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Determining the Scope of "Additional Insured" Coverage

Recent ISO CGL Insurance Form Revisions Merit Close Attention By Contracting Parties

By Roberta D. Anderson

It is common among parties to sophisticated construction projects, service agreements, leases, and many other types of projects and transactions, to assess the risks associated with their contractual activities and allocate those risks through a combination of contractual indemnification provisions and insurance requirements. In the construction setting, for example, project owners, general contractors and developers (so-called "upstream" parties) typically require their subcontractors and sub-subcontractors ("downstream" parties) to indemnify them for claims arising from the contract work. In addition to the contractual indemnification provisions, upstream parties frequently require that they be provided with "additional insured" status on the downstream indemnitor's/named insured's general liability insurance policy. This provides a number of benefits to the upstream indemnitee. It effectively gives the additional insured/indemnitee direct coverage rights under the indemnitor's insurance policy, preserves the indemnitee's own liability coverage and may protect the indemnitee in the event the contractual indemnification provision in the parties' contract is determined to be void and unenforceable.

Additional insured status may be achieved in several ways. Commonly, it is established through an omnibus definition of "Insured," which may include, for example, the named insured and entities for whom the named insured is obligated by "insured contract" to provide insurance. Alternatively, additional insured status is often achieved through the purchase of "blanket" or "scheduled" additional insured endorsements. The additional insured status under a liability policy is an important bargained-for asset in many types of transactions.

Of course, the extent of the benefit of additional insured status hinges on the actual terms of the insurance policy and applicable law. With respect to policy terms, the Insurance Services Office (ISO)[i] commercial general liability (CGL) coverage forms provide the basis for many general liability policies. Accordingly, familiarity with the ISO forms is important. With respect to applicable law, the indemnity and insurance scheme has precipitated frequently conflicting judicial decisions on numerous and complex issues. A number of these decisions, based upon the fact that the underlying agreement and the insurance policy are in fact separate contracts, have held that the scope and validity of the contractual indemnification provisions have no impact upon the scope and validity of the additional insured coverage—with the effect that additional insureds sometimes enjoy broader protection under the insurance policy than under the contractual indemnification provisions. By way of example, although anti-indemnification statutes in many states prohibit the transfer of an indemnitee's sole (and/or concurrent) negligence through contractual indemnity provisions, some courts have construed the terms of the insurance policy as encompassing and covering the additional insured's negligence even where the underlying contractual indemnification provision was void and unenforceable. In addition, some courts have held that, while the underlying contract may expressly limit the named insured's indemnification and insurance obligations to the additional insured, the

scope of additional insured coverage is not so limited, but rather is governed solely by the terms of the insurance policy.

Presumably in response to developing law impacting the scope of additional insured coverage, ISO has recently revised its standard CGL forms and endorsements, including twenty four of its thirty one standard additional insured endorsements. Although the true scope of their effect will remain unclear until clarified by ISO or by judicial decision, the new endorsements clearly have the potential to further complicate an already complex area of law and may potentially negatively impact both additional and named insureds. The new endorsements and developing law warrant the attention of named insureds, additional insureds, indemnitors, and indemnitees alike.

ISO CGL Insurance Form Revisions

ISO's new standard CGL policy forms, including both its "occurrence"-based form (CG 00 01 04 13) and claims-made form (CG 00 02 04 13), came into effect on April 1, 2013. In addition to the revised main forms, ISO has issued new and revised additional insured endorsements as part of its overall revisions to the standard CGL policy. ISO also has introduced a revised optional endorsement changing the definition of "insured contract." The basic ISO forms are used by a majority of insurers and it is likely that these new forms will come into use in the near future. At a minimum, the language in these new forms underscores that contracting parties are well advised to pay attention to, among other things, potentially applicable law, the terms of the underlying contract and the specific insurance policy terms so that they can most appropriately structure risk transfer provisions.

A. Additional Insured Endorsements

The revised ISO endorsements contain three significant modifications of particular concern to contracting parties. These are discussed in points 1, 2 and 3 below. Importantly, these revisions impact twenty four additional insured endorsement forms that cover a broad range of transactions[ii] and generally attempt to tie, and thereby limit, the scope of additional insured coverage to the underlying contract provisions. In addition, ISO has issued a new "blanket" additional insured endorsement and a new "other insurance" endorsement. These new endorsements are discussed in points 4 and 5 below.

