

Additional Insured Endorsement Forms and Other Practical Tips When Drafting Insurance Requirements

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WHAT'S AN ISO FORM?

- ISO is the Insurance Services Office, Inc., an industry organization
- ISO promulgates numbered forms commonly used by insurers, for example:
 - Commercial General Liability CG 00 01 04 13
 - Additional Insured Endorsement (Landlord) CG 20 11 04 13
 - Additional Insured Endorsements (Owners, Lessees, or Contractors) CG 20 10 11 85
CG 20 10 10 01 / CG 20 37 10 01
CG 20 10 07 04 / CG 20 37 07 04
CG 20 10 04 13 / CG 20 37 04 13
- The type of form is shown by the letters and first two numbers (CG 00 01) and the date of the edition follows (04 13), meaning April, 2013. Coverages are changed with each edition.

WHY BE NAMED AS AN ADDITIONAL INSURED?

- * Obtain the same benefit as the insured with respect to defense of suit and coverage issues
- * Assure that indemnification obligations are funded
 - * Broad form
 - * Intermediate form
 - * Limited form

Contractual Liability & Insured Contract

- * Standard ISO Policy
 - * Gives Broad Coverage
- * Contractual Liability Exclusion
 - * Takes Bodily Injury / Property Damage Coverage Away
 - * Except if Assumed in an “**Insured Contract**”

Contractual Liability

Language in Standard ISO Form CG 00 01 04 13:

2. Exclusions This insurance does not apply to:

...

b. Contractual Liability

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) **Assumed in a contract or agreement that is an “insured contract”,** provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an “insured contract”, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of “bodily injury” or “property damage”, provided:
 - (a) Liability to such party for, or for the cost of, that party’s defense has also been assumed in the same “insured contract”;
 - (b) Such attorneys’ fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

Insured Contract

Definition of Insured Contract in this standard CGL form (CG 00 01 04 13):

“Insured contract” means . . .

- a. A contract for a lease of premises. . . .
- ...
- f. That part of any other contract or agreement pertaining to your business . . . under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Endorsement CG 24 26 07 04 changes this (adding an element of fault):

- f. That part of any other contract or agreement pertaining to your business . . . under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization, provided **“bodily injury” or “property damage” is caused, in whole or in part, by you or by those acting on your behalf.** Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Contractual Liability Limitation Endorsement

- * ISO CG 21 39 10 93 redefining “Insured Contract” to **delete** definitional language contained in Section V – 9.f
- * Also, sometimes the definitional language in Section V – 9.f is **removed** in the policy itself.

**THIS MEANS NO COVERAGE FOR THE INSURED’S
INDEMNIFICATION OBLIGATIONS!**

Indemnification Continuum

Common Law
Indemnification

(Indemnitee
faultless and
Indemnitor 100%
at fault)

Intermediate Form
("in whole or in part"
by Indemnitor)

Limited Form

(to the extent of
Indemnitor's negligence)

Broad Form (sole
negligence of
Indemnitee)

Practice Point

- * Critical that there be an enforceable indemnification provision in order to have an “Insured Contract”
- * §§ 725.06 and 725.08 (Florida’s Anti-Indemnity Statutes)
- * Every State has some form of anti-indemnity statute
 - * Some apply to additional insured status as well.

Standard ISO Additional Insured Endorsement Forms

Older ISO Additional Insured Endorsements

- * COMPLETED OPERATIONS & ONGOING OPERATIONS/BROAD FORM
 - * CG 20 10 11 85 (“arising out of”)
- * COMPLETED OPERATIONS/BROAD FORM
 - * CG 20 37 10 01 (“arising out of”)
- * ONGOING OPERATIONS/BROAD FORM
 - * CG 20 10 10 01 (“arising out of”)
- * COMPLETED OPERATIONS/INTERMEDIATE FORM
 - * CG 20 37 07 04 (“in whole or in part”)
- * ONGOING OPERATIONS/INTERMEDIATE FORM
 - * CG 20 10 07 04 (“in whole or in part”)

2013 ISO Additional Insured Endorsements

- * COMPLETED OPERATIONS

- * CG 20 37 04 13

- * ONGOING OPERATIONS

- * CG 20 10 04 13

- * Only to the extent permitted by law.

