

EXPANDED TABLE OF CONTENTS

The following table of contents lists every major topic discussed in *Contractual Risk Transfer*. It is included here as a guide for the user in determining where within the manual as a whole a particular subject is treated.

SECTION III: GENERAL INFORMATION	
GENERAL INFORMATION	III.B.1
CONTRACTUAL RISK TRANSFER	
AS A RISK MANAGEMENT TECHNIQUE	
Factors Affecting Contractual Risk Transfer	III.C.1
Control of the Risk	III.C.1
Knowledge of Risk	III.C.1
Statutory or Common Law Limitations on Risk Transfer	III.C.2
Custom and Practice	III.C.2
Bargaining Position	III.C.2
Risk Transfer in Risk Management Theory	III.C.2
Key Contract Provisions	III.C.4
The Process	III.C.6
Measures of Successful Performance	III.C.7
Financial Performance Measures	III.C.8
Skills Required	III.C.8
Summary	III.C.8
BASICS OF CONTRACT LAW	
Elements of a Contract	III.D.1
The Offer	III.D.2
Terms of the Offer	III.D.3
Communication of the Offer	III.D.3
Termination of the Offer	III.D.3
Acceptance of the Offer	III.D.4
Offer and Acceptance Under the UCC	III.D.5
Consideration	III.D.6
Types of Contracts	III.D.8
Validity and Enforceability of Contracts	III.D.8
Interpretation of Contracts	III.D.12
The Parol Evidence Rule	III.D.13
Basic Rules of Contract Interpretation	III.D.16
Interpretation of Insurance Policies	III.D.18
Breach of Contract	III.D.20
Common Commercial Contract Provisions	III.D.22
Choice-of-Law Provisions	III.D.23
Forum Selection Provisions	III.D.24
Jury Waiver Provisions	III.D.25
Federal Courts' Approach	III.D.25
State Courts' Approach	III.D.26
Alternative Dispute Resolution Provisions	III.D.26
Arbitration	III.D.26
Mediation	III.D.27
Enforceability	III.D.27
Summary	III.D.27
INDEPENDENT CONTRACTOR EXPOSURE	
Development of the Independent Contractor Rule	III.E.1
Control by Employer	III.E.2
Peculiar Risk and Inherent Danger Doctrines	III.E.5
Statutory Liability	III.E.7
Negligent Hiring	III.E.8
Borrowed Servant Doctrine	III.E.9
Summary	III.E.11
EMPLOYEE LEASING EXPOSURE	
Development of Employee Leasing Issues	III.H.1
The Employment Relationship	III.H.2
State Approaches to Determination of Employer	III.H.2
State-Specific Status of Employer Determination and Exclusive Remedy	III.H.4
Third-Party Issues	III.H.15
Commercial General Liability	III.H.15
Summary	III.H.17
OVERVIEW OF CONTRACTUAL RISK TRANSFER STRATEGIES	
Strategies for Transferring Risk to Others	III.K.1
Observe Statutory and Common Law Limitations ..	III.K.1
Back-Up Indemnity Provisions with Insurance Requirements	III.K.2
Keep Requirements Reasonable	III.K.3
Allow Flexibility	III.K.3
Update Requirements	III.K.4
Additional Insured Status	III.K.5
Problems with Additional Insured Status	III.K.6
Shared Limits	III.K.6
Completed Operations Coverage	III.K.7
"Other Insurance" Problems	III.K.7
The OCP Alternative	III.K.8
Verify Compliance with Insurance Requirements ..	III.K.8
Problems with Certificates of Insurance	III.K.9
Certificate Management	III.K.10
Strategies for Accepting Risk from Others	III.K.12
Negotiate Contract Risk and Insurance Provisions	III.K.12
Try To Cap Liability and Indemnity	III.K.13
Read the Entire Contract	III.K.12

EXPANDED CONTENTS

Coordinate Additional Insured Status with Indemnity Agreement	III.K.13
Resist Use of Manuscript Forms	III.K.15
Educate Indemnitees on Coverage Issues	III.K.15
Consider Using Blanket Endorsements	III.K.16
Additional Insureds and Workers Compensation Insurance	III.K.17
Additional Insureds and Completed Operations.....	III.K.18
Consider Contractual Obligations in Selecting Limits	III.K.18
ALTERNATIVE DISPUTE RESOLUTION	III.M.1
Negotiation.....	III.M.2
Gathering and Organizing Information	III.M.3
Setting Positions	III.M.3
BATNA and WATNA	III.M.3
Creating Options.....	III.M.4
Stages of Negotiation	III.M.4
Negotiation Provisions in Contracts	III.M.6
Mediation	III.M.7
The Benefits of Mediation.....	III.M.8
Do I Have To Mediate?	III.M.8
Selecting a Mediator	III.M.9
Confidentiality of Mediation Communications	III.M.9
Preparing for the Mediation.....	III.M.10
The Role of the Mediator	III.M.10
The Mediation Format.....	III.M.11
Good Faith Participation.....	III.M.12
The Uniform Mediation Act.....	III.M.12
Arbitration.....	III.M.13
Enforceability of the Arbitration Provision	III.M.15
Enforcement of Arbitration Provisions Against Nonsignatories	III.M.17
Enforceability of Arbitration Provision Incorporated by Reference	III.M.17
Enforcement Against Third-Party Beneficiaries	III.M.19
Enforcement of Arbitration through Alter Ego Theory	III.M.20
Rights of Nonsignatories.....	III.M.20
Waiver of Arbitration Rights.....	III.M.21
The Authority of the Arbitrator	III.M.21
The Arbitration Process.....	III.M.22
Demand	III.M.22
Response	III.M.23
Discovery	III.M.23
Hearing	III.M.24
Award	III.M.24
Post-Award	III.M.25
Arbitration Provisions in Contracts.....	III.M.27
Pros and Cons of Alternative Dispute Resolution	III.M.30
INSURANCE FORMS	III.R.1
Developers of Standardized Forms.....	III.R.2
ISO Form Numbering and Edition Dates	III.R.3

SECTION IV: INDEMNITY PROVISIONS

INDEMNITY PROVISIONS	IV.B.1
IMPLIED INDEMNITY AND CONTRIBUTION	IV.C.1
EXPRESS INDEMNITY AGREEMENTS	IV.D.1
Broad Form Indemnification Agreements.....	IV.D.1
Intermediate Form Indemnification Agreements	IV.D.3
Limited Form Indemnification Agreements.....	IV.D.5
Hybrid Indemnification Agreements.....	IV.D.7
Cross-Indemnity Agreements.....	IV.D.10
TREATMENT OF INDEMNIFICATION AGREEMENTS IN THE COURTS	IV.E.1
“Public Policy” Rationale.....	IV.E.1
Enforceability of Indemnification Agreements.....	IV.E.5
Relationship of Injury or Damage to Risk Indemnified Against.....	IV.E.5
Subject Matter of Indemnity Clause	IV.E.5
Duration of Indemnity Obligation.....	IV.E.11
Related Issues.....	IV.E.13
The “Clear and Unequivocal” Approach.....	IV.E.15
Construction Contracts.....	IV.E.15
Leases.....	IV.E.17
Insurance Requirements.....	IV.E.19
The Strict “Express Negligence” Approach.....	IV.E.21
Express Negligence Doctrine.....	IV.E.21
Conspicuousness Requirement	IV.E.25
Other Recent Express Negligence Cases	IV.E.27
Other Rules of Construction Applied to Indemnity Agreements	IV.E.28
Ambiguity Construed Against the Drafter	IV.E.28
Burden of Proof.....	IV.E.29
Contract To Be Read as a Whole	IV.E.29
Importance of Insurance Requirements	IV.E.30
Indemnity Obligation as Limitation on Additional Insured Coverage.....	IV.E.31
Third-Party Beneficiaries	IV.E.36
Incorporation by Reference.....	IV.E.36
Writing Requirement.....	IV.E.38
Summary	IV.E.38
STANDARDS OF INTERPRETATION AS TO INDEMNIFICATION OF THE INDEMNITEE FOR ITS OWN NEGLIGENCE	IV.F.1
Notes to Standards of Interpretation Chart	IV.F.15
PUTTING IT ALL TOGETHER:	
DRAFTING INDEMNITY CLAUSES	IV.G.1
Simplicity versus Complexity	IV.G.2
Consistent Terminology	IV.G.3
Parties to the Contract	IV.G.4
Subject Matter of the Contract	IV.G.4
The Contract or Agreement Itself	IV.G.4
Duration of Indemnity Obligation.....	IV.G.5
Scope and Enforceability of Indemnity.....	IV.G.5
Attorneys Fees.....	IV.G.6
Defense and Settlement on Behalf of the Indemnitee	IV.G.6
Allocation, Reimbursement, and Durational Issues	IV.G.7