1. Coverage Is Provided "To The Extent Permitted By Law."

The revised additional insured endorsements now state that the insurance afforded to the additional insured "only applies to the extent permitted by law." For example, the new "*Additional Insured—Owners, Lessees Or Contractors—Scheduled Person Or Organization*" (CG 20 10 04 13) endorsement states:

> **A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
>
> **1.** Your acts or omissions; or
>
> **2.** The acts or omissions of those acting on your behalf;
>
> in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.
>
> However:

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1. ***The insurance afforded to such additional insured only applies to the extent permitted by law[.]***

   (emphasis added)

Although it is not entirely clear what the italicized language is intended to accomplish, it clearly is attempting to address state anti-indemnification laws in some manner. By way of background, at least forty five states have enacted anti-indemnification statutes that restrict, modify, or invalidate indemnification agreements in construction and certain other contracts. These statutes (and/or common law) frequently prohibit the transfer of an indemnitee's sole and/or concurrent negligence through indemnification provisions. Even where the anti-indemnification statute would render a contractual indemnification provision unenforceable, however, a number of courts have upheld additional insured coverage—even with respect to the additional insured's *sole* negligence.[iii]

Against this backdrop, as part of its July 2004 revisions to the additional insured endorsements, ISO added the "in whole or in part" verbiage reflected at the end of the first Paragraph A of the above-quoted language (these words replaced the phrase "arising out of").[iv] The "in part" portion of the phrase, which is left undisturbed in the 2013 revision, means that the additional insured has coverage for its own liability provided that the acts or omissions of the named insured (or those acting on its behalf, such as subcontractors) played at least some *part* in causing the injury or damage at issue. Therefore, an indemnitee could maintain additional insured coverage for its own negligence even though the state anti-indemnification law might prohibit the transfer of *any* of the indemnitee's negligence through contractual indemnification.

Through the 2013 language, ISO could be attempting to address circumstances in which the 2004 language provides broader coverage than is allowed under the anti-indemnification laws of certain states, such that, for example, if a state anti-indemnification statute prohibits the transfer of *any* liability, the additional insured coverage would be limited to vicarious liability arising out of the named insured's acts or omissions.[v] Alternatively, a better reading appears to be that ISO is attempting to harmonize, without the need for state-specific endorsements, the scope of coverage where the state anti-indemnification law at issue extends to additional insured coverage. In this regard, some states have expanded their anti-indemnification statutes to void contract provisions that seek to transfer risk via additional insured coverage.[vi] Additionally, the italicized language could be intended as a "savings clause" to preserve additional insured coverage in circumstances in which the contractual indemnification provision is determined to be void and unenforceable under the state anti-indemnification statute. This may be in response to the fact that some courts have voided contractual additional insured provisions where, for example, such provisions were "inextricably tied" to the indemnification provisions.[vii]

There are likely to be disputes over the meaning of this wording and, when judicially tested, this language could have broad and negative implications for additional insureds. There also could be negative repercussions for indemnitors who may face breach of contract claims from indemnitees who thought they had bargained for and obtained broader additional insured coverage. The reach and impact of this additional language will remain unknown until it is clarified by ISO or through judicial decisions.[viii]

In the meantime, the language clearly carries the potential to reduce additional insured coverage, leaving indemnities without the expected coverage and indemnitors exposed to breach of contract litigation.

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2. Coverage "Will Not Be Broader Than" The Contract Requires.

The additional endorsements now state that if the coverage is required by a contract or agreement, the insurance afforded to the additional insured "will not be broader than" the coverage that the insured is "required by the contract or agreement to provide." For example, the new "*Additional Insured—Owners, Lessees Or Contractors—Completed Operations*" (CG 20 37 04 13) endorsement states:

> **A.** **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".
>
> However:
>
> ****
>
> *2.* ***If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured***.
>
> (emphasis added)

ISO has not provided guidance regarding the intent of this new language. However, it seems likely that the new language is intended to incorporate into the insurance policy any express limits on additional insured coverage that the parties have specified in the contract, *e.g.,* where the contract specifies that additional insured coverage will only extend to vicarious liability.

Whatever its intent, reference to the terms of the underlying contract documents to determine the scope of coverage afforded to additional insureds may well create areas of significant disagreement.

