



CONTRACTUAL RISK TRANSFER

ADDITIONAL INSURED ISSUES

Presented by

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Although the content changes yearly, this seminar is consistently one of our most popular sessions. The day begins with an in-depth look at additional insured issues, including case law on the scope of coverage provided under the standard endorsements and "other insurance" conflicts that can negate the intent of the risk transfer if not handled appropriately. Recent developments in third-party-over action litigation will be reviewed, including how the CGL policy responds to such claims. The afternoon will be devoted to learning how to analyze contracts for risk exposures and negotiate changes that will keep the risks assumed in line with the contractor's insurance coverage. Starting with a basic "how to" discussion, learn how to help your clients assess their contractual risks and evaluate the adequacy of their insurance program in protecting the contractor against these risks.

Monday, November 13, 9:00 a.m.–5:00 p.m.



May we wrap that for you?

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Dr. Rudolph is one of the presenters for Monday's all-day seminar, "Contractual Risk Transfer." He is a principal with Seaver Rudolph & Associates in St. Charles, IL, is the author of the CPCU Society's 1987 Outstanding Research Project, "Bond-financed Self-insurance for Public Entities: A Risk Management Alternative" and has written numerous other articles on insurance coverages, risk management financing, agent errors and omissions, and financial solvency. He is a frequent seminar leader on topics in insurance coverage, risk financing, agent errors and omissions, ethics, effective business writing, and creative thinking. He is a past president of the Chicago Chapter, CPCU, and serves on the Research Activities Committee of the national CPCU Society. He is also a past director and treasurer of the Insurance Society of Chicago, and has served as an instructor of IIA and CPCU courses since 1981. In 1987 he was honored as an Outstanding Instructor of the Insurance School of Chicago. He is also the August 1994 Standard Setter for the CPCU Society, the first recipient of the American Institute for Chartered Property Casualty Underwriters/American Institute of America's Jack F. Derrickson Award for Outstanding Course Leadership, and was been recognized by the CPCU Society as a Distinguished Instructor at its Annual Meeting in 1996. In 1997, the Institutes named him to the National Registry of Outstanding Course Leaders. Dr. Rudolph entered the insurance industry in 1972 as a sales representative for a major insurance company, and worked in various capacities in agencies and brokerage firms until 1992. In 1992, he joined a risk management consulting practice that now bears his name.

Notes

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.

ADDITIONAL INSURED ISSUES

*Richard G. Rudolph, Ph.D., CPCU, ARM
Seaver Rudolph & Associates*

I. When Bad Things Happen to Good People

- A. Litigation
- B. Delay
- C. Distrust

II. How Bad Things Happen to Good People Using Additional Insured Status

- A. Overlooking what is really needed
- B. Dilution of limits (sum of the parts greater than the whole)
- C. Impairment of aggregates
- D. Defense conflicts
- E. Administrative matters
 - 1. Documentation
 - 2. Proof of insurance
- F. Other insurance conflicts
- G. Subrogation

III. Overlooking What Is Really Needed

- A. What are the parties' intents?
 - 1. Direct transfer of financial responsibility
 - 2. Response to custom, practice, or tradition

- 3. Subrogation defense
- 4. Extension of rights (defense)

B. What are the contractual rights

- 1. Named insured
 - a. Benefits
 - b. Change the contract
 - c. Cancel the contract
 - d. Receive return premium
 - e. Receive notice of cancellation or nonrenewal

2. Additional insured

- a. Benefits

C. What are the contractual duties

- 1. Named insured
 - a. Premium
 - b. Cooperation in claims
 - c. Submit to audit
- 2. Additional insured
 - a. Premium
 - b. Cooperation in claims

D. Solution

1. Express what is really needed
2. Reflect the contractual requirements in the policy (i.e., notice of cancellation or nonrenewal, other insurance clause, etc.)
3. Example: “The additional insured is afforded the same right of notice of cancellation or nonrenewal (or material change) as provided to the named insured.”

IV. Dilution of limits

- A. The sum of the parts is greater than the whole
- B. Solution—consideration of higher minimum limits requirements

V. Impairment of aggregates

- A. Per project/per location
 1. Solves problem of dilution from losses at other projects/locations
 2. Does not solve problem of dilution from losses at same project/location
 3. Solution: consider higher aggregate limits requirements
- B. Reinstatement
 1. Cost
 2. Willingness of underwriter

VI. Defense conflicts

- A. Co-naming of parties
- B. Individual right of zealous, independent representation

C. Solution

1. Avoidance of additional insured status
2. Pre-loss agreement for coordinated defense

VII. Administrative Matters

A. Documentation

1. Option of endorsement choice belongs to requestor
2. Solution: specific requirement of acceptable form options

B. Proof of insurance

1. Certificates of insurance are unenforceable—not contracts, but mere promises
2. Bare-bones certificate provides no substantive information
 - a. Policy terms and conditions
 - b. Endorsement terms and conditions
3. Solution
 - a. Each certificate accompanied by endorsement wording
 - b. Each certificate includes standard form numbers or copy of manuscript policy
 - c. No changes to certificate form made or required by either party
 - d. Essential details
 - (i) Notice of cancellation must be a policy contract right
 - (ii) Extension of other rights must be a policy contract right
 - (iii) Signature by authorized person

VIII. Other Insurance Conflicts

- A. Food chain effect
 - 1. No uniformity of contracts between participants
 - 2. Inspection of individual contracts impractical
- B. Mismatch of other insurance clause wordings
 - 1. What is the intent of the parties
 - a. Superior excess over subordinate
 - b. Problems
 - (i) Superior primary, subordinate excess (wrong one pays first)
 - (ii) Both are the same (both share)
 - 2. Solution
 - a. Superior's coverage
 - (i) Best practice: "This insurance is excess over any insurance available to you by virtue of your status as an additional insured."
 - (ii) Problem: "This insurance is excess ..."
 - b. Subordinate's coverage
 - (i) "This insurance is primary."
 - (ii) "This insurance is primary and noncontributory."
 - c. Superior must review subordinate's coverage as endorsed

IX. Subrogation

- A. The transfer of rights after a loss such that an insurer can recover from a negligent third party for damages paid out on behalf of its insured
- B. Convention wisdom—an insurer cannot subrogate against its own insured, only third parties
- C. An additional insured is a third party
- D. Solution: waiver of subrogation should be considered

X. Summary

- A. Identify what is needed and why
- B. Identify possible solutions
- C. Implement appropriate solutions
- D. Monitor and modify as needed