

Additional Insured Endorsements and Indemnification Requirements:

A new Additional Insured Endorsement you should be aware of

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There are two ways for an Upstream Party to obtain coverage under a Downstream Party's General Liability program. The Downstream Party can be required to indemnify the Upstream party or add them as an Additional Insured to their General Liability program. Almost always, the Downstream Party is required to do both.

An indemnity agreement is a contractual provision that requires one party (the Indemnitor) to indemnify another party (Indemnitee). This is a legal obligation to make the other party whole for certain things encompassed within the indemnity agreement. Note that every state has their own indemnity laws.

An Additional Insured endorsement amends a party's General Liability coverage to extend coverage to an Additional Insured (AI). The AI may be specifically named, or coverage may be extended under a Blanket Endorsement. The Insurance Services Office (ISO) publishes policy forms that many insurance companies use. It is important to note that insurance companies are not required to use ISO forms and many do not. Regardless, the majority of companies do use the ISO forms and if they don't, they usually build off these forms.*

Historically, in California it has been illegal to transfer the sole negligence of one party to another via an indemnity agreement. This, however, was not always the case with an "Additional Insured" endorsement. If you review the CG 2010 1185 Additional Insured endorsement** you will note that the only requirement for the Upstream Party to have insured status was that the incident arise out of the work of the Named Insured (Downstream Party). The Named Insured didn't have to be at fault which implies that the Additional Insured could be 100% at fault and still have Insured Status so long as the incident arose out of the Named Insured's work.

CG 2010 1185

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.

The insurance industry never intended to provide coverage this broad, and although it took a while, in 2004 they changed the CG 2010. The CG 2010 0704*** provides Additional Insured status only if the damages are "caused in whole or in part by" the Named Insured's acts or omissions or the acts or omissions of those acting on behalf of the Named Insured. In order to trigger Additional Insured status under this endorsement, the Named Insured had to have some responsibility, however in an extreme example, the Named Insured could be 1% at fault and be on the hook for 100% of the damages.

Additional Insured Endorsements *(continued on page 2)*



CG2010 0704

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.

Unfortunately this still provided broader coverage in some circumstances than the industry had wanted to provide and it also provided broader coverage than was allowed by law under the indemnity statutes of certain states, California included. To remedy this situation, a new CG 2010 endorsement is being proposed (2010 0413). The new endorsement includes the “caused by” wording but is further qualified to dovetail coverage with applicable indemnity laws. The complete text of the endorsement is shown below, the underlines are mine:

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.

Additional Insured Endorsement (continued on page 3)

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Additional Insured Endorsement *(continued from page 2)*

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
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.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to “bodily injury” or “property damage” occurring after:

1. *All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or*
2. *That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.*

C. With respect to the insurance afforded to these additional insured’s, 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.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Clearly the insurance industry is trying to dovetail the coverage provided by the Additional Insured Endorsement with state indemnity laws. If successful, this endorsement will substantially reduce potential coverage for an Additional Insured. The matter is complicated by the fact that indemnity laws in most states are anything but clear, and it remains to be seen how the new endorsement will be interpreted. Regardless you can bet that Upstream Parties will contractually require the older forms and in some cases refuse to accept the 0413 form.

If you are an Upstream Party, you will want to obtain the broadest coverage you can. Recognize, however, that most of your key subcontractors or suppliers will not be able to provide the CG 2010 1185 form and many may not be able to provide the CG 2010 0704 form. This will become a business decision you will have to make.

If you are a Downstream Party, you need to understand the coverage you have and which endorsement you can agree to and then negotiate your contracts accordingly. ❖

**It is imperative you understand the scope of Additional Insured Coverage you can offer under your insurance program whether your insurer offers an ISO form or a manuscripted (custom) form.*

***ISO Codes their forms as follows: CG = Commercial General; 2010 = Form Number; 1185 = date, this means published November, 1985.*

****The CG 2010 0704 addition only pertains to ongoing operations. ISO introduced a similar endorsement, the CG 2037, which provides additional insured status for completed operations.*

Disclaimer: This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.



live well, work well

Reducing Vacation Stress

Whether it's to escape the cold, take the kids on spring break or visit family and friends, there's no doubt that March is a popular time of the year to travel.

As relaxing as it can be to spend some time away from your normal routine, taking a vacation can be stressful, too. Eliminate some traveling stress this year by following these tips:

- Take advantage of technology - Making use of the online airport check-in option means one less line to wait in once you get there, as do the self-service boarding pass kiosks. If you're driving, use your GPS to save time, rather than relying entirely on maps.
- Give yourself extra time - If it normally takes 35 minutes to get to the airport, make sure you add in enough extra travel time for things like getting stuck in a traffic jam, having your suitcase searched by security and grabbing a bite to eat before your flight. You'll be much more stressed if you miss your flight than if you have extra time waiting at the gate. For road trips, factor in time for bathroom breaks,

getting gas, weather delays, meals and bad traffic.

- Rent a car - If you plan to do a lot of driving at your destination, or if you want to avoid putting all of your road trip miles onto your own vehicle, renting a car may be a good idea. You'll be able to go where you want, when you want. In addition, if you reserve a vehicle ahead of time, you may even get a discounted rate.



Schedule some down time - It can be easy to get carried away with excursions and activities, so make sure you actually spend some vacation time relaxing.

- Use sunscreen - Nothing ruins a week on the beach like a scorching sunburn the first day. To make sure you're protected, use broad-spectrum sunscreen that protects against both UVA and UVB rays. Also, be sure to use sunscreen that is at least SPF 30 and water resistant.

National Poison Prevention Month

Thousands of people die each year due to unintentional poisoning, not only from drugs such as prescription painkillers, cocaine and heroin, but also from ingestion of standard household products. Shockingly, accidental poisoning cases that result in death most frequently occur in individuals aged 45 to 49, and least frequently in children under 15.

This month, practice poison prevention by reading the labels of all medications (including for seemingly harmless products like acetaminophen and ibuprofen) before using or giving to someone else, and by keeping all cleaning solutions and personal care products out of reach of children. In addition, if you accidentally ingest a medication or product, contact Poison Control immediately.

DID YOU KNOW

Every day, 87 people in the United States die as a result of unintentional poisoning, and another 2,277 end up in the emergency room.



live well, work well

Live Well, Work Well (continued from page 4)

Avoiding Common Workout Injuries

Diving headfirst into an intense exercise routine can be dangerous. Take care to ensure you're putting safety first in every workout. Here are some common exercise-induced injuries and ways to avoid them:

- Knee pain - This can be caused by not warming up first when running on a treadmill. Generally the pain comes from the hips and can be avoided by doing some simple warm-up exercises, such as a plank, or keeping your back and waist straight and bending forward at the hip. Knee pain can also result from bike seats being too far forward, which is common in spinning classes.
- Shin splints - Stretching or walking to warm up before running will help you avoid the ache of shin splints. Shin splints come from imbalanced calves (i.e., the shin is less developed than the muscle), and should become less frequent with regular exercise.



- Sprains and strains - Rolling an ankle or extending a joint too far can end painfully. Strengthen your joints before starting workouts that require quick movements and great flexibility. Flexing your joints away from you while using exercise bands can really help to strengthen joint muscles.

Ready, Set, Tax Time!

Whether you're hiring an accountant to do your taxes or tackling the task yourself, you need to prepare to ensure that your taxes are calculated correctly. If mis-

takes are made, you will have to file an amendment, which costs money and is time-consuming. Follow these tips to avoid filing incorrectly:

- Keep current and former employers and financial institutions aware of your current address. Anyone you did business with in a given tax year will need to mail tax forms to you.
- Make a list ahead of time of the documents that should be coming in the mail—Forms W-2 and 1098, receipts, etc. If you're especially organized, try making a list throughout the year that you add to when your job changes, you make a charitable donation, etc. When each form arrives, check it off the list and put it in a file specifically designated for tax information.
- If you are doing your taxes by hand, visit the IRS website to determine which form you need to file (1040EZ, 1040A, 1040, etc.). The IRS does not mail these forms, but you can download them for free on the IRS website.
- If you are hiring an accountant to prepare your taxes, explain your tax situation (mention if you're joint filing, if you've recently changed jobs, bought or sold a house, or made a significant charitable donation) and verify what documents you should be providing prior to the first meeting.

Sunshine Salad

Salads are low in calories and high in nutrition. Take a break from those hearty, winter meals and let a little sunshine in with this refreshing salad.

- 5 c. spinach leaves (packed, washed and dried well)
- ½ red onion (sliced thinly)
- ½ red pepper (sliced)
- 1 cucumber (sliced)
- 2 oranges (peeled and chopped into bite-size pieces)
- 1/3 c. low-calorie vinaigrette dressing (15 cal./tbsp. or less)

Toss all ingredients together in a large bowl. Add dressing and toss again. Serve immediately.

Yield: 5 servings. Each serving provides 70 calories, 0g total fat, 0mg cholesterol, 180mg sodium, 3g dietary fiber, 2g protein and 9g sugar.

SPOTLIGHT ON



Cavnagac & Associates is proud to support local and non-profit civic organizations, including the Downtown San Diego Partnership



The Downtown San Diego Partnership is a leading advocate for the economic growth and revitalization of Downtown. The Partnership works closely with regional business organizations and government agencies to identify needs, develop strategies, shape public policy and implement programs that strengthen the business climate and quality of life in Downtown San Diego.

Overview:

The Downtown San Diego Partnership is a privately funded non-profit 501(c) 6 business organization. The Partnership was formed in 1993 by the merger of two Downtown business organizations: San Diego Downtown Association / Central City Association (formed in 1952), and San Diegans, Inc. (formed in 1958). Our membership consists of companies and individuals committed to strengthening the business, residential and cultural environment of Downtown San Diego.

Our Mission:

As the "Voice of Downtown," it is our mission to advance Downtown San Diego as the leading economic, cultural and governmental center of the region through leadership, advocacy and education.

What we do:

- Represent membership before governmental agencies and community organizations
- Serve as Downtown's watchdog
- Support redevelopment that stimulates business and economic growth Downtown
- Advocate for improvements that enhance Downtown's quality of life
- Promote development of public facilities and infrastructure that serve Downtown
- Support Downtown San Diego as the center for the arts and culture for the region
- Coordinate member efforts to improve Downtown social services and outreach programs
- Educate San Diego communities about the importance of a vibrant and healthy Downtown

For more information about the Downtown San Diego Partnership, visit www.downtownsandiego.org