Again, the additional language underscores the need to carefully review the terms of the underlying contract and the specific insurance policy language to be used to satisfy additional insured requirements. To the extent the 2013 endorsement is used, contracting parties should ensure that the underlying contract language clearly reflects the parties' intent regarding the scope of additional insured coverage.

3. Limits Are The Lesser Of The Contract Requirement Or The Policy Declarations.

The additional insured endorsements now state that the most the insurer will pay on behalf of the additional insured is either: (1) the amount "[r]equired by the contract or agreement"; or (2) the applicable Limits of Insurance shown in the Declarations, whichever is less. For example, the new "*Additional Insured—Designated Person Or Organization*" form (CG 20 26 04 13) states:

> **B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**
>
> If coverage provided to the additional insured is required by a contract or agreement, ***the most we will pay on behalf of the additional insured is the amount of insurance:***
>
> ***1. Required by the contract or agreement; or***
>
> ***2. Available under the applicable Limits of Insurance shown in the Declarations*;**
>
> ***whichever is less*.**

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> This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations
>
> (emphasis added)

It seems clear that the intent of the italicized language is to limit the insurer's exposure to the lesser of the policy limits or the amount agreed to by the contracting parties. And at first glance this might seem reasonable. This may come as an unpleasant surprise to contracting parties, however, because additional insureds often have access to the policy's full limits of liability—sometimes in cases in which the underlying contract or agreement requires that the named insured provide an amount less than the policy's limits. Unanticipated changes may leave both parties exposed. To the extent an additional insured has insufficient insurance to cover a loss, it may look to the named insured for indemnification for any amounts in excess of the insurance limits. Again, the new language reflects an attempt to link the scope of additional insured coverage to the underlying contract and further underscores the need for contracting parties to pay careful attention to contact language concerning the limits of insurance as well as the insurance policy documentation.

4. New Blanket Additional Insured Endorsement.

ISO has introduced a new blanket endorsement, entitled Additional Insured—Owners, Lessees Or Contractors—Automatic Status For Other Parties When Required In Written Construction Agreement (CG 20 38 04 13). This endorsement, which contains the same potentially problematic language discussed in points 1, 2 and 3 above, provides blanket additional insured status to all parties whom the named insured is "required to add as an additional insured under the contract or agreement":

> **A.** **Section II – Who Is An Insured** is amended to include as an additional insured:
>
> **1.** Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
>
> ***2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above*.**
>
> Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
>
> **a.** Your acts or omissions; or
>
> **b.** The acts or omissions of those acting on your behalf;
>
> in the performance of your ongoing operations for the additional insured.
>
> (emphasis added)

The endorsement extends additional insured status to an upstream party that is not a party to the underlying contract, where required, without the need for a specific listing. This has been termed a "broadening of coverage" by ISO,[ix] and may be a useful addition, since additional insured status is often required between entities who do not share a direct contractual relationship. In the construction context, for example, subcontractors often agree to provide additional insured status to upstream parties with whom the subcontractor may not share a direct contractual relationship. The prior blanket endorsement, CG 20 33 07 04, contains only the language in subparagraph A.1. of the above-quoted new endorsement.[x] The new endorsement should clarify that those upstream parties are covered

where the named insured is obligated in writing in a contract or agreement to name them as additional insureds—even though they are not in contractual privity with the named insured.

5. New Other Insurance Condition Endorsement.

ISO also has introduced another new optional endorsement, entitled *Primary And Noncontributory—Other Insurance Condition* (CG 20 01 04 13), which revises the "Other Insured Condition" to specifically state that the coverage made available to an additional insured is provided on a primary and noncontributory basis where the named insured has agreed to such in writing in the underlying contract documents:

> The following is added to the **Other Insurance Condition** and supersedes any provision to the contrary:
>
> **Primary And Noncontributory Insurance**
>
> This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:
>
> **(1)** The additional insured is a Named Insured under such other insurance; and
>
> **(2)** You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.
>
> (emphasis added)

This endorsement presumably has been introduced in response to typical contractual wording requiring coverage to be extended to the additional insured on a "primary and noncontributory" basis. The language is a useful addition, since it may clarify the parties' intent. One of the reasons that indemnitees bargain for additional insured status is to preserve their own insurance and this objective may be frustrated when the named insured's carrier turns to the additional insured's carrier for contribution pursuant to the "other insurance" clauses.[xi]

