

## Additional Insured Endorsements

1. **What is the difference between the different edition dates of Form CG2010, the standard Additional Insured form?**

- A CG2010 affords Additional Insured status on your policy to the Recipient. The **edition date** of the form establishes how much protection your policy affords the Additional Insured.

2. **What is the primary difference between CG2010 (11/85) and other Additional Insured forms such as CG2010 (10/01), CG2010 (12/04), etc?**

- **CG 2010 (10/01)** Gives the Additional Insured protection for your **“On-Going” Operations** (while you are on the job). This protection includes free defense costs for the Additional Insured. **Once your job/ work/ project is completed, the coverage to the Additional Insured ENDS.**
- **CG2010 (11/85) 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.

This particular edition date of the CG2010 endorsement provides the Additional Insured much broader protection under your policy. It uses the language **“YOUR WORK” which has been interpreted by the courts to mean “On-Going AND Completed” work.** This protection includes free defense costs for the Additional Insured. **Once your job/ work/ project is completed, the coverage to the Additional Insured CONTINUES until statute expires (10 years).**

This interpretation by the courts has resulted in carriers defending General Contractors and Developers under the sub-contractors policy, regardless of sub-contractors negligence. Under statutory law, there is a 10 year window to which “alleged **construction**

## Additional Insured Endorsements

**defects**" suits can be filed. Naturally, in these types of claims, the General and Developer are ALWAYS named in the lawsuit.

- **CG 2010 (03/97) 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.

The 3/97 Version of the 2010 Endorsement provides coverage only for ongoing operations, and **NOT** for completed operations. Therefore, they may not be acceptable to G.C.'s who are meticulously documenting their insurance rights.

### 3. Blanket Additional Insured Endorsements

- A blanket Additional Insured endorsement can be manuscripted to clarify the exact risk undertaken (such as excluding architects' and engineers' professional services) or that the insurer's agent has been given notice of the increased risk (by, for example, requiring that a Certificate of Insurance have been issued.). Generally, the concept is that if the insured agrees in writing to make another party an Additional Insured, the other party is automatically an Additional Insured.

#### SAMPLE:

Section II - Who Is An Insured is amended to add: Any person or organization who you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into, excluding contracts or agreements for professional services, which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of your operations or premises owned by or rented to you. However, the insurance provided will not exceed the lesser of:

1. The coverage and/or limits of this policy, or
2. The coverage and/or limits required by said contract or agreement.

## Additional Insured Endorsements

- The risk for the subcontractor's insurer is in not knowing how many subcontracts its named insured has entered into. Some blanket A.I. endorsements include language specifically stating that contracts entered into both before and after policy inception provide blanket A.I. coverage to the G.C. Have these insurers really performed an underwriting investigation sufficient to determine what they are taking on through such a blanket endorsement?

### **3. Primary Language**

- Many subcontracts require that the subcontractor's policy provide that it is primary to the General Contractors' own policy. If the coverage is modified in compliance with the subcontract, the buck has been passed off to others. Frequently, this does not happen, probably because the specific requirements are not conveyed by the subcontractor to its broker, or from the broker to the insurer. Some General Contractors are careful enough to check and require that the proper form of 2010 endorsement be manuscripted to provide that the additional insurance is primary to the General Contractors' own coverage.
- Without "primary" language, arguably, coverage is governed by the "Other Insurance" clause of the policies. "Other insurance" clauses generally provide, absent other endorsements, that all of the insurance at the same level (e.g., all primary insurance for the General Contractors and all Additional Insureds) contributes according to equal shares.
- General Contractors can protect their own policy limits by endorsements to their policies providing that the Additional Insured coverage is primary.
- The subcontractor's insurer would be well advised to obtain Declarations pages, at a minimum, from the General Contractors policies in order to determine whether the General Contractors policy is also obligated to contribute to the defense, or whether it is all up to the Additional Insureds.
- Some General Contractors are choosing to either go without Commercial General Liability coverage, or to have a substantial Self-Insured Retention (Deductible). The terms of that Self-Insured Retention may be important to the additional insurer because, depending on the language, payments by the additional insurer on behalf of the General Contractors may or may not satisfy the Self-Insured Retention (Deductible).