The “Silent Approach”..... IV.G.8
 The “Simple Approach”..... IV.G.8
 Reimbursement of Defense Costs Approach..... IV.G.9
 Selection of Counsel Issues..... IV.G.12
 Consent To Settle IV.G.13
 Summary..... IV.G.14

CONSTRUCTION ANTI-INDEMNITY STATUTES IV.K.1
 Insurance Provisions and Anti-Indemnity Statutes IV.K.5

STATE CONSTRUCTION ANTI-INDEMNITY STATUTES IV.L.1

MARITIME CONTRACT INDEMNITY PROVISIONS..... IV.N.1
 Allocation of Liabilities in Contract..... IV.N.1
 Indemnity Clauses IV.N.2
 Towage Contracts IV.N.3
 Outer Continental Shelf Lands Act..... IV.N.4
 Longshore and Harbor Workers’ Compensation Act IV.N.6

OILFIELD ANTI-INDEMNITY STATUTES IV.P.1
 History and Purpose of the Anti-Indemnity Acts IV.P.2
 Developments through the Late 1960s..... IV.P.2
 Industry Response IV.P.3
 Subsequent Industry Developments IV.P.3
 Key Anti-Indemnity Statute Issues..... IV.P.4
 Choice of Law IV.P.4
 Contractual Choice of Law Provisions IV.P.6
 Offshore Choice of Law..... IV.P.6
 Contracts Subject to the Act..... IV.P.7
 Effect on Indemnification for Damages IV.P.7
 Effect on Indemnification for Defense Fees IV.P.8
 Effect on Insurance Arrangements..... IV.P.9
 Overview of State Oilfield Anti-Indemnity Acts IV.P.9
 The Wyoming Oilfield Anti-Indemnity Act..... IV.P.10
 General Overview IV.P.10
 Contracts Subject to the Act IV.P.11
 Prohibition on Indemnification for Damages IV.P.12
 Indemnification for Defense Fees..... IV.P.13
 Impact on Insurance Arrangements IV.P.13
 Wyoming Choice of Law IV.P.14
 The New Mexico Oilfield Anti-Indemnity Act..... IV.P.14
 General Overview IV.P.14
 Contracts Subject to the Act IV.P.14
 Broad Prohibition on Indemnification for Damages IV.P.15
 Indemnification for Defense Fees..... IV.P.15
 Impact on Insurance Arrangements IV.P.16
 New Mexico Choice of Law IV.P.16
 The Louisiana Oilfield Anti-Indemnity Act..... IV.P.17
 General Overview IV.P.17
 Contracts Subject to the Act IV.P.17
 Prohibition on Indemnification for Damages IV.P.19
 Indemnification for Defense Fees:
 the “Meloy Exception”..... IV.P.19
 Impact on Insurance Arrangements IV.P.21
 Louisiana Choice of Law IV.P.21
 The Texas Oilfield Anti-Indemnity Act IV.P.22

General Overview..... IV.P.22
 Contracts Subject to the Act..... IV.P.23
 Prohibition on Indemnification Unless
 Supported by Insurance IV.P.24
 Indemnification for Defense Fees IV.P.27
 Impact on Indirect Insurance Arrangements IV.P.27
 Texas Choice of Law IV.P.28

ENVIRONMENTAL INDEMNITY PROVISIONS IV.T.1
 Indemnity Agreements IV.T.1

SECTION V: WAIVERS OF SUBROGATION

WAIVERS OF SUBROGATION V.B.1
SUBROGATION BASICS..... V.C.1
 Legal versus Conventional Subrogation V.C.2
 Allocation of Subrogation Recoveries V.C.3
 Obligation To Preserve Subrogation Interest V.C.5
 Voluntary Payments V.C.5
 Workers Compensation Subrogation..... V.C.7
 Summary V.C.9

GENERAL PRINCIPLES OF WAIVERS OF SUBROGATION V.D.1
 Scope of the Waiver V.D.3
 Workers Compensation Waivers of Subrogation V.D.7
 Subrogation Theory and Its Breakdown V.D.8
 Mechanics of Workers Compensation Subrogation... V.D.9
 Waivers of Subrogation under State Law V.D.12
 The Problem of Double Recovery V.D.14
 State Law Measures Addressing
 Double Recovery..... V.D.18
 Contractual Measures Addressing
 Double Recovery..... V.D.21
 Assignment of Insurer’s Right of Subrogation... V.D.21
 Limited Waiver of Subrogation V.D.22
 Pros and Cons of Waivers of Subrogation V.D.23
 Pros in Requiring a Waiver of Subrogation..... V.D.24
 Cons in Requiring a Waiver of Subrogation V.D.26
 Pros in Providing a Waiver of Subrogation..... V.D.26
 Cons in Providing a Waiver of Subrogation..... V.D.27
 Recommendations for Using Workers Compensation
 Waivers of Subrogation..... V.D.27
 Summary V.D.28

INSURANCE POLICY SUBROGATION PROVISIONS V.E.1
 The Common Provision and Its Inference V.E.1
 Workers Compensation Policies V.E.8
 Commercial General Liability Policy V.E.9
 Commercial Automobile Insurance Policies..... V.E.12
 Commercial Property and Inland Marine
 Insurance Policies..... V.E.12
 Summary V.E.15

PROHIBITION OF SUBROGATION AGAINST INSUREDS..... V.F.1
 Subrogation in Real Property Leases V.F.2
 Subrogation Against Additional Insureds V.F.4
 Antisubrogation Rule—Two Separate Policies..... V.F.7
 Summary V.F.9

EXPANDED CONTENTS

SECTION VI: LIMITATION CLAUSES

LIABILITY LIMITATION CLAUSES

AND RELEASES	VI.B.1
LIMITATION OF LIABILITY CLAUSES	VI.C.1
Typical Limitation of Liability Clauses	VI.C.2
Requirements for Valid Limitation of Liability Clauses	VI.C.4
The Opportunity To Negotiate— Sophisticated versus Unsophisticated Parties	VI.C.5
Limits of the Limitation	VI.C.6
Description of Risks Covered	VI.C.7
Designation of Persons Covered	VI.C.8
Statutory Restrictions	VI.C.8
Treatment by the Courts	VI.C.10
Survey of Cases	VI.C.12
Summary	VI.C.26
EXCULPATORY CLAUSES	VI.D.1
Statutory Regulation	VI.D.2
Public Policy	VI.D.3
Hazardous Activities	VI.D.5

