2013 ISO CGL Changes: The Good & Bad

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Overview

- Additional Insured
- Other Insurance
- Insured Contract
- Pollution
- Professional Services
ISO GL & Trade Contract

Increased Interdependence

GC/CM -> Trade Contract -> Sub-contractor

Sub’s Policy

Sub’s Insurance Carrier
Additional Insured Issues

Eliminating Contractual Privity Disputes

NEW:

2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1, above.
A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.
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 and performed for that additional insured and included in the "products-completed operations hazard".

CG 20 37 07 04
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" 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) designated above.
WHO IS 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” performed for that insured.
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1, above.
However, the insurance afforded to such additional insured described above:

   a. Only applies to the extent permitted by law; and
Additional Insured Endorsements

Conformity with Law
Additional Insured Endorsements

Conformity with Law

IMPACT

However, the insurance afforded to such additional insured described above:

a. Only applies to the extent permitted by law; and
Additional Insured Endorsements

Limits: No more than contract provides

BAD?

NEW:

Those required by contract, or those proscribed on the Declarations page, whichever is less.
Additional Insured Coverage

Limits: No more than contract provides

Contract Requirements

- $5 Million
- $1 Million

Policy Limits

$10 Million

$1 Million Gap

$2 Million

PROBLEM!
Additional Insured Coverage

Limits: No more than contract provides

New ISO Form: Those required by contract, or those proscribed on the Declarations page, whichever is less.

New Contract: $1 Million per occurrence, or the full per occurrence limits of the policy, whichever is greater.
However, the insurance afforded to such additional insured described above:

b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
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 insurance afforded to the additional insureds shall be at least as broad as that afforded to the first named insured.
“Any other primary insurance available to you covering liability for damages arising out of the premises of operations, or the products and completed operations, for which you have been added as an AI by attachment of an endorsement.”
The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

1. The additional insured is a Named Insured under such other insurance; and

2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.
“Other Insurance”
Primary/Non-Contributory

AI coverage will be primary and non-contributory so long as:

1. The AI is a named insured on another policy of insurance, and
2. primary insurance is required by contract
Horizontal Exhaustion

Who Pays First?
Horizontal Exhaustion
Who Pays First?

- Owner’s Corporate Excess Insurance
- Owner’s Corporate Primary Insurance
- GC’s Excess Insurance (Owner’s AI Excess Insurance)
- GC’s Primary Insurance (Owner’s AI Carrier)

Promise to Indemnify
Promise to Procure Insurance

Owner

General Contractor ("GC")
f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) 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.
“Insured Contract”

BAD

Insured Must Have Caused Injury

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) 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 the "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.
f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) 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 the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
The following exclusion is added to Paragraph 2.7, Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2.7, Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

1. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
   a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
   b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

2. Subject to Paragraph 3. below, professional services include:
   a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
   b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.

3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.
The following exclusion is added to Paragraph 2 of Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2 of Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

1. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
   a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
   b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

2. Subject to Paragraph 3 below, professional services include:
   a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
   b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offence which cause the "personal and advertising injury", involved the rendering of or failure to render any professional services by you or on your behalf with respect to the operations described above.
**Project Specific Pollution Exclusion**

**WATCH**

**CG 21 98**
Total Pollution Exclusion

- No Sudden/Accidental Exception
- No Hostile Fire Exception

**CG 21 99**
Total Pollution Exclusion

Same Exclusion, but Now in “Per Project” Form
Recap

- Additional Insured
- Other Insurance
- Insured Contract
- Professional Services
- Pollution
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