B. *"Insured Contract" Definition Endorsement.*

As part of its 2013 revisions, ISO has amended its *Amendment Of Insured Contract Definition* (CG 24 26 04 13). The endorsement changes the definition of the "insured contract," part f., to state that an indemnification provision in an underlying contract "shall only be considered an 'insured contract' to the extent [the named insured's] assumption of the tort liability is permitted by law." By way of background, although the main CGL coverage form excludes "'Bodily injury' or 'property damage' for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement," the form creates an exception for, among other things, liability for damages "[a]ssumed in a contract or agreement that is an 'insured contract' …." (CG 00 01 04 13, Section I.2.b.(2).) The key to the breadth of the exception lies with the definition of "insured contract," which includes "[t]hat part of any other contract or agreement pertaining to [the insured's] business … under which [the insured] assume[s] the tort liability of another party to pay for 'bodily injury' or 'property damage' to a third person or organization…." (Section V.9.f.) The insured/indemnitor thus maintains coverage for liability it assumes to its indemnitee in a hold harmless or indemnity agreement. Indeed, the named insured's assumption of liability for the sole negligence of the indemnitee may be covered under the unendorsed "insured contract" definition, making the coverage potentially broader than coverage granted by many additional insured endorsements.

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As part of its 2004 revisions to the CGL policies, ISO added the *Amendment of Insured Contract Definition* (CG 24 26 07 04) endorsement to limit the definition of "insured contract" to those circumstances in which the liability assumed by the insured is caused "in whole or in part" by such insured. As noted, however, certain states do not allow a downstream party to indemnify an upstream party for *any* part of the upstream party's negligence. Now, as part of the 2013 revisions, ISO has modified the *Amendment of Insured Contract Definition* (CG 24 26 04 13) endorsement to add the qualification that "such part of a contract or agreement shall only be considered an 'insured contract' to the extent your assumption of tort liability is permitted by law":

> The definition of "insured contract" in the **Definitions** section is replaced by the following:
>
> "Insured contract" means:
>
> ****
>
> f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. ***However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law***. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
>
> (emphasis added)

When this endorsement is attached to a policy, the named insured presumably would not be provided coverage for the tort liability such named insured assumes of another party to the extent that the assumption of such liability is prohibited by applicable law. The new ISO language thus has the potential of further restricting coverage in states in which an indemnitor cannot indemnify the indemnitee for any part of the indemnitee's own negligence.

Conclusion

The important takeaway to contracting parties is to pay close attention to potentially applicable law, including potentially applicable anti-indemnification statutes, and the underlying contract provisions setting forth the scope of contractual indemnification and additional insured requirements. In addition, contracting parties are well advised to review the specific terms of the insurance policy under which additional insured protection is to be afforded, including all endorsements, to confirm the coverage terms and to understand the interplay between the underlying contract provisions and the additional insured coverage. Importantly, there are many different additional insured forms and there can be significant discrepancy in the breadth of coverage provided to additional insureds under the wordings of the various forms. By paying close attention to potentially applicable law, in addition to the specific contract and insurance policy terms, contracting parties may avoid potentially negative surprises, such as unexpected gaps or potential loss of insurance coverage.

For contracting parties to accurately evaluate risk transfer, they must be aware of evolving case law and the specific insurance terms and conditions—in addition to the terms and conditions of the underlying agreement. In light of ISO's recent issuance of new policy forms and endorsements that contain modifications to policy provisions addressing the scope of additional insured coverage, this

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may be a precipitous time for contracting parties to assess contractual requirements and additional insured provisions to ensure that the terms and coverage are aligned with the parties' intentions.

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[i] ISO is an insurance industry organization whose role is to develop standard insurance policy forms and to have those forms approved by state insurance commissioners.

