legal counsel to the Indemnified Person. The Indemnified Party's full cooperation with legal counsel is a condition of continued defense and indemnification; or
- b. Upon making a determination that a Person is an Indemnified Person under this Resolution, the University may reimburse the Indemnified Person for the reasonable costs and expenses, including reasonable attorneys' fees, actually paid or incurred by the Indemnified Person in connection with proceedings related to the defense or settlement of an Action. Counsel chosen by the Indemnified Party must be approved by Indiana University, in its sole discretion; or
- c. Where it is unclear at the outset of an Action whether a Person is entitled to indemnity under this Resolution, the University may retain separate counsel for a Person and pay the reasonable costs and expenses of the Person's defense, including reasonable attorneys' fees, while a matter is pending prior to a Final Judgment. In these circumstances, the Person shall enter into an agreement with Indiana University agreeing to repay such costs and expenses if he or she is ultimately determined not to be entitled to indemnification under this Resolution.

D. Indemnified Person's Right to Retain Separate Counsel. An Indemnified Person may, at his or her own expense, retain separate counsel rather than accept the University's defense of litigation provided by this Resolution. However, retention of separate counsel cuts off Indiana University's obligation to indemnify under this Resolution for any settlement, judgment or expense incurred.

E. Payment of Judgment or Settlement.

- a. Except as provided herein, Indiana University shall pay on behalf of an Indemnified Person any amount for which the Indemnified Person becomes liable by reason of a Final Judgment in such Action, irrespective of whether the Final Judgment is on the merits or not on the merits.
- b. The University shall not pay any portion of a Final Judgment or indemnify an Indemnified Person for any portion of a Final Judgment that is based on a finding that the Indemnified Party committed malfeasance in office or employment or a judgment of punitive damages against the Indemnified Party. Pursuant to Section B.2.b. of this Resolution, the University may seek restitution of associated expenses, including attorneys' fees and costs.
- c. Settlement. Where the University has provided defense costs to an Indemnified Party under Section C.1. of this Resolution, the University shall pay any settlement of an Action on behalf of such Indemnified Party.

F. Payment of Costs Incurred to Enforce this Resolution. Indiana University shall pay an Indemnified Party the reasonable costs and expenses, including reasonable attorneys' fees, actually paid or incurred by the Indemnified Person in any Action to enforce his or her rights under this Resolution, which Action results in a Final Judgment in favor of such Indemnified Person.

G. Actions Brought by Indiana University. No indemnification shall be made on account of any Action brought by or on behalf of Indiana University to procure a judgment in its favor against any Person.

Unanimously approved on a motion duly made and seconded