



Coverage for Contractual Risk Transfer and Additional Insured Issues

“Advocates For Policyholders in Insurance Coverage Disputes”

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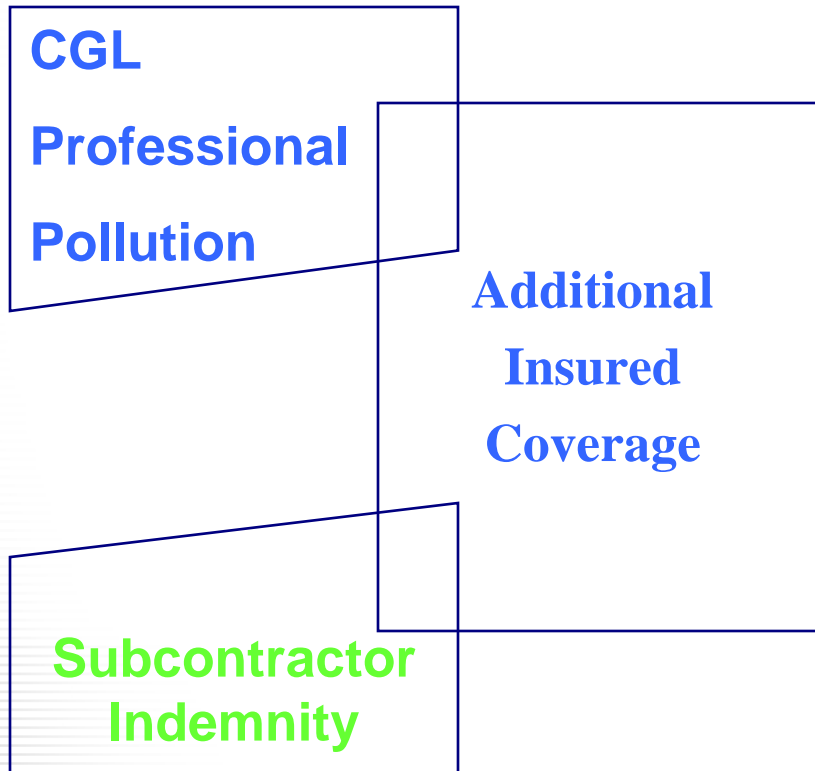
Outline

- Introduction
- Contractual Indemnity
- Additional Insured Coverage
- Co-Insurance Issues re: AI Coverage
- Certificates of Insurance
- Waiver of Subrogation



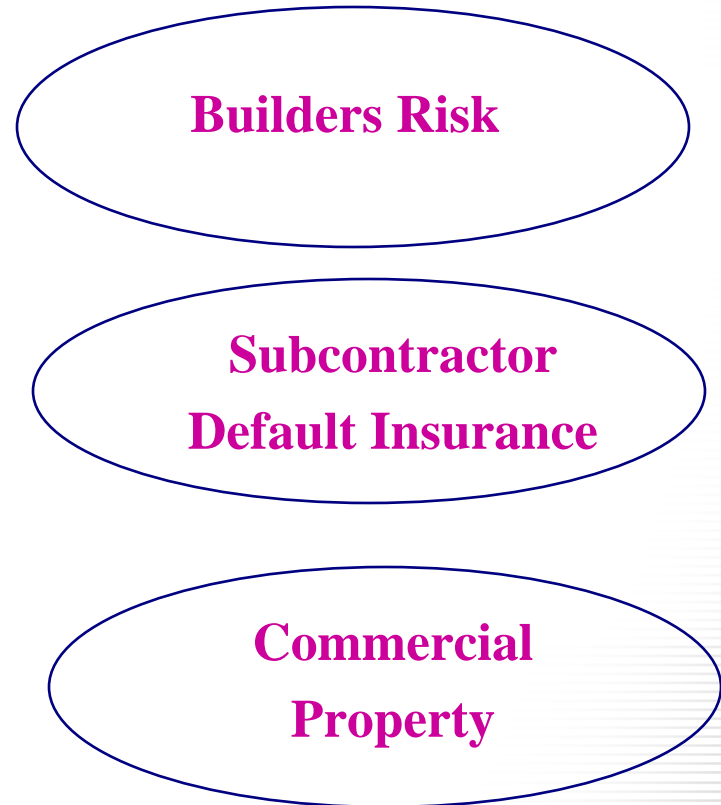
Risk Transfer

3rd Party Liability Insurance



Contractual Rights

1st Party Insurance





Effect of Indemnity Provisions

- May shift payment of defense to sub/indemnitor
- May shift indemnification to sub/indemnitor



Risk Allocation through Contract

- GC/CM contract, subcontract, side agreement
- Specific paragraphs for indemnity
- Hidden provisions throughout contract



Contract Language

“...the Subcontractor agrees to indemnify and save [GC] harmless of all loss, cost, expense, liability, damage or injury, including legal fees and disbursements ...”



