

Understanding Your Completed Operations Coverage and Obligations (Part II)

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Construction contracts often require subcontractors to provide insurance coverage for claims resulting from their completed work for a finite period of time, typically in the one- to five-year range. For example, the ASA-endorsed ConsensusDOCS 750 *Standard Form of Agreement Between Contractor and Subcontractor* (2007 ed.) provides that “[t]he Subcontractor shall continue to carry Completed Operations Liability Insurance for at least one year after either ninety (90) Days following Substantial Completion of the Work or final payment to the Contractor, whichever is earlier” (§9.2.6). Analogously, the American Institute of Architects A401-2007 *Standard Form of Agreement Between Contractor and Subcontractor* requires that all insurance coverages “shall be maintained ... after final payment to the Subcontractor, and, with respect to the Subcontractor’s completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract” (§13.2).

On its face, satisfying this requirement is easy — the contractor simply needs to maintain an occurrence-based commercial general liability policy, which is part of basic CGL coverage. Ensuring that the policy provides the required coverage given any limitations, endorsements and exclusions can be one complicating factor. To complicate matters further, the typical

construction contract requires more of the subcontractor than merely providing such completed-operations coverage for itself. The typical contract also requires the subcontractor to name the owner, the architect, the general contractor and other third parties as “additional insured” parties entitled to coverage under the insured subcontractor’s CGL policy. Often, such contracts expressly require coverage for additional insureds to include “completed operations.” For example, when the option for “additional insured” coverage is selected in the ConsensusDOCS 750, the prime contractor “shall be named as an additional insured on Subcontractor’s Commercial General Liability Insurance . . . for operations and completed operations” (emphasis



added, ¶ 9.2.11.1.1). The AIA A401-2007 provides (§13.4) that the subcontractor's CGL insurance shall include the contractor, owner, architect and architect's consultants as "additional insureds" for claims arising during the subcontractor's "operations" and the contractor as an "additional insured" for claims occurring during the subcontractor's "completed operations."

The additional insured requirement presents several complications for subcontractors. First, the basic CGL policy form doesn't automatically extend coverage to additional insureds. Furthermore, when these other insureds are added, the policy may not provide coverage for claims made against them for the subcontractor's *completed* operations. In order to meet its contractual obligations, an insured subcontractor must not only procure the additional insured endorsement, but also verify that the endorsement provides the requisite completed-operations coverage.

Naming "additional insureds" requires a separate endorsement to the subcontractor's basic CGL coverage, which can either specifically name the parties that are

additional insureds or designate a general category of persons entitled to such coverage under a "blanket endorsement." The terms of the endorsement will control the nature and extent of such "additional insured" coverage, including whether and to what extent and duration completed-operations coverage is included. Some additional insured endorsements specifically omit coverage for completed operations; others don't. One size does not fit all:

- The original, basic "additional insured" endorsement form in the CG 20 10 family, the **CG 20 10 11 85** issued by the Insurance Services Office in November 1985, is worded broadly enough to extend coverage *for both ongoing and completed operations* in covering liability "arising out of" the insured's work.
- The current form used by many insurers, the **CG 20 10 07 04** form issued by ISO in 2004, provides additional insured status *only for the ongoing operations* of the named insured subcontractor. To use the present-day ISO forms for additional insured coverage as described in the ConsensusDOCS 750 or the AIA A401-2007, a subcontractor would also have to procure a separate endorsement, the **CG 20 37 07 04**, which provides coverage for "*products-completed operations hazard*."
- Many insurance carriers now issue endorsements in their own **proprietary or "manuscript" forms** that extend additional insured coverage *for both ongoing and completed operations*.

Your Risk Management Plan

For subcontractors, procuring the completed-operations coverage expressly required under their contracts, including the required coverage for additional insureds, is critical to avoiding breach-of-contract claims. Equally critical is maintaining such completed-operations coverage after project completion by continued and continuous procurement of CGL policies throughout the period of later exposure. The coverage for completed operations is insurance to protect the subcontractors from later exposure to third-party claims for bodily injury or



property damage resulting from their defective work. As long as subcontractors are legally or contractually exposed to such claims, they should maintain this insurance coverage to shift most if not all of the liability to the CGL carriers.

At the same time, satisfying contractual requirements for completed operations coverage is not the end-all, be-all of risk management for completed-operations hazards. For one thing, subcontractors should be clear that this type of insurance, which primarily addresses liability exposure from claims of injury or damage to the property of *others*, will cover injury or damage to the *subcontractors'* completed work only in very limited circumstances. Further, such insurance will not generally cover ongoing warranty or other contractual obligations to "correct" nonconforming work on completed projects during the specified period of time. That is the subcontractors' own business and contractual risk, not their CGL carriers'.

It's wiser to look at decisions regarding completed-operations coverage, whether it's choosing insurance limits or selecting CGL policy endorsements, as part of an overall risk management plan. For example, even when there is no contractual requirement to do so, procuring completed-operations coverage as a named insured throughout the statute of limitations or, even better, the statute of repose, might reduce the likelihood or impact of an otherwise catastrophic claim. By contrast, providing "additional insured" coverage for the owner, contractor or other parties benefits those parties, not the subcontractor. [Editor's note:

Furthermore, an "additional insured" requirement can cause an unnecessary *detriment* to a subcontractor when its carrier counts a claim against an additional insured party as a loss on the subcontractor's claim history.] Subcontractors should seek to limit their contractual obligations to procure such additional insured coverage.

Conclusion

Don't wait until a completed-operations hazard claim occurs to "patch" gaps in coverage. By then, the die is cast regarding the underlying contract terms and the GCL policy coverages procured during and after the project. Subcontractors must protect themselves before any such situation arises by reviewing the terms of their contracts and checking their CGL policies and endorsements for conformity with the contract, adequate coverage limits, and acceptable coverage for completed operations. Such precautions taken early on will aid subcontractors in successfully navigating this complex insurance issue.

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