SECTION X: CONTRACTUAL LIABILITY INSURANCE

CONTRACTUAL LIABILITY INSURANCE	X.B.1
THE CGL POLICY'S	
CONTRACTUAL LIABILITY COVERAGE	X.C.1
The Insuring Agreement and the Exclusion	X.C.2
Definition of "Insured Contract"	X.C.6
Lease of Premises	X.C.8
Sidetrack Agreement	X.C.9
Easement License Agreement	X.C.10
Indemnification of Municipality	X.C.10
Elevator Maintenance Agreement	X.C.11
Other Business Contracts	X.C.11
What Is Not an "Insured Contract"	X.C.20
Application to Surety Indemnification Agreements	X.C.22
Defense of Indemnitees	X.C.24
Application of Policy Exclusions	X.C.29
Personal and Advertising Liability Coverage	X.C.32
Contractual Liability Endorsements	X.C.33
Questions about Limited Contractual Liability Coverage	X.C.34
Broad Form Indemnity as an "Insured Contract"	X.C.35
Summary	X.C.36
CONTRACTUAL LIABILITY COVERAGE	
IN STANDARD AUTOMOBILE POLICIES	X.D.1
The Business Auto Policy	X.D.1
BAP Insuring Agreement	X.D.1
Contractual Liability Exclusion	X.D.3
Insured Contract Definition	X.D.4
Insured Contract Exceptions	X.D.8
Relationship to Other BAP Exclusions	X.D.9
The Garage Policy	X.D.11

The Truckers Policy	X.D.11
The Motor Carrier Coverage Form	X.D.14
CONTRACTUAL LIABILITY COVERAGE	
IN UMBRELLA AND EXCESS POLICIES	X.E.1
The Umbrella Insuring Agreement	X.E.1
Policy Exclusions	X.E.6
War	X.E.6
Workers Compensation and Similar Laws	X.E.6
Aircraft-Watercraft	X.E.7
Property Damage	X.E.7
CONTRACTUAL LIABILITY COVERAGE	
IN PROFESSIONAL LIABILITY POLICIES	X.F.1
Design Professionals	X.F.3
Accountants	X.F.5
Lawyers	X.F.6
Physicians	X.F.7
Hospitals	X.F.8
Insurance Agents	X.F.9
Media Professional Liability	X.F.9
Other Professional Liability Coverages	X.F.11
CONTRACTUAL LIABILITY COVERAGE	
IN AIRCRAFT POLICIES	X.H.1
INSURING INDEMNITY OBLIGATIONS IN	
MARITIME CONTRACTS	X.N.1
CGL and MGL Policies	X.N.1
Protection and Indemnity (P&I) Policies	X.N.3
CONTRACTUAL LIABILITY COVERAGE	
FOR ENVIRONMENTAL CLAIMS	X.P.1
Total Pollution Exclusion	X.P.4
Contractual Liability Coverage in the CPL Policy	X.P.4
CGL CONTRACTUAL LIABILITY LIMITATIONS	X.S.1
The Standard CGL Coverage Form	X.S.1
The Contractual Liability Limitation Endorsement	X.S.1
Amendment of Insured Contract Definition	X.S.2
Nonstandard Forms	X.S.3
Written versus Unwritten Contracts	X.S.4
Aircraft, Autos, Watercraft	X.S.5
Broad Form Indemnification	X.S.7
Summary	X.S.8

SECTION XI: ADDITIONAL INSURED STATUS

ADDITIONAL INSURED STATUS	XI.B.1
Reasons for Requiring Additional Insured Status	XI.B.2
Problems with Hold Harmless Enforcement	XI.B.2
Direct Right to a Defense	XI.B.4
Subrogation	XI.B.4
Personal Injury Coverage	XI.B.5
Obtaining Coverage Not Otherwise Available to Indemnitee	XI.B.5
Summary	XI.B.5
ADDITIONAL INSURED STATUS UNDER	
THE CGL POLICY	XI.C.1
Categories of Insured	XI.C.1

Named Insured	XI.C.2	CG 20 26, Additional Insured—Designated Person or Organization	XI.C.142
Automatic Insureds	XI.C.3	CG 20 27, Additional Insured—Co-Owner of Insured Premises	XI.C.143
“Real Estate Manager” Issues	XI.C.3	CG 20 28, Additional Insured—Lessor of Leased Equipment.....	XI.C.143
Partnerships and Joint Ventures	XI.C.7	CG 20 29, Additional Insured— Grantor of Franchise	XI.C.145
Additional Insureds	XI.C.9	CG 20 30, Oil or Gas Operations— Nonoperating Working Interests	XI.C.146
Unambiguous Contractual Insurance Requirements	XI.C.13	CG 20 32, Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured	XI.C.147
Differentiating Indemnity and Insurance Requirements	XI.C.13	CG 20 33, Additional Insured—Owners, Lessees or Contractors—Automatic Status When Required in Construction Agreement with You	XI.C.148
“Implied” Insured Status	XI.C.14	CG 20 34, Additional Insured—Lessor of Leased Equipment—Automatic Status When Required in Lease Agreement with You.....	XI.C.155
Additional Insureds and Notification Requirements	XI.C.16	CG 20 37, Additional Insured—Owners, Lessees or Contractors—Completed Operations.....	XI.C.156
Defense of Indemnitees versus Defense of Additional Insureds.....	XI.C.19	Cancellation Notice and State Law	XI.C.201
Unenforceable Indemnity Agreement	XI.C.24	MANUSCRIPT ENDORSEMENTS	XI.D.1
Anti-Indemnity Statutes and Insurance Requirements	XI.C.26	Automatic Additional Insured Endorsements	XI.D.1
State-Specific Endorsements	XI.C.29	Specify Applicable Policy Provisions	XI.D.2
Additional Insured Status without Indemnity Agreement	XI.C.31	Extent of Additional Insured’s Coverage	XI.D.4
The Additional Insured’s “Other Insurance”	XI.C.32	When Additional Insured Status Ceases.....	XI.D.7
The Umbrella as “Other Insurance”	XI.C.41	NONSTANDARD ADDITIONAL INSURED ENDORSEMENTS	XI.E.1
“Other Insurance” and Indemnity Agreements	XI.C.44	Standard CGL Coverage for Additional Insureds.....	XI.E.1
Allocation Among Insurers.....	XI.C.47	Coverage of the Additional Insured’s Negligence	XI.E.2
Method of Tendering Defense.....	XI.C.49	Additional Insured’s “Vicarious” Liability Only.....	XI.E.3
Additional Insureds and Completed Operations.....	XI.C.51	Sole Negligence of the Named Insured	XI.E.6
Separation of Insureds	XI.C.56	Coverage to Extent of Named Insured’s Negligence.....	XI.E.7
Additional Insureds and the CGL Pollution Exclusion.....	XI.C.59	No Coverage for “Independent Acts” of Additional Insured	XI.E.8
Partnerships, Joint Ventures, LLCs as Additional Insureds	XI.C.60	“Your Performance of ‘Your Work’”	XI.E.9
Standard CGL Additional Insured Endorsements	XI.C.101	Coverage of Additional Insured’s Contributory Negligence.....	XI.E.9
CG 20 07, Additional Insured—Engineers, Architects, or Surveyors.....	XI.C.101	Sole Negligence of Additional Insured Excluded ...	XI.E.10
CG 20 10, Additional Insured— Owners, Lessees or Contractors— Scheduled Person or Organization	XI.C.105	“General Supervision” of the Named Insured’s Work.....	XI.E.11
Completed Operations	XI.C.109	Coverage Only to Extent of Indemnity Obligation	XI.E.13
Third-Party-Over Suits	XI.C.112	Coverage Only to Extent of Contract Insurance Requirement.....	XI.E.14
Additional Insured Contractors and “Damage to Your Work”.....	XI.C.117	Insured Status under Blanket Additional Insured Endorsements	XI.E.16
CG 20 11, Additional Insured—Managers or Lessors of Premises	XI.C.119	Written Contract or Agreement	XI.E.16
CG 20 12, Additional Insured—State or Governmental Agency or Subdivision or Political Subdivision— Permits or Authorizations.....	XI.C.123	Insured Status Triggered by Issuance of Certificate	XI.E.17
CG 20 13, Additional Insured—State or Governmental Agency or Subdivision or Political Subdivision— Permits or Authorizations Relating to Premises... ..	XI.C.125	Capping Limits of Insurance.....	XI.E.19
CG 20 15, Additional Insured—Vendors	XI.C.126	Completed Operations Coverage	XI.E.20
CG 20 18, Additional Insured—Mortgagee, Assignee, or Receiver.....	XI.C.139	Other Insurance Conditions	XI.E.23
CG 20 23, Additional Insured—Executors, Administrators, Trustees or Beneficiaries	XI.C.140	Primary and Noncontributing	XI.E.23
CG 20 24, Additional Insured—Owners or Other Interests from Whom Land Has Been Leased	XI.C.141		