- * If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- * If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance: (1) required by the contract or agreement; or (2) available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

Why is an Endorsement Necessary?

- * **MUST OBTAIN ENDORSEMENT BECAUSE CERTIFICATE OF INSURANCE NOT BINDING**
 - * Issued as a matter of information only
 - * Does not amend terms of policy
 - * Does not constitute a contract
 - * Policies have been issued for the period indicated
 - * Subject to all terms, exclusions and conditions of the policies

BROAD FORM ENDORSEMENTS

- * COMPLETED OPERATIONS & ONGOING OPERATIONS
 - * CG 20 10 11 85

“WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability **arising out of ‘your work’ for that insured by or for you.**” (emphasis added)

BROAD FORM ENDORSEMENTS (cont.)

* COMPLETED OPERATIONS

* CG 20 37 10 01

Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".

* ONGOING OPERATIONS

* CG 20 10 10 01

A. Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

FAULT-BASED ENDORSEMENTS

* COMPLETED OPERATIONS/FAULT BASED

* CG 20 37 07 04

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

* ONGOING OPERATIONS/FAULT BASED

* CG 20 10 07 04

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products completed operations hazard".

FAULT-BASED (with restrictions)

- * CG 2010 (04/13)
 - * Ongoing Operations
- * 2037 (04/13)
 - * Completed Operations
- * Fault-Based
- * “Caused in whole and in Part”
- * But.....
 - * Only to the Extent Permitted by Law (Savings Clause)
 - * No Broader than Coverage Specified in Contract
 - * Most Insurer will Pay is Lesser of:
 - * Contracted Limits
 - * Limits Shown in Declaration

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury"

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your [REDACTED] for the additional insured(s) at the location(s) designated above.

1. The insurance afforded to such additional insured only applies [REDACTED] and [REDACTED]

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured

If coverage provided to the additional insured is required by a contract or agreement, [REDACTED] on behalf of the additional insured is the amount of insurance:

1. [REDACTED] or [REDACTED]
2. [REDACTED] shown in the Declarations;

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" [REDACTED]

[REDACTED] at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "I [REDACTED]

1. The insurance afforded to such additional insured only applies [REDACTED] and [REDACTED]

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured [REDACTED]

If coverage provided to the additional insured is required by a contract or agreement, [REDACTED] on behalf of the additional insured is the amount of insurance:

1. [REDACTED]; or
2. [REDACTED]

Practice Point

- * Consider add language substantially similar to the following in the insurance requirements of the contract:

In the event [insured's] insurance policy(ies) provide greater coverage and/or greater limits than the minimum requirements set forth herein, then the [additional insureds] shall be entitled to the full coverage and limits of such policy(ies), and these insurance requirements will be deemed to require such greater coverage and/or greater limits.

Other Practical Tips When Drafting Insurance Requirements

Builder's Risk/Property Insurance

- * A special form of property insurance policy that is designed to cover property in the course of construction
- * Who Procures? Owner or Contractor?
- * Full Replacement Cost
 - * materials stored off site / materials in transit
 - * doesn't typically cover Contractor's tools, machinery or equipment
- * Term (when does coverage cease?)
 - * substantial completion / final completion / other (occupancy?)
- * “No fault”
 - * Deductibles / waiver of subrogation / etc.
 - * Practice Point: Waiver of subrogation should include “any other property insurance” maintained by owner

INSURANCE AGENT / CONSULTANT

- Agent versus Independent Consultant
 - An insurance agent may be motivated by opportunity to sell a policy
 - A true insurance consultant (i.e., one who doesn't sell insurance) will not have that potential conflict
- Provide Contract
 - Insurance Requirements
 - Indemnification Obligations
 - Other?
- Confirm coverage / identify potential gaps
- Determine whether additional types/amounts of insurance make sense
- Don't wait!

Other Potential Issues

- * Primary / Won't Seek Contribution
- * Professional Liability Insurance – Retroactive Date
- * How Long to Maintain Completed Operations
 - * “Occurrence” versus “Claims Made”
- * Waiver of Claims and Waiver of Subrogation
- * Certified Copies of Policies versus Declaration Page and Endorsements
 - * Require Periodic Updates to COI?
- * Notice of Cancellation (from Insurer)
 - * Need Endorsement

Thank You – Questions?

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