



## The Evolution of Additional Insured Endorsements

by Ellen Chapelle – February 26, 2014

If a person walking near a construction site suffers an injury and sues both the general contractor and the owner for negligence, both negligent parties could be held jointly and severally liable for the injuries. Under those circumstances, the owner might be compelled to pay the injured passerby not only for the proportionate share of the judgment representing its negligence, but also for the general contractor's proportionate share. The owner would be left with its common law or statutory rights to seek contribution from the general contractor for its proportionate share of the liability. By naming the owner as an additional insured, the general contractor creates a shortcut to that recovery by extending insurance coverage to the owner for the proportion of the liability caused by the general contractor.

Construction contracts typically require the general contractor to insure the owner against liability arising out of the work by requiring the general contractor to name the owner as an additional insured under the general contractor's general liability policy. The extent to which the general contractor's policy actually covers the owner depends upon the actual language of the additional insured endorsement purchased by the general contractor. Although there are a myriad of additional insured endorsement forms available for purchase in the insurance marketplace, the additional insured endorsements most commonly specified in construction contracts are form endorsements published by the Insurance Services Office, Inc. (ISO). They are identified by form numbers beginning CG 20 10 and CG 20 37.

In the past few decades, ISO published multiple editions of these endorsements, designating each new edition by its publication date. The progression from the November 1985 version (denoted as CG 20 10 11 85) to the most recent version available in April 2013 (CG 20 10 04 13) is both interesting and important for understanding the risks allocated by construction contracts.

### A Brief Evolutionary History

In 1985, the standard ISO form additional insured endorsement then available in the marketplace, CG 20 10 11 85, did more than just cover the owner against the potential threat of paying the general contractor's proportionate share of any liability. That endorsement stated:

WHO IS AN INSURED is amended to include [the Additional Insured] but only with respect to liability arising out of 'your work' for that insured by or for you.

This endorsement broadly covered the additional insured (generally the owner) for any liability arising out of the named insured's work—including the additional insured's own negligence. Although there was litigation over the extent to which the endorsement required negligence by the named insured, some courts required

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little causal connection between the named insured's work and the injury to trigger coverage. Once triggered, the courts read the endorsement to cover the additional insured's own negligence and not merely its liability for the named insured's proportionate share of the negligence.

By October 2001, the insurance industry had released new ISO forms with additional insured endorsements. The new CG 20 10 10 01 limited its coverage to liability arising out of the named insured's "ongoing operations." To extend coverage to the additional insured for completed operations, CG 20 10 10 01 had to be paired with CG 20 37 10 01. When purchased together, coverage under CG 20 10 10 01 and CG 20 37 10 01 together was equivalent to coverage under the old CG 20 10 11 85.

The insurance industry again modified these standard forms in July 2004, releasing CG 20 10 07 04 and CG 20 37 07 04. These forms provided coverage to the additional insured "only with respect to liability . . . caused in whole or in part by" (1) the named insured's acts or omissions or (2) the acts or omissions of those acting on the named insured's behalf. These forms, by limiting the coverage to liability caused by the acts or omissions of the named insured or those acting on its behalf, were designed to eliminate coverage for the additional insured's own negligence.

The newest editions of the additional insured endorsement, CG 20 10 04 13 and CG 20 37 04 13, further limit coverage to the additional insured by stating:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. 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.

### **The April 2013 Editions**

The April 2013 additional insured editions further narrow coverage by eliminating insurance coverage for indemnity obligations that are invalidated by law. Many construction contracts specify that the general contractor must carry Contractual Liability Coverage, which is supposed to pay for liability assumed by the named insured if it falls within certain definitions, such as when the general contractor assumes the bodily injury or property damage liability of an owner to a third party (i.e., the indemnity obligation). Many states' anti-indemnity statutes invalidate broad indemnity provisions that require general contractors to indemnify owners for losses resulting from the owner's negligence. This raises the question: Can a general contractor's insurance provide coverage for an indemnity obligation that is invalidated by statute? In some states, it may be against public policy to indemnify another for its own negligence while it is not against public policy to purchase insurance for another to cover that same negligence. The newest endorsements, CG 20 10 04 13 and CG 20 27 04 13, appear to attempt to eliminate coverage for liability for which indemnification is prohibited by an anti-indemnity statute.

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The newest editions also limit the amount of coverage available to the additional insured by limiting the coverage to that which the general contractor is required to provide by the construction contract if it is narrower than what the general contractor purchased. If the additional insured carries better insurance with higher limits, the additional insured will not enjoy the benefits of that better coverage if the construction contract requires lesser coverage or lower limits.

### **Impact on Drafting Construction Contracts**

The most widely specified forms of the additional insured endorsement have evolved over time from broad coverage for the owner's own negligence to narrow coverage for exactly what is specified in the construction contract. The greatest impact of the newest editions of the additional insured endorsements may indeed be in the drafting of the construction contract's insurance specifications. By defining coverage by reference to the construction contract's insurance requirements, the 2013 editions highlight the need to carefully draft the construction contract's insurance terms.

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