[ii] The revised ISO additional insured forms include: *Additional Insured—Concessionaires Trading Under Your Name* (CG 20 03 04 13), *Additional Insured—Controlling Interest* (CG 20 05 04 13), *Additional Insured—Engineers, Architects Or Surveyors* (CG 20 07 04 13), *Additional Insured—Owners, Lessees Or Contractors—Scheduled Person Or Organization* (CG 20 10 04 13), *Additional Insured—Managers Or Lessors Of Premises* (CG 20 11 04 13), *Additional Insured—State Or Governmental Agency Or Subdivision Or Political Subdivision—Permits Or Authorizations* (CG 20 12 04 13), *Additional Insured—State Or Governmental Agency Or Subdivision Or Political Subdivision—Permits Or Authorizations Relating To Premises* (CG 20 13 04 13), *Additional Insured—Vendors (CG 20 15 04 13), Additional Insured—Mortgagee, Assignee Or Receiver* (CG 20 18 04 13), *Additional Insured—Executors, Administrators, Trustees Or Beneficiaries* (CG 20 23 04 13), *Additional Insured—Owners Or Other Interest From Whom Land Has Been Leased* (CG 20 24 04 13), *Additional Insured—Designated Person Or Organization* (CG 20 26 04 13), *Additional Insured—Co-owner Of Insured Premises* (CG 20 27 04 13), *Additional Insured—Lessor Of Leased Equipment* (CG 20 28 04 13), *Additional Insured—Grantor Of Franchise* (CG 20 29 04 13), *Oil Or Gas Operations—Nonoperating, Working Interests* (CG 20 30 04 13), *Additional Insured—Engineers, Architects Or Surveyors* (CG 20 31 04 13), *Additional Insured—Engineers, Architects Or Surveyors Not Engaged By The Named Insured* (CG 20 32 04 13), *Additional Insured—Owners, Lessees Or Contractors—Automatic Status When Required In Construction Agreement With You* (CG 20 33 04 13), *Additional Insured—Lessor Of Leased Equipment—Automatic Status When Required In Lease Agreement With You* (CG 20 34 04 13), *Additional Insured—Grantor Of Licenses—Automatic Status When Required By Licensor* (CG 20 35 04 13), *Additional Insured—Grantor Of Licenses* (CG 20 36 04 13), *Additional Insured—Owners, Lessees Or Contractors—Completed Operations* (CG 20 37 04 13), and *Additional Insured—State Or*

Governmental Agency Or Subdivision Or Political Subdivision—Permits Or Authorizations (CG 29 35 04 13).

iii *See*, *e.g.*, *Marathon Ashland Pipe Line LLC v. Maryland Cas. Co.*, 243 F.3d 1232, 1240 (10th Cir. 2001) (Wyoming law) ("we conclude this policy language does not limit coverage to the additional insured's vicarious liability"); *McIntosh v. Scottsdale Ins. Co.*, 992 F.2d 251, 254 (10th Cir. 1993) (Kansas law) ("we believe that the Kansas courts, like courts in other jurisdictions that liberally construe ambiguous insurance policy provisions in favor of the the insured, would conclude that the additional insured endorsement does not limit the policy's coverage to cases where [the additional insured] is held vicariously liable for [the named insureds]' negligence").

iv *Compare Additional Insured—Owners, Lessees Or Contractors—Scheduled Person Or Organization* (CG 20 10 07 04) ("Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for 'bodily injury', 'property damage' or 'personal and advertising injury' ***caused, in whole or in part, by… Your acts or omissions***…") (emphasis added) *with Additional Insured—Owners, Lessees Or Contractors—Scheduled Person Or Organization* (CG 20 10 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.") (emphasis added).

v It should be noted that many of the states tthat have adopted some type of anti-indemnification statute also have adopted insurance savings provisions, which typically state that the statute does not affect the validity of an insurance contract. These savings provisions have been upheld. *See, e.g.*, *Chrysler Corp. v. Merrell & Garaguso, Inc.*, 796 A.2d 648, 653 (Del. 2002) (upholding the savings provision and noting that "if in fact an insurer issues an endorsement to cover the actions of a third party and charges a premium for that coverage, it should not be permitted to create an illusion that insurance exists").

vi *See* Joanne Wojcik, *States curb ability to shift contractor risk; Anti-indemnity changes cut additional insureds from some* CGL policies, Business Insurance, Vol. 46, No. 18 (Apr. 30, 2012) (noting that "at least three states—California, Louisiana and Texas—recently enacted legislation expanding their anti-indemnity statute to restrict risk transfer via additional insured coverage"); Paul Primavera, *Evolving AI Endorsement Interpretations Create More Headaches For Contractors*, Nat'l Underwriter - Prop. & Cas. Ins., 2009 WLNR 3489852 (Feb. 23, 2009) (noting that "courts in several jurisdictions —such as Colorado, Oregon, New Mexico and Montana—have linked anti-indemnity statutes to also apply to potentially broadly worded additional insured endorsements").