EXPANDED CONTENTS

Preserving Contribution Rights with other Additional Insured Coverage	XI.E.25
Defense of the Additional Insured	XI.E.28
Atypical Exclusions	XI.E.30
Conditions Imposed on Additional Insured	XI.E.32
Miscellaneous Provisions	XI.E.33
ADDITIONAL INSURED STATUS UNDER COMMERCIAL PROPERTY INSURANCE	XI.F.1
Additional Insured Endorsements.....	XI.F.1
Loss Payment.....	XI.F.2
Notice of Cancellation.....	XI.F.2
No Protection from Insured’s Acts	XI.F.3
Subrogation.....	XI.F.3
As Their Interests May Appear	XI.F.3
Mortgagees and Loss Payees	XI.F.4
Mortgage Clauses	XI.F.4
Loss Payee Clauses.....	XI.F.7
Loss Payable Clause.....	XI.F.7
Lenders Loss Payable Clause.....	XI.F.8
Contract of Sale Clause.....	XI.F.9
Building Owner	XI.F.10
ISO Endorsement CP 12 18	XI.F.10
Builders Risk Insureds	XI.F.11
Builders Risk Policy Subrogation Provision	XI.F.12
Including Contractors as Insureds	XI.F.12
Waiver of Subrogation Endorsement.....	XI.F.13
Builders Risk Subrogation Court Cases.....	XI.F.13
ADDITIONAL INSUREDS UNDER WORKERS COMPENSATION INSURANCE	XI.G.1
Borrowed Servant Situations	XI.G.2
Dual Employment and Joint Employment.....	XI.G.4
Employee Leasing.....	XI.G.5
ADDITIONAL INSURED STATUS UNDER UMBRELLA AND EXCESS POLICIES	XI.H.1
Umbrella Additional Insureds.....	XI.H.1
Additional Insureds as in Underlying	XI.H.3
Contractually Required Additional Insured Coverage... ..	XI.H.6
“Other Insurance” Problems	XI.H.9
Issues Specific to Excess Policies.....	XI.H.10
ADDITIONAL INSURED STATUS UNDER STANDARD AUTOMOBILE POLICIES.....	XI.I.1
Vicarious Auto Liability	XI.I.1
Insured Status for Owner of Leased or Rented Vehicle	XI.I.5
Owners of Hired or Borrowed Equipment under the Truckers and Motor Carrier Policies	XI.I.7
INSURED STATUS UNDER CONTRACTORS POLLUTION LIABILITY INSURANCE	XI.K.1
MARITIME CONTRACTS AND ADDITIONAL INSURED STATUS	XI.N.1
The <i>Ogea</i> , <i>Tullier</i> , and <i>Hodgen</i> Cases.....	XI.N.2
COURT INTERPRETATIONS OF PRE-2004 ADDITIONAL INSURED ENDORSEMENTS	XI.P.1
“Arising Out Of”	XI.P.1
Required Causal Connection	XI.P.3

“Work” or “Operations”	XI.P.5
THE THIRD-PARTY-OVER ACTION.....	XI.T.1
The Problem	XI.T.1
Contribution and Implied Indemnity.....	XI.T.2
Express or Contractual Indemnity.....	XI.T.2
Injured Employee’s Causes of Action Against Third Parties	XI.T.3
Apportionment of Fault between Third Party and Employer	XI.T.4
Express Indemnity Agreements	XI.T.7
Mechanics of the Basic Third-Party-Over Action.....	XI.T.9
Third-Party-Over Actions in the Construction Industry	XI.T.13
Third-Party-Over Actions—No Additional Insured....	XI.T.16
Third-Party-Over Actions—No Indemnity Agreement.....	XI.T.16
Summary	XI.T.18

**SECTION XII: PROTECTIVE LIABILITY
INSURANCE**

PROTECTIVE LIABILITY INSURANCE	XII.B.1
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE	XII.C.1
The OCP Liability Coverage Form	XII.C.2
Insuring Agreement.....	XII.C.2
Exclusions	XII.C.3
“General Supervision”	XII.C.5
Supplementary Payments.....	XII.C.9
Who Is an Insured	XII.C.10
Limits of Insurance	XII.C.10
Conditions	XII.C.10
Other Insurance.....	XII.C.11
Subrogation.....	XII.C.11
Other OCP Conditions.....	XII.C.12
Definitions.....	XII.C.12
Endorsements	XII.C.13
CG 20 31, Additional Insured—Engineers, Architects or Surveyors	XII.C.13
CG 25 11, Amendment of Limits of Insurance (Designated Project or Premises)	XII.C.14
CG 28 04, Earlier Notice of Cancellation Provided by Us	XII.C.14
CG 28 05, Personal Injury Liability	XII.C.14
CG 28 07, Principals Protective Liability Coverage	XII.C.14
CG 28 12, Pesticide or Herbicide Applicator Coverage.....	XII.C.15
CG 29 35, Additional Insured—State or Governmental Agency or Subdivision or Political Subdivision— Permits or Authorizations.....	XII.C.15
CG 29 51, Employment-Related Practices Exclusion.....	XII.C.15

