



IRMI[®]

CONTRACTUAL RISK TRANSFER SEMINAR

ADDITIONAL INSURED ISSUES

Presented by

**Richard L. Angell
Shareholder
Zupkus & Angell, P.C.**

Monday, October 29, 9:00 a.m.-5:00 p.m.

CRT



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Richard L. Angell
Shareholder
Zupkus & Angell, P.C.

Mr. Angell is one of the presenters for Monday's all-day seminar, "Contractual Risk Transfer." A shareholder in Zupkus & Angell, P.C., in Denver, he has 23 years of experience in insurance defense, bad faith, and coverage litigation. He has extensive experience in underwriting analysis and interpretation of policy language. He has written opinions, conducted litigation, and served as an expert on the analysis of coverage issues on a wide range of cases and policies. Mr. Angell graduated *cum laude* from Creighton University College of Law in 1977. He now serves as a regional editor for The Defense Research Institute's Insurance Law Committee's newsletter and has been published in *The Colorado Lawyer*, *Chemical Health & Safety*, and numerous Defense Research Institute publications. He is past chair of the Publications Subcommittee of the Insurance Law Committee of the Defense Research Institute.

Notes

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ADDITIONAL INSURED ISSUES

***Richard L. Angell
Zupkus & Angell, P.C.***

I. Who are Additional Insureds?

II. Compared to the Named Insured

III. How Are Additional Insureds Created?

- A. Certificates of insurance
- B. Endorsement to the policy
- C. Blanket provisions

IV. What Types of Endorsements Are Available and Applicable to the Construction Industry?

- A. CG 2009
- B. CG 2010
- C. Wrap-up endorsements

V. How Does Additional Insured Status Compare to the Status of an Indemnitee?

VI. Keeping Track of Available Coverage

VII. Consideration of Coverage for Events Occurring after the Project is Complete

Notes

Two Primary Methods of Shifting and Sharing Risk

- Indemnity agreement
- Insurance agreement – Additional Insured Endorsement
- Used simultaneously
- Both have been subject of recent innovations in the coverage provided by the CGL

What Insured Risk is Shifted and Shared?

- The risk of occurrence of accidental damage
- The risk that work performed will not meet contract specifications
 - ◆ Not intended to be shared
 - ◆ Not intended to be insured
 - ◆ A troublesome distinction

Limiting Language of the Insurance Policy

- The insuring agreement
- The definition of the named insured
- Exclusions
- The additional insured endorsement

Risk Shifting by Indemnity Agreements

- Types of indemnity agreements
- CGL coverage
 - ◆ CGL editions prior to 1996
 - ◆ 1996 edition CGL
- Indemnity provisions and allocation of fault

CGL Coverage for Indemnity Agreements

- Insuring agreement
- Contractual liability exclusion
- “Insured contracts”
- Distinction between indemnity and defense expense

Coverage for Defense Expense

- Subject of recent innovation
- CGL editions prior to 1996
- 1996 edition CGL
 - ◆ Changes to the insuring agreement
 - ◆ Changes to the contractual liability exclusion
 - ◆ Changes to the supplementary payment provisions

Provisions dealing with Contractually Transferred Risk - Indemnity

- Insuring Agreement
- Contract Exclusion
- Supplementary Payments
- Definitions

Insuring Agreement

- Modified to clarify that it applies only to the insured

Contractual Liability Exclusion

- Modified to cover Defense as Damages
- Erodes limits

Supplementary Payments

- Provide a Defense
- Paid Outside limits
- Significant Restrictions

Restrictions on Supplementary Payments

- Insured named co-defendant
- No existing or potential conflicts
- Represented by a single counsel
- Indemnitee must agree
- Indemnitee and insured concur in request for defense
- Control of Defense and Settlement

Risk Sharing by Additional Insured Endorsement

- Used simultaneously with indemnity
- Frequently occupies the entire field
- Fewer public policy concerns
- Defense is provided to an insured with reciprocal duties

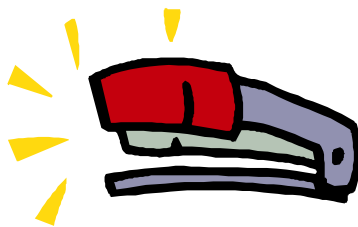
Drafting the Additional Insured Provision

- Deserve critical analysis
- Requires current information

Available Coverage

- General liability
 - ◆ Damage caused by accident
 - ◆ Not repair or replacement of performance
- Adjustments to primacy

Available Endorsements for Construction



Standard Form Endorsements

- ◆ Engineers, Architects or Surveyors
- ◆ Owners and Contractors
- ◆ Certificates Are Not Endorsements

Certificates of Insurance

- Evidence of the Existence of a Policy
 - ◆ Named insured
 - ◆ Policy Period
 - ◆ Type of Policy
 - ◆ Time
- Identifies a Certificate Holder
- Does not amend the Policy and does not substitute for an Additional Insured Endorsement

Certificate of Insurance

- Effect of statements in the “Special Comments” Box
- Invitation to a lawsuit
- Invitation to an E&O claim against the Agent or Broker

Owners and Contractors Protective Liability Insurance

- Separate policy
- Purchased by the contractor or sub-contractor
- Names the owner or contractor as the insured
- Provides no coverage to the contractor or sub-contractor who purchased

CG 20 09

- Used where the CGL does not provide insured contract coverage
- Limited to liability arising from general supervision
- Completed operations not covered

CG 2010 Features

- Limited to liability arising out of “your” ongoing operations for the additional insured
- No completed operations coverage
- Not limited to liability arising from general supervision

CG 20 26 Features

- Limited to liability arising out of operations
- Extends to completed operations

Manuscript Endorsement

- Generally available
- Currently favorable terms and rates
- Frequently used to adjust primacy

Wrap-up Programs

- Single policy for entire project
- Covers all owners, contractors and subcontractors
- Reduces disputes and litigation
- Removes specified project from the premium base and the coverage