



FOUR KEY ADDITIONAL INSURED ENDORSEMENTS FOR CONTRACTORS

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ON YOUR TEAM.

Contracts record specific promises agreed to between parties. At best, contract negotiations can be time consuming, complicated and frustrating. Construction contracts are no exception. One of the promises that the parties make to each other is the kind and amount of insurance required for a construction project. Project owners will require contractors on a project to name the project owner as an additional insured on the contractor's casualty insurance program (excluding workers' compensation). General contractors will require subcontractors to do the same. It is very important that project owners and contractors alike -- "the parties" -- understand the coverage provided by additional insured endorsements. It is equally important for the parties to understand what limitations or conditions are found in these endorsements.

ADDITIONAL INSUREDS

Project owners request to be an additional insured on a contractor's casualty program for several reasons, including but not limited to the following:

1. **A third-party may allege the project owner is liable for actions of a contractor on the project.** Consider the example of a contractor on a project who assembles scaffolding over a sidewalk. Pedestrians are permitted to walk under the scaffolding. The scaffolding collapses and injures three pedestrians. The pedestrians sue the contractor and the project owner. The project owner did not erect the scaffolding or tell the contractor how to erect it. Nevertheless, the project owner is accused of being vicariously liable for the actions of the contractor.
2. **In business contracts, there are indemnification provisions.** An indemnification provision is a clause that requires one or both parties to promise to pay the other party for loss, harm or liability arising out of the contract. Project owners include indemnification provisions in their contracts. A project owner requires insurance that will help fund the contractor's promise to pay because the project owner is uncertain whether the contractor will have the funds without insurance.
3. **Sometimes project owners want to pass some (or all) of their own liability to the contractor's insurance policy.** The ability to transfer this kind of liability to a contractor varies by state.

For these reasons, and others, project owners require additional insured status and other insurance coverage on a contractor's casualty program. Contractors will also require similar coverage for tiers of contractors below them.

ADDITIONAL INSURED ENDORSEMENTS

There are many types of additional insured endorsements available in the insurance market. However, this article will focus on four common ISO additional insured

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endorsements related to commercial general liability policies purchased by contractors. While the endorsements discussed are commonly found in the market, insurance companies may prefer to offer their own version of these endorsements. The additional insured endorsements that will be discussed are:

1. Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization **(CG2010 4/13)**
2. Additional Insured – Owners, Lessees or Contractors – Completed Operations **(CG2037 4/13)**
3. Additional Insured – Owners, Lessees or Contractors – Automatic Status When Required in Construction Agreement With You **(CG2033 4/13)**
4. Additional Insured – Owners, Lessees or Contractors – Automatic Status For Other Parties When Required in Written Construction Agreement **(CG2038 4/13)**

The first two ISO endorsements require specific information regarding the additional insured and the project. The third and fourth ISO endorsements are “blanket” additional insured endorsements and do not require specific information concerning the additional insured or project information be shown on the endorsements. Instead, they require a written contract to be in force which requires the additional insured status. We will reference the endorsement form numbers in this article.

CG2010 4/13

This endorsement has changed significantly since the 1980s, and not for the better. The CG2010 additional insured endorsement has the following important characteristics:

1. The additional insured (e.g. project owner, general contractor) is not insured for their own sole negligence. The insured/contractor must be liable in whole or in part for a loss before the additional insured can seek coverage under this endorsement.
2. Coverage for the additional insured is for ongoing operations ONLY. In other words, when the contractor’s work is completed on the project, this additional insured endorsement terminates. Any future alleged claims by the additional insured under this endorsement must have resulted from an occurrence when the project was “ongoing” by the insured/contractor.
3. The project must be stated on the endorsement.
4. Coverage under the endorsement is only permitted to the extent that it is allowed by law (which can vary by state).
5. The endorsement does not require that a written contract be in effect which requires this additional insured status.
6. *However*, if there is a contract in existence, then coverage provided by this endorsement will not be broader than what is required by the contract. Additionally, the endorsement will pay the lesser of the amount required in the contract OR the policy limit.

While the coverage can be quite broad and beneficial to the additional insured, the endorsement is riddled with conditions, limitations and additional exclusions. A savvy project owner or general contractor may attempt to counter these conditions and limitations by telling the contractor the conditions and limitations are not permitted. However, it is unlikely that most of the insurance companies would (or could) change the endorsement. Therefore, all the project owner or general contractor accomplish is to potentially place the contractor in a breach of contract situation because the contractor cannot comply with the demand.

CG2037 4/13

This endorsement contains the same limitations and conditions as the CG2010 EXCEPT that this endorsement insures the additional insured for completed operations of the contractor and not ongoing operations. This endorsement supplements the CG2010.

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Therefore, if an additional insured requires additional insured status for the project, the contractor will need BOTH the CG2010 and the CG2037 endorsements in order to comply.

For example, ABC University is accepting bids from contractors to build a new student center. ABC University requests additional insured status on the commercial general liability policy from each contractor on the project which will insure ABC University during the construction phase and after the construction phase is completed. In this situation, the CG2010 (or its equivalent) would be required to insure for ongoing operations PLUS the CG2037 (or its equivalent) would be required to insure for completed operations once the work was completed.

CG2033 4/13

This additional insured endorsement is a blanket additional insured endorsement and has the following limitations and conditions:

1. The additional insured (e.g. project owner, general contractor) is not insured for their sole negligence. The insured/contractor must be liable in whole or in part for a loss before the additional insured can seek coverage under this endorsement.
2. Coverage for the additional insured is for ongoing operations ONLY. In other words, when the insured/contractor's work is completed on the project, this additional insured endorsement terminates. Any future alleged claims by the additional insured must have resulted from an occurrence when the project was "ongoing" by the insured/contractor.
3. There is automatic additional insured status provided to a party when a written contract requires the additional insured status. The party receiving additional insured status is the named party that contracts with the contractor.
4. Coverage under the endorsement is only permitted to the extent that it is allowed by law (which can vary by state).
5. Coverage provided by this endorsement will not be broader than what is required by the contract. Additionally, the endorsement will pay the lesser of the amount required in the contract OR the policy limit.

While this endorsement provides automatic coverage to additional insureds, there are still numerous conditions, limitations and exclusions. Additionally, since completed operations are not included in this endorsement, a second endorsement is needed to provide coverage for completed operations for the additional insured.

CG2038 4/13

This endorsement is very similar to CG2033. The primary difference between these two endorsements is that CG2038 applies to a party or parties requiring additional insured status within a construction agreement *that are not the actual contracting party with the contractor*. In other words, the parties are referred to – but not specifically named – in the construction contract. These "silent" parties are referred to as "upstream parties." As with the CG2033, additional insured coverage for these upstream parties is for ongoing operations only. Therefore, a second endorsement should be included that provides coverage for completed operations if required by the contract.

CONCLUSION

Additional insured endorsements, whether they are issued by ISO or by insurance companies using their own equivalent endorsements, are not as broad as they were years ago. These endorsements include limitations, conditions and additional exclusions that did not exist in the past. Project owners may request broader coverage in their construction contracts than additional insured endorsements can currently provide. Therefore, it is not always possible for the contractor to obtain the requested insurance protection, causing frustration to both parties. It is important for all contracting parties to understand the additional insured endorsements that are available in the market and appropriately manage their expectations.