CG 29 88, Waiver of Rights of Recovery
Against Others to UsXII.C.15

CG 31 66, Exclusion—Exterior Insulation
and Finish SystemsXII.C.15

CG 33 70, Silica or Silica-Related
Dust Exclusion.....XII.C.16

OCP Policy versus Additional Insured StatusXII.C.16

**RAILROAD PROTECTIVE
LIABILITY INSURANCE**..... XII.D.1

Bodily Injury and Property Damage Liability XII.D.2

Coverage A Exclusions XII.D.3

Expected or Intended XII.D.3

Completed Work XII.D.3

Acts or Omissions of Insured..... XII.D.4

Workers Compensation and Similar Laws..... XII.D.4

Contractual Liability XII.D.5

Pollution..... XII.D.5

Damage to Owned, Leased, or Entrusted
Property XII.D.7

Physical Damage to Property XII.D.7

Policy Conditions XII.D.8

Cancellation..... XII.D.8

Other Insurance XII.D.8

Premium and Premium Audit..... XII.D.8

RRP Coverage, Indemnity Agreements, and
Subrogation..... XII.D.8

Limits of Insurance..... XII.D.12

Rating XII.D.12

Location..... XII.D.13

Type of Project XII.D.13

Project Owner..... XII.D.13

Hazardous Nature of the Work..... XII.D.13

SECTION XIV: INSURANCE REQUIREMENTS

**STRATEGIES FOR
CONTRACT INSURANCE REQUIREMENTS**..... XIV.B.1

Overall Considerations for Contract
Insurance Requirements..... XIV.B.1

Insurance Requirement Costs XIV.B.2

Considerations for General Insurance Provisions XIV.B.3

Evidence of Insurance XIV.B.4

Notice of Cancellation..... XIV.B.5

Deductibles and Retentions..... XIV.B.5

Self-Insurance XIV.B.6

Additional Insured Status..... XIV.B.7

“Other Insurance” Provisions XIV.B.9

Permanent Property Waivers
of Subrogation..... XIV.B.9

Cross-Liability..... XIV.B.10

Acceptability of Insurers XIV.B.11

Limits of Liability..... XIV.B.13

Considerations for Specific
Coverage Requirements..... XIV.B.15

Sample Contract Requirements
for General Insurance Provisions XIV.B.101

**STRATEGIES FOR GENERAL LIABILITY
INSURANCE REQUIREMENTS** XIV.C.1

Miscellaneous General Liability Coverages XIV.C.3

Protective Liability Insurance..... XIV.C.3

Liquor Liability Insurance XIV.C.3

Products-Completed Operations Insurance XIV.C.3

Electronic Data Liability..... XIV.C.4

Possible Contract Requirements XIV.C.4

Standard Policy Form XIV.C.4

Occurrence Coverage..... XIV.C.5

Claims-Made Coverage Features..... XIV.C.5

Long-Term Completed Operations Coverage..... XIV.C.5

Per-Project General Aggregate Limit XIV.C.6

Per-Location General Aggregate Limit XIV.C.6

Each-Occurrence Limit..... XIV.C.6

Additional Insured Status XIV.C.7

Waiver of Subrogation..... XIV.C.9

Common Errors and Problems XIV.C.10

Sample Contract Requirements
for CGL and Umbrella Liability Insurance XIV.C.101

**STRATEGIES FOR AUTOMOBILE
INSURANCE REQUIREMENTS** XIV.D.1

Possible Contract Requirements XIV.D.1

Standard Policy Form XIV.D.2

Liability Coverage XIV.D.2

Lessor or Renter as Additional Insured XIV.D.2

Waiver of Subrogation XIV.D.2

Physical Damage Coverage XIV.D.3

Loss Payable Clause XIV.D.3

Pollution Liability Coverage..... XIV.D.3

Special Garage Liability Exposures..... XIV.D.4

Trailer Interchange Coverage XIV.D.5

Common Errors and Problems..... XIV.D.5

Sample Contract Requirements
for Commercial Auto and Umbrella Liability
Insurance XIV.D.101

**STRATEGIES FOR WORKERS COMPENSATION
INSURANCE REQUIREMENTS** XIV.E.1

Coverage Summary..... XIV.E.1

Possible Contract Requirements XIV.E.3

Alternate Employer Endorsement..... XIV.E.3

Waiver of Subrogation XIV.E.3

Longshore and Harbor Workers Act Coverage..... XIV.E.4

Outer Continental Shelf Lands Act Coverage XIV.E.4

Maritime Coverage XIV.E.4

Defense Base Act Coverage XIV.E.5

Federal Employers Liability Act Coverage XIV.E.5

Migrant and Seasonal Agricultural Worker
Protection Act Coverage XIV.E.5

Federal Coal Mine Health and Safety Act
Coverage XIV.E.5

Common Errors and Problems..... XIV.E.5

Sample Contract Requirements
for Workers Compensation Insurance XIV.E.101

EXPANDED CONTENTS

STRATEGIES FOR COMMERCIAL PROPERTY

INSURANCE REQUIREMENTS XIV.P.1
Possible Contract Requirements XIV.P.3
Insured Perils XIV.P.3
Flood and Earthquake XIV.P.4
Coastal Windstorm XIV.P.5
Terrorism XIV.P.5
Valuation and Limit XIV.P.6
Covering Additional Interests XIV.P.6
Waiver of Subrogation XIV.P.6
Equipment Breakdown Coverage XIV.P.8
Income and Expense Coverage XIV.P.8
Inland Marine Coverage Approaches XIV.P.9
Common Errors and Problems XIV.P.10
Sample Contract Requirements
for Commercial Property Insurance XIV.P.101
**STRATEGIES FOR ENVIRONMENTAL IMPAIRMENT
LIABILITY INSURANCE REQUIREMENTS** XIV.T.1
Common Errors and Problems XIV.T.2
Sample Contract Requirements for
Pollution Legal Liability Insurance XIV.T.101
Sample Contract Requirements for
Environmental Professional Liability Insurance... XIV.T.301

SECTION XV: INSURANCE CERTIFICATES

INSURANCE CERTIFICATES XV.B.1
**STANDARD AND MANUSCRIPT
CERTIFICATES** XV.C.1
Manuscript Certificates XV.C.6
Cancellation XV.C.6
Coverage Disclaimer XV.C.7
Certification of Contractual Liability Coverage XV.C.9
Additional Insured Status XV.C.9
Proof of Authority XV.C.12
Endorsement as Alternative
to Manuscript Certificate XV.C.12
Scope of Coverage Conflicts XV.C.12
“Other Insurance” Issue XV.C.14
Notice of Cancellation XV.C.14
Severability of Interests XV.C.14
Other Considerations XV.C.15
Suggestions for Tailoring Certificate Language XV.C.16
**LEGAL ASPECTS OF
INSURANCE CERTIFICATES** XV.D.1
Conflicts between Certificates and Policies XV.D.2
Notice and Cancellation Issues XV.D.10
Breach of Contract Issues XV.D.12
Certificate Holder Status versus
Additional Insured Status XV.D.15
Authority of Issuing Party XV.D.16
Summary XV.D.18

SECTION XVI: ADMINISTRATION

**ADMINISTRATION OF CONTRACTUAL
RISK TRANSFER PROGRAMS** XVI.B.1
ADMINISTRATION BY RISK TRANSFERORS XVI.C.1
Developing a Corporate Risk Transfer Philosophy XVI.C.1
Establishing Standards XVI.C.6
Applying the Standards XVI.C.7
Monitoring Compliance XVI.C.8
Compliance Monitoring Systems XVI.C.10
Handling Noncompliance XVI.C.11
Responding to Cancellation Notice XVI.C.13
Compliance Management Approach XVI.C.13
ADMINISTRATION BY TRANSFEREES XVI.G.1
Establishing Corporate Risk Transfer Standards XVI.G.1
Contract Review Guidelines XVI.G.3
Learn the Risk Transfer Specifics Early XVI.G.3
Develop Alternatives to Unacceptable
Requirements XVI.G.3
Avoid Committing to Problematic Insurance
Requirements XVI.G.3
Maintenance of Insurance Beyond
Contract Term XVI.G.6
Efficient System for Responding
to Insurance Requirements XVI.G.6
Applying the Standards XVI.G.7
Managing for Results XVI.G.7
CERTIFICATE TRACKING SYSTEMS XVI.J.1
System Capabilities XVI.J.4
Viewing and Sorting Data XVI.J.4
Electronic Images XVI.J.4
Compliance Verification XVI.J.4
Report Generation XVI.J.5
Letter Generation XVI.J.6
Customization XVI.J.7
Hardware/Software Requirements XVI.J.8
Nontechnical Considerations XVI.J.8
Experience XVI.J.8
Customer Service XVI.J.9
Cost XVI.J.9
Professional Responsibility XVI.J.10
System Evaluation and Comparison XVI.J.11
Cert2000 XVI.J.11
Certifitrac+ XVI.J.12
Certificate Management Solutions XVI.J.14
ConfirmNet XVI.J.15
Ins-Cert.com XVI.J.16
Insurance Data Services XVI.J.18
Periculum Services Group XVI.J.19
Conclusion XVI.J.20
CONTRACT REVIEW MANUAL XVI.M.1
**GUIDELINES FOR INSERTING INSURANCE
CLAUSES IN CONTRACTS** XVI.M.3
**INSURANCE REQUIREMENTS FOR
CONTRACTORS** XVI.M.17
CONTRACT REVIEW CHECKLIST XVI.Z.1