Policy Language

This exclusion does not apply to liability for damages:

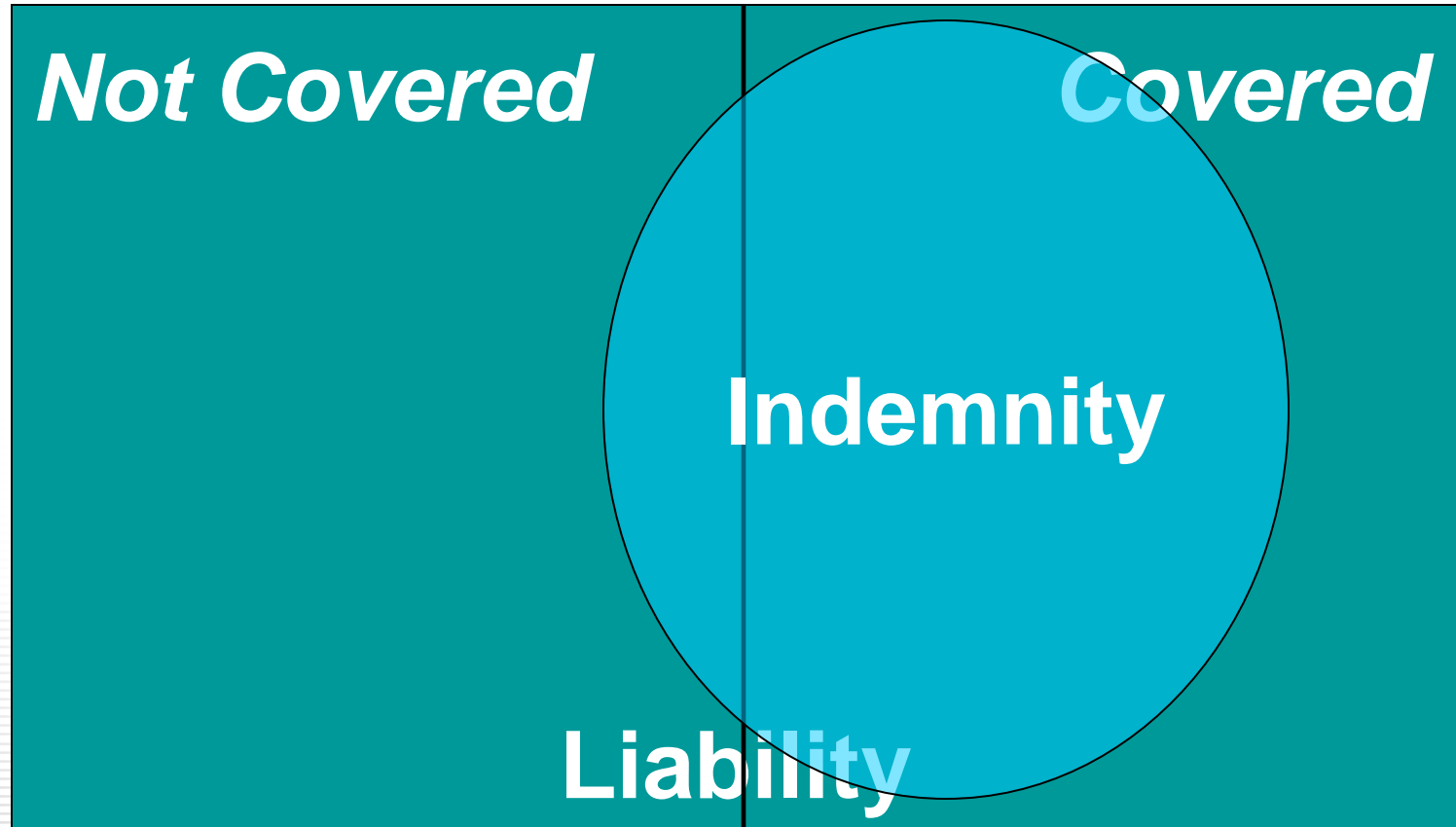
- (1) Assumed in a contract or agreement that is an **“insured contract,”** provided the “bodily injury” or “property damage” **occurs subsequent to the execution** of the contract or agreement; or
- (2) That the insured would have in the absence of the contract or agreement



Insured Contract

That part of any other contract or agreement...under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person

Indemnity: What is Covered?