vii *Compare Federated Serv. Ins. Co. v. Alliance Const., LLC*, 805 N.W.2d 468, 477 (Neb. 2011) ("[E]ven if an indemnity agreement is invalid, its invalidity does not affect the coverage extended to another party under an additional insured endorsement.") *with Transcontinental Ins. Co. v. National Union Fire Ins. Co. of Pittsburgh*, 662 N.E.2d 500, 506 (Ill. App. Ct. 1996) ("the portion of the contract in which [the named insured] agreed to purchase insurance to insure its obligations under section 18 is also void because…it is inextricably tied to the void indemnity provision") *and W.E. O'Neil Const. Co. v. General Cas. Co. of Illinois*, 748 N.E.2d 667, 672-73 (Ill. App. Ct. 2001) (noting that "[c]ases have upheld the validity of provisions requiring the party named as indemnitee to be named as an additional insured on the indemnitor's insurance policy where the insurance provision is not inextricably tied to a void indemnity agreement").

However, a number of courts have determined that "to the extent permitted by law"-type verbiage suffices to preserve the contract requirements to the extent they do not offend a state's anti-indemnification statute. *See*, *e.g.*, *Thrash Commercial Contractors, Inc. v. Terracon Consultants, Inc.*, 889 F.Supp.2d 868, 881 (S.D.Miss. 2012) (Mississippi law) ("[T]he limitation of liability provision in the parties' agreement herein recites that the limitation of liability is intended by the parties to operate 'to the fullest extent permitted by law.' Numerous courts have found that such language permits enforcement of a limitation of liability to the extent it does not offend a state's anti-indemnification statute.") (collecting cases).

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[viii] To the extent the new language is ambiguous and/or contrary to the contracting parties' reasonable expectations, the language would be construed in favor of coverage under well-established rules of insurance policy interpretation. *See generally* 2 Couch on Insurance 3d § 22:31 ("provisos, exceptions, or exemptions, and words of limitation in the nature of an exception ... are strictly construed against the insurer where they are of uncertain import or reasonably susceptible of a double construction, or negate coverage provided elsewhere in the policy"); *id.* § 22:14 ("If an insurer uses language that is uncertain, any reasonable doubt will be resolved against it[.]"); *id.* § 22:11 ("the objectively reasonable expectations of [the insured] regarding the terms of insurance contracts will be honored even though a painstaking study of the insurance provisions would have negated those expectations").

At least one court has observed that "an endorsement that provides coverage only for the additional insured's vicarious liability may be illusory and provide no coverage at all." *Marathon Ashland*, 243 F.3d at 1240 n.5 (quoting Douglas R. Richmond & Darren S. Black, *Expanding Liability Coverage: Insured Contracts and Additional Insureds*, 44 DRAKE L. REV. 781, 806 (1996)).

[ix] *See 2012 General Liability Multistate Forms Revision To Policyholders* (CG P 015 04 13).

[x] Some decisions without the new language have held in favour of additional insured coverage in the absence of contractual privity. *See*, *e.g.*, *Pro Con, Inc. v. Interstate Fire & Cas. Co.*, 794 F.Supp.2d 242, 251-252 (D.Me. 2011) (Maine law) (finding that the language in subparagraph A.1 does "not plainly restrict additional insured status only to those entities that have contracted directly with the named insured").

[xi] In a similar vein, the CGL "Other Insurance" provision, at Condition 4, has been revised to state that the insurance provided "is excess over [a]ny other primary insurance available to [the named insured] covering liability for damages … for which [the named insured] ha[s] been added as an additional insured"— whether by endorsement or any other means. (CG 00 01 12 04, Section IV.4.b.(1)(b).) The prior version stated that coverage is excess over any primary insurance for which the named insured had been added as an additional insured "by attachment of an endorsement." (CG 00 01 12 04, Section IV.4.b.(2).) This deletion of this phrase is generally helpful because some insurers provide additional insured status directly in their coverage form and not by endorsement.