**SECTION XVII: CONSTRUCTION
CONTRACTS**

CONSTRUCTION CONTRACTS.....XVII.B.1
**CONTRACTING APPROACHES WITHIN
THE CONSTRUCTION INDUSTRY**.....XVII.C.1
 Basic Project Delivery Methods.....XVII.C.1
 General Contractor with Subcontractors.....XVII.C.1
 Stipulated Sum or Fixed-Price Contracts.....XVII.C.2
 Cost-Plus-a-Fee Contracts.....XVII.C.2
 Guaranteed Maximum Price Contracts.....XVII.C.3
 Unit Price Contracts.....XVII.C.3
 Multiple Prime Contracts.....XVII.C.3
 Construction Management Contracts.....XVII.C.3
 Design-Build Contracts.....XVII.C.5
 Risk Allocation and Insurance Responsibilities.....XVII.C.6
 Architect/Owner Relation.....XVII.C.7
 Insurance Requirements.....XVII.C.9
 General Contractor/Owner Relation.....XVII.C.10
 General Contractor/Subcontractor Relation.....XVII.C.11
 Construction Manager/Owner/General
 Contractor Relations.....XVII.C.12
 Design-Build Contractor/Owner Relation.....XVII.C.13
 Consolidated Insurance Programs.....XVII.C.14
 Contractor Complaints.....XVII.C.15
**STANDARD FORM CONSTRUCTION
CONTRACTS**.....XVII.D.1
 AIA Contract Documents.....XVII.D.1
 AGC Contract Documents.....XVII.D.4
 ConsensusDOCS Contract Documents.....XVII.D.5
 EJCDC Contract Documents.....XVII.D.5
**STANDARD CONSTRUCTION INDEMNIFICATION
AGREEMENTS**.....XVII.E.1
 AIA Document A201.....XVII.E.1
 Paragraph 4.18 (1976), Paragraph 3.18 (1987),
 and Paragraph 3.18 (1997).....XVII.E.1
 Paragraph 3.18 (1987).....XVII.E.3
 Paragraph 3.18 (1997).....XVII.E.6
 Paragraph 3.18 (2007).....XVII.E.7
 Comparison of AIA A201
 Indemnity Paragraphs.....XVII.E.8
 Court Decisions Involving A201
 Indemnity Provisions.....XVII.E.9
 Other A201 Indemnity Clauses.....XVII.E.11
 ConsensusDOCS 300 Indemnity Clause.....XVII.E.15
 ConsensusDOCS 200 Indemnity Clause.....XVII.E.18
 ConsensusDOCS Hazardous Materials
 Provisions.....XVII.E.19
 EJCDC Document C-700 (2007).....XVII.E.22
 Standard Form Subcontract Indemnity Clauses.....XVII.E.23
 Incorporation by Reference.....XVII.E.26
 Duty To Defend Clarified.....XVII.E.27
**CONTRACTORS' LIMITATION ENDORSEMENTS AND
CONTRACTUAL LIABILITY COVERAGE**.....XVII.F.1
 Contractual Liability Exclusion.....XVII.F.1
 Care, Custody, Control.....XVII.F.2

Explosion, Collapse, Underground Hazards.....XVII.F.3
**CONSTRUCTION CONTRACT INSURANCE
REQUIREMENTS**.....XVII.G.1
 Contractor's Liability Insurance.....XVII.G.2
 Workers Compensation and
 Employers Liability Insurance.....XVII.G.4
 General Liability Insurance.....XVII.G.4
 Automobile Liability Insurance.....XVII.G.5
 Additional Insured Status.....XVII.G.6
 Other Liability Coverages.....XVII.G.7
 Limits of Insurance.....XVII.G.8
 Evidence of Insurance.....XVII.G.9
 Owner's Liability Insurance.....XVII.G.9
 Property Coverages.....XVII.G.11
 Scope of Coverage.....XVII.G.13
 Deductibles.....XVII.G.14
 Other Required Property Coverages.....XVII.G.14
 Waivers of Subrogation.....XVII.G.15
 Sample Contract Requirements
 General Insurance Provisions.....XVII.G.51
 CGL and Umbrella Liability Insurance.....XVII.G.101
 Commercial Auto and
 Umbrella Liability Insurance.....XVII.G.201
 Workers Compensation Insurance.....XVII.G.301
 Contractors Pollution Liability Insurance.....XVII.G.401
**BUILDERS RISK INSURANCE AND
CONTRACT WAIVERS OF SUBROGATION**.....XVII.H.1
 A201 Waiver of Subrogation Provision.....XVII.H.1
 Parties Protected by Waiver.....XVII.H.3
 Protection for Performance Bond Surety.....XVII.H.8
 Liability Insurance as
 "Other Property Insurance".....XVII.H.9
 Time Period of Waiver.....XVII.H.12
 Property Subject to Waiver.....XVII.H.16
 Caselaw Broadly Applying Waiver.....XVII.H.20
 No Conflict between Waiver of Subrogation
 and Indemnity Obligation.....XVII.H.24
**LIMITATION OF LIABILITY AND
EXCULPATORY CLAUSES**.....XVII.J.1
 In Professional Services Contracts.....XVII.J.1
 In Construction Contracts.....XVII.J.4
**STRATEGIES FOR BUILDERS RISK
INSURANCE REQUIREMENTS**.....XVII.K.1
 Possible Contract Requirements.....XVII.K.2
 Who Buys the Policy?.....XVII.K.2
 Who Is an Insured.....XVII.K.3
 Waiver of Subrogation.....XVII.K.3
 Covered Perils.....XVII.K.3
 Covered Property.....XVII.K.6
 Deductibles.....XVII.K.6
 Occupancy before Completion.....XVII.K.6
 Coverage Termination.....XVII.K.7
 Common Errors and Problems.....XVII.K.7
 Sample Contract Requirements
 Builders Risk Insurance.....XVII.K.101
 Owner Required To Maintain Insurance.....XVII.K.101
 Contractor Required To Maintain Insurance.....XVII.K.106

EXPANDED CONTENTS

SURETY BOND REQUIREMENTS

IN CONSTRUCTION CONTRACTS.....XVII.L.1
 Surety Bonds in Construction ContractingXVII.L.1
 Subcontract BondsXVII.L.2
 Bond FormsXVII.L.2
 Bonds Required for Public ProjectsXVIII.L.2
 Options for Private ProjectsXVII.L.3
 Advantages and Disadvantages of Surety Bonds ..XVII.L.4
 Other Types of Completion/Payment Guarantees .XVII.L.6
 Completion GuarantyXVII.L.7
 Letter of CreditXVII.L.7
 Subcontract BondsXVIII.L.7
 Subcontractor Default Insurance.....XVII.L.7
 Contract Surety Bond Requirement ProvisionsXVII.L.9
 SummaryXVII.L.9

RISK ALLOCATION IN THE AIA GENERAL

CONDITIONS (A201)XVII.N.1
 Indemnity ProvisionsXVII.N.2
 Insurance Requirements.....XVII.N.4
 General Liability InsuranceXVII.N.5
 Additional Insured StatusXVII.N.6
 Builders Risk Insurance.....XVII.N.7
 Waivers of Subrogation.....XVII.N.9
 Waivers of Consequential DamagesXVII.N.10
 Design Responsibilities.....XVII.N.12
 Differing Site ConditionsXVII.N.14
 Site SafetyXVII.N.15
 Hazardous MaterialsXVII.N.16
 Mediation and ArbitrationXVII.N.18
 Mediation.....XVII.N.20
 ArbitrationXVII.N.21
 ConclusionXVII.N.21