Contractual Indemnity v. AI Coverage

- AI coverage and indemnity operate independently
- Indemnity covered as contractual liability
- AI coverage determined by policy and AI endorsement
- AI coverage not limited by states' anti-indemnity laws



Benefits of AI Status

- Supplement to contractual indemnity
- Protects GC from own negligence and vicarious liability
- Prohibits subrogation
- Avoids impact to GC's loss history



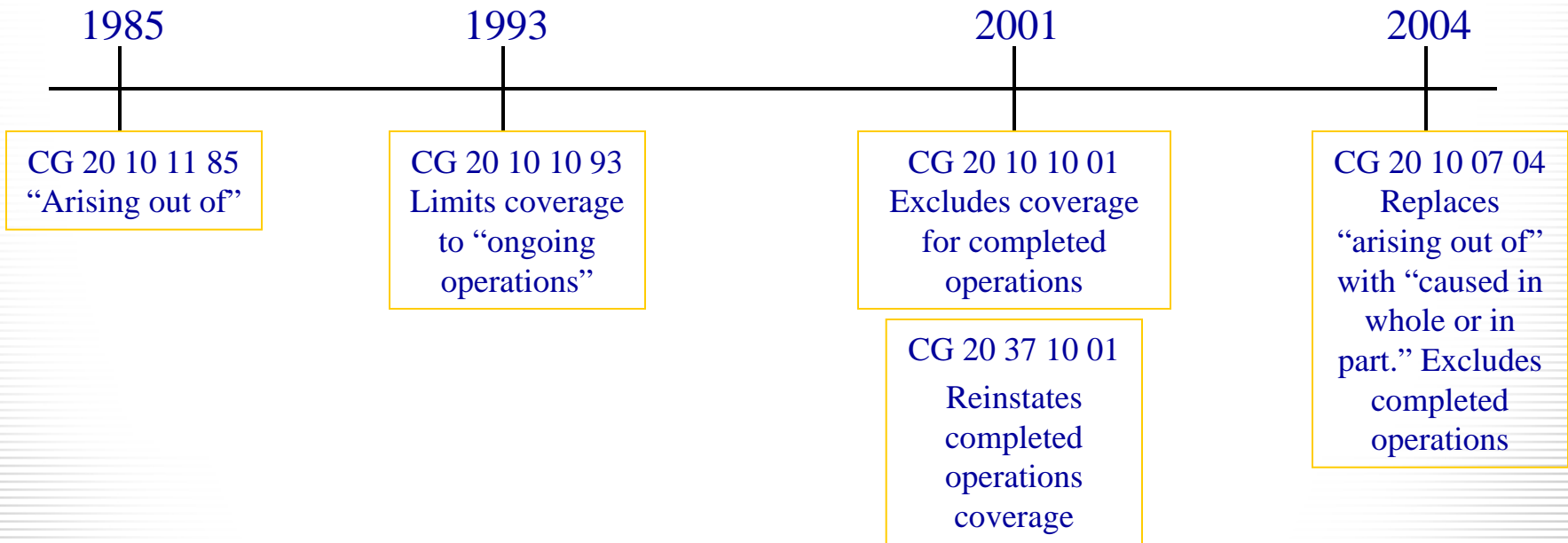
AI Issues

- Who is an “Insured”?
 - Blanket Endorsement
 - Specifically Named

- Notice to Insurer



Evolution of the AI Endorsement





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SCHEDULE

Name of Person or Organization: Any person or organization for whom the Named Insured has agreed by written "insured contract" to designate as an additional insured subject to all the provisions and limitations of this policy.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

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.

but only with respect to liability arising out of
"your work" for that insured by or for you



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ADDITIONAL INSURED -- OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

but only with respect to liability arising out of your ongoing operations performed for that insured.

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 ongoing operations performed for that insured.



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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;

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

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.

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ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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”.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

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".



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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”... caused, in whole or in part, by:

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

In the performance of your ongoing operations for the additional insured(s) at the location(s) at

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

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 location of the covered operations has been completed;

the additional insured(s) at the location 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.



AI Insurance - Primary v. Excess

- As AI, GC is entitled to same protection as named insured
- Make sure contract and policy are clear that sub's insurance (primary and excess) will act as primary with GC's insurance as excess



Co-Insurance Issues

- “Other Insurance”
- Horizontal v. Vertical exhaustion
 - Horizontal is more common
 - Vertical exhaustion a/k/a targeted tender



Completed Operations

- Completed Operations coverage addresses continuing liability for an additional insured from the named insured's work after that work is completed



Certificates of Insurance

- Do not rely on certificate of insurance as evidence that you are an AI
- Obtain all policies and endorsements at start of each project from the subcontractors including all renewals
 - At a minimum obtain declaration page, AI endorsement and certificate of insurance



Subrogation

- Subrogation allows a party who has paid a loss or debt on the part of another to succeed to the rights of that other party to pursue recovery from a third party who was responsible for causing the loss
- The right to subrogation can be waived prior to loss



Waiver of Subrogation

- Allocate the risk of property damage and do not permit reallocation through subrogation
 - Contractually waive subrogation

and/or

- Include party and all of its subcontractors as insureds since insurers can not subrogate against their own insureds