UNDERSTANDING THE ADDITIONAL INSURED ENDORSEMENT

> *The most widely used technique for transferring risk is the indemnity provision—also commonly referred to as a hold harmless provision. From the builder or general contractor's perspective, to be effective an indemnity clause requires two elements. First, it must be backed by the commercial general liability insurance policy (also referred to as a "CGL" policy) of the indemnitor. Second, the CGL policy must have adequate limits. In other words, builders and general contractors want to know that an indemnity clause is backed up by a sufficient amount of insurance. Therefore, whenever a subcontractor or supplier is asked to agree to an indemnity clause, be rest assured that the builder or general contractor will also be requiring insurance from the subcontractor or supplier to back-up such indemnity clause.*
>
> *Aside from backing up indemnity provisions, there are additional types of insurance related contract provisions that builders and contractors use to transfer risk.*
>
> *Insurance requirement provisions contained in a builder customer contract form are one example of another form of risk transfer. Through these provisions, the builder or contractor seeks to impose requirements of insurance on its subcontractors and suppliers in order to keep its own insurance policies from being claimed against. The primary form of risk transfer through insurance requirements is the additional insured endorsement. An additional insured endorsement indirectly transfers risk from the builder transferor to the transferee subcontractor or supplier and directly transfers risk to the subcontractor or supplier transferee's insurance company.*
>
> *Indemnity and additional insured endorsements are two distinct methods of risk transfer, that are also mutually reinforcing. However, they are not mutually exclusive. Builders and contractors commonly require both.*
>
> *The CGL policy is the subcontractor's and supplier's primary source of protection for the loss exposures assumed by the indemnity provision. If the subcontractor or supplier has any questions as to the extent any particular indemnity provision may or may not be covered by the CGL policy, the subcontractor's or supplier's attorney or insurance broker should be consulted.*
>
> *The CGL policy is also the policy that builders and contractors most often request additional insured status. They view this as a reinforcement of the indemnity provision. It is now quite common for builders and general contractors to specify in their customer