CONTRACT PROVISIONS

AND ENVIRONMENTAL LIABILITYXVII.P.1
 Scope of Work.....XVII.P.2
 Construction Contract—No Environmental
 ResponsibilityXVII.P.3
 Remediation Contract.....XVII.P.3
 Phases of ServicesXVII.P.4
 Changes.....XVII.P.5
 Differing Site Conditions.....XVII.P.6
 Standard of CareXVII.P.6
 Ordinary Negligence StandardXVII.P.8
 Higher Standards of CareXVII.P.9
 Warranty.....XVII.P.10
 Cost EstimatesXVII.P.11
 Responsibilities of Parties.....XVII.P.11
 Compliance with LawsXVII.P.13
 Requirements Applicable to SubcontractorsXVII.P.16
 Permits and LicensesXVII.P.16
 Health and SafetyXVII.P.17
 TrainingXVII.P.18
 Disposal of MaterialsXVII.P.19
 IndemnificationXVII.P.20
 Client Indemnifies Consultant.....XVII.P.20
 Consultant Indemnifies Client.....XVII.P.21

Environmental LiabilityXVII.P.22
 Mutual Indemnification.....XVII.P.24
 Limitation of LiabilityXVII.P.25
 ConfidentialityXVII.P.26
 Dispute ResolutionXVII.P.27
 Recovery of Dispute Resolution CostsXVII.P.27
 Time Limit for Legal Action.....XVII.P.28
 Third-Party RightsXVII.P.28
 Warnings Regarding Use
 of Consultant’s Report.....XVII.P.29
 Severability.....XVII.P.31
 SurvivalXVII.P.31

SPECIAL CONTRACTING RISKS.....XVII.S.1

Professional Services.....XVII.S.1
 Construction ManagementXVII.S.3
 Design-BuildXVII.S.4
 Completed Operations and Construction DefectsXVII.S.4
 Defective WorkXVII.S.6
 The CGL Insuring Agreement.....XVII.S.7
 The CGL Contractual Liability Exclusion.....XVII.S.9
 The CGL Damage to Property Exclusion.....XVII.S.9
 The CGL Damage to Your
 Product ExclusionXVII.S.10
 The CGL Damage to Your Work Exclusion..XVII.S.11
 The CGL Impaired Property Exclusion.....XVII.S.12
 The CGL Recall of Products Exclusion.....XVII.S.14
 Subcontractor’s Insurance.....XVII.S.15

DESIGN-BUILD CONSTRUCTION

CONTRACTSXVII.T.1
 Methods of Project DeliveryXVII.T.1
 Traditional Project Delivery.....XVII.T.1
 Construction Management Project Delivery.....XVII.T.2
 Design-Build Project DeliveryXVII.T.2
 Design Professional Primary, Construction
 Subcontracted.....XVII.T.3
 Contractor Primary, Design Provided by
 Independent Design Firm.....XVII.T.4
 Contractor Primary, Design Performed
 In-House.....XVII.T.4
 Joint VentureXVII.T.5
 Selection of Design-Builders.....XVII.T.6
 Pros and Cons of Design-BuildXVII.T.7
 Single Point AccountabilityXVII.T.7
 Accelerated Delivery.....XVII.T.8
 Quality of the Work.....XVII.T.9
 Transfer of Design Liability.....XVII.T.9
 Loss of Checks and Balances.....XVII.T.10
 New Set of Adversarial RelationshipsXVII.T.10
 Assumption of Design Liabilities
 by the Contractor.....XVII.T.10
 Bidding IssuesXVII.T.11
 Design-Build LawsXVII.T.11
 When Is Design-Build Appropriate?.....XVII.T.11
 Potential Liabilities of Design-Build Participants...XVII.T.12
 Traditional Liabilities of the ContractorXVII.T.12
 Traditional Liabilities of Design Professionals...XVII.T.13

Separate Attorneys' Fees Clause	XVIII.D.13	Personal Property	XVIII.I.9
Survival of the Indemnity Obligation.....	XVIII.D.14	Time Element Coverage.....	XVIII.I.10
Duty To Defend	XVIII.D.14	Property Insurance Limits.....	XVIII.I.10
Landlord Indemnification of Tenant.....	XVIII.D.15	Coverage Forms and Insured Perils	XVIII.I.11
Waivers of Subrogation.....	XVIII.D.16	Boilers and Machinery	XVIII.I.11
Additional Questions	XVIII.D.18	General Insurance Provisions.....	XVIII.I.11
Is a Waiver of Subrogation		Evidence of Insurance.....	XVIII.I.11
Really Necessary?	XVIII.D.18	Notice of Cancellation, Nonrenewal,	
Against Which Parties Should the		or Material Change.....	XVIII.I.12
Waiver Be Effective?.....	XVIII.D.19	Acceptability of Insurers.....	XVIII.I.12
Should the Waiver of Subrogation Clause		Insurance Deductibles	XVIII.I.13
Refer to Negligence?	XVIII.D.19	Summary	XVIII.I.13
Does the Policy in Question Allow a		Sample Insurance Requirements for	
Waiver of Subrogation?.....	XVIII.D.19	Real Estate Leases	XVIII.I.101
Conclusion	XVIII.D.19	General Insurance Provisions.....	XVIII.I.101
EXCULPATORY AND LIMITATION		CGL and Umbrella Liability Insurance	XVIII.I.103
OF LIABILITY CLAUSES IN COMMERCIAL		Pollution Legal Liability Insurance.....	XVIII.I.105
REAL ESTATE LEASES	XVIII.F.1	Commercial Automobile and	
Enforceability of Exculpatory Clauses in Leases	XVIII.F.3	Umbrella Liability Insurance.....	XVIII.I.106
Public Policy Restrictions.....	XVIII.F.3	Workers Compensation and	
Degree of Negligence	XVIII.F.5	Employers Liability Insurance	XVIII.I.107
Liability for Breach of a Statutory Duty.....	XVIII.F.5	Commercial Property Insurance.....	XVIII.I.108
Liability for Fraud and Other Intentional Torts	XVIII.F.6	REAL ESTATE LEASE REVIEW CHECKLIST	XVIII.J.1
Unequal Bargaining Power and		COMMERCIAL REAL ESTATE	
Unconscionable Contracts	XVIII.F.6	PURCHASE AND SALE AGREEMENTS	XVIII.L.1
Defective Design or Construction		Recitals	XVIII.L.2
of the Premises.....	XVIII.F.7	Buyer Inspections and Approvals (Due Diligence).....	XVIII.L.3
Statutory Restrictions	XVIII.F.7	Conditions to Closing.....	XVIII.L.7
Exculpatory Clause Drafting Suggestions	XVIII.F.9	Buyer's Conditions	XVIII.L.7
Understand State Law Requirements	XVIII.F.9	Seller's Conditions	XVIII.L.8
Consider a Savings Clause	XVIII.F.9	"As Is" Provisions	XVIII.L.8
Reflect that the Lease Consideration		Casualty or Condemnation	XVIII.L.10
Has Been Adjusted.....	XVIII.F.10	Indemnity Provisions.....	XVIII.L.11
Scope of the Exculpatory Clause.....	XVIII.F.10	Insurance Requirements	XVIII.L.12
Geographical Reach of the Clause	XVIII.F.10	Limitation of Liability and	
Use Insurance and Indemnity Provisions		Exculpatory Provisions.....	XVIII.L.13
to Reinforce Intent	XVIII.F.10	Representations and Warranties	XVIII.L.14
Limitation of Liability Provisions in Leases.....	XVIII.F.11	Liquidated Damages and Remedies	XVIII.L.17
Conclusion	XVIII.F.12	Dispute Resolution	XVIII.L.19
CASUALTY DAMAGE PROVISIONS		Conclusion.....	XVIII.L.19
UNDER COMMERCIAL LEASES	XVIII.H.1	COMMERCIAL REAL ESTATE MORTGAGES ..	XVIII.N.1
Common Law and Statutory Law	XVIII.H.1	Single Purpose Entity Structure	XVIII.N.2
Status of Lease	XVIII.H.3	Prepayment Restrictions.....	XVIII.N.5
Rent	XVIII.H.4	Representations and Warranties	XVIII.N.5
Insurance of Improvements	XVIII.H.5	Insurance	XVIII.N.10
INSURANCE REQUIREMENTS FOR		Condemnation	XVIII.N.16
REAL ESTATE LEASES	XVIII.I.1	Indemnity Provisions.....	XVIII.N.18
Liability Insurance Requirements.....	XVIII.I.2	Environmental Indemnity Agreement.....	XVIII.N.18
Commercial General Liability Insurance	XVIII.I.2	Events of Default.....	XVIII.N.20
Required Limit	XVIII.I.4	Limited Recourse	XVIII.N.23
Environmental Impairment Liability Insurance ...	XVIII.I.4	Changes in Law Regarding Taxation	XVIII.N.26
Auto Liability Insurance.....	XVIII.I.5	Conclusion.....	XVIII.N.26
Workers Compensation Insurance	XVIII.I.5	COMMERCIAL PROPERTY MANAGEMENT	
Property Insurance Requirements.....	XVIII.I.6	AGREEMENTS	XVIII.O.1
Buildings.....	XVIII.I.6	Recitals	XVIII.O.2
Improvements and Betterments	XVIII.I.7	Management Fee	XVIII.O.3

Limitation of Liability	XVIII.O.5
Budgets	XVIII.O.6
Capital Budget.....	XVIII.O.7
Operating Expense Budget.....	XVIII.O.8
Insurance Requirements	XVIII.O.8
Liability Insurance Requirements	XVIII.O.8
Property Insurance for the Managed Property ..	XVIII.O.10
Insurance Administration	XVIII.O.11
Indemnity Provisions.....	XVIII.O.14
Approval of Contracts	XVIII.O.16
Termination.....	XVIII.O.16
Property Manager’s Obligations	
After Termination	XVIII.O.19
Leasing Indemnity of Property Manager.....	XVIII.O.20
No Agency	XVIII.O.20
Conclusion	XVIII.O.21

**SECTION XIX: PERSONAL PROPERTY
CONTRACTS**

EQUIPMENT LEASES	XIX.C.1
Ordinary Equipment Leases	XIX.C.2
Lease Description.....	XIX.C.2
Lease Term	XIX.C.2
Identification/Location/Use of Equipment.....	XIX.C.2
Maintenance/Repair of the Equipment.....	XIX.C.2
Taxes and Fees	XIX.C.3
Warranties.....	XIX.C.3
Events of Default.....	XIX.C.4
Risk of Loss.....	XIX.C.4
Trademark/Service mark	XIX.C.4
Indemnity and Insurance	XIX.C.4
Remedies	XIX.C.5
Lease or Security Interest?	XIX.C.5
Finance Leases.....	XIX.C.6
Commencement of Insured’s Insurable Interest	
and Risk of Loss	XIX.C.8
Risk of Loss.....	XIX.C.9
Commercial Auto/Truck Insurance Coverage.....	XIX.C.10
Commercial Property Insurance.....	XIX.C.15
Loss Payee Designation	XIX.C.15
Additional Insured Endorsement.....	XIX.C.16
Procurement of CGL Insurance Pursuant	
to the Lease.....	XIX.C.17
Insurance versus Indemnity.....	XIX.C.18
Insurance Coverage for Indemnity Obligations ...	XIX.C.18
Binders	XIX.C.18
Workers Compensation Insurance.....	XIX.C.19
Other Insurance Issues	XIX.C.20
Bankruptcy Considerations	XIX.C.20
PURCHASE ORDERS	XIX.D.1
Applicability of the UCC: Sale of Goods or Services ...	XIX.D.1
Purchase Order: Offer or Acceptance?.....	XIX.D.2
Key Question.....	XIX.D.3
Price: Open or Closed.....	XIX.D.4

Quantities of Goods	XIX.D.5
Time for Performance or Payment.....	XIX.D.5
Letters of Credit.....	XIX.D.5
Description and Inspection of Goods.....	XIX.D.6
Execution Requirements	XIX.D.6
Confirmation Letter Exception	XIX.D.7
Delivery Terms.....	XIX.D.7
Warranties	XIX.D.8
Express versus Implied Warranties.....	XIX.D.8
Indemnity, Limitation of Liability,	
and Disclaimer Provisions.....	XIX.D.9
Insurable Interests	XIX.D.11
Insurance Implications Arising From	
Use of Purchase Orders	XIX.D.12
Conclusion	XIX.D.13

**SECTION XX: ENERGY
INDUSTRY CONTRACTS**

ENERGY INDUSTRY CONTRACTS	XX.B.1
AN ENERGY EXPLORATION	
AND PRODUCTION OVERVIEW	XX.C.1
The Major Players.....	XX.C.1
The Role of the Oil Operator	XX.C.1
The Role of the Drilling Contractor.....	XX.C.2
The Role of the Well Service Contractors.....	XX.C.3
Major Types of Contracts	XX.C.4
Mineral Lease	XX.C.4
Farmout Agreement.....	XX.C.4
Joint Operating Agreement.....	XX.C.4
Drilling Contract.....	XX.C.5
Master Service Agreement	XX.C.5
Master Charter Agreement	XX.C.5
Conclusion	XX.C.6
INSURANCE AND INDEMNITY PROVISIONS	
IN THE MINERAL LEASE	XX.D.1
Insurance Requirements.....	XX.D.1
Surface Damage Agreement	XX.D.2
SAMPLE INSURANCE REQUIREMENTS	
FOR THE MINERAL LEASE AND THE	
FARMOUT AGREEMENT	XX.E.1
RISK ALLOCATION PROVISIONS	
IN THE FARMOUT AGREEMENT	XX.F.1
Insurance Requirements.....	XX.F.1
Definition of “Payout”	XX.F.2
Other Nonstandard Provisions	XX.F.3
Conclusion	XX.F.3
INSURANCE AND INDEMNITY PROVISIONS	
IN THE JOINT OPERATING AGREEMENT.....	XX.G.1
AAPL Form 610.....	XX.G.1
Clarifying the Indemnity Provision.....	XX.G.2
Oil Field Anti-Indemnity Statutes	XX.G.3
Insurance Requirements for the JOA	XX.G.4
CGL and Umbrella Insurance Requirements.....	XX.G.5
Pollution Liability Coverage.....	XX.G.6

EXPANDED CONTENTS

Aircraft Liability Coverage	XX.G.9	Required Drilling Contract Provisions.....	XX.G.11
Marine Liability Coverage	XX.G.9	Blowout Preventer.....	XX.G.11
Workers Compensation and Employers Liability.....	XX.G.9	Importance of Checking Old JOAs	XX.G.12
Auto Liability Coverage	XX.G.9	Conclusion.....	XX.G.12
Control of Well Coverage.....	XX.G.9	SAMPLE EXHIBIT D FOR THE JOINT OPERATING	
Property Insurance.....	XX.G.10	AGREEMENT	XX.H.1
Other Provisions	XX.G.11		