



# nerej

## **The hot potato of indemnification What's being asked of you & why? - by Robert Barresi**

March 03, 2017 - Front Section

Robert Barresi, Starkweather & Shepley

Every contractor has been in that position. You're ready to start a job, everything has been approved, the project manager is scheduled to be on site first thing in the morning, supplies are being delivered...just send over your insurance certificate.

More and more we're finding property owners/managers, general contractors, construction managers, and others requesting not only your insurance certificate but also copies of the endorsements for their review. We all know the magic language: "additional insured including completed operations," "primary and noncontributory basis," "waiver of subrogation." At the end of the day, though, there are many different additional insured endorsements and the one you have, and pay good money for, may not be the best or most appropriate for the work you're doing. Subsequently, it's unacceptable to your end-user.

Ultimately, every person you do work for is looking for the CG2010 Additional Insured endorsement; however, there are many different variations of this endorsement which can differ greatly, affording various types of indemnification to the interested party. The holy grail of additional insured endorsements is the CG2010 11/85 edition. Since many insurance carriers will not offer this endorsement, its "equivalent" is also acceptable. In order to achieve said equivalent, one has to include the CG2037 which reinstates coverage for "completed operations" afforded to the additional insured. The statute of repose in Massachusetts for construction defect claims is 6 years. For that reason, the "completed operations" portion of the additional insured language is paramount.

Many contractors, due to the number of people that require this language on a regular basis, elect to purchase the insurance carrier's "blanket additional insured" endorsement which will automatically provide additional insured status, usually including completed operations and primary/noncontributory language, any time you sign a contract that requires this level of protection & indemnification. However, these blanket additional insured endorsements vary greatly from carrier to carrier.

Firstly, they may only provide completed operations coverage to the additional insured for a finite period of time, in some cases 2 or 3 years. With the statute of repose in Massachusetts being 6 years, this is insufficient and may put you in noncompliance of your contract.

Secondly, the individual carriers' blanket additional insured endorsement may not contain the broadest possible language; namely, covering the additional insured for work "arising out of" your acts or omissions or the acts or omissions of those performing work on your behalf. On occasion, these blanket additional insured endorsements will contain the more restrictive "...caused in whole or in part by..." language, which can be unacceptable to your end-user.

For these reasons, among others, many end-users, general contractors, certificate tracking services,

and risk managers are asking for copies of endorsements to back-up the certificate of insurance provided by your agent. Many agents who do not specialize in servicing the construction industry may overextend themselves by including language on a certificate that does not necessarily match the language of the policy. Furthermore, certificates of insurance are only valid for that moment when they are issued. Coverage can change, policies can be cancelled, and other issues may arise that change the terms & conditions of a policy mid-term. Ultimately, the only way to know for sure if your policy, forms, endorsements, and coverages meet or exceed the requirements of your contractual liabilities is to have them reviewed by a specialist.

A properly structured policy will have both the CG2010 and CG2037 endorsements covering additional insureds for both ongoing and completed operations on a primary and noncontributory basis arising out of your work and those acting on your behalf with waiver of subrogation in favor of the certificate holder.

You pay a lot of money for your insurance, and ultimately some words can cost more than others. Do what you can to minimize your costs, transfer risk, and manage your exposures in a way that affords both your company and those you do business with the proper protection that will allow for seamless completion of your work and long-lasting relationships with those you serve.

Robert Barresi is assistant vice president at Starkweather & Shepley, Providence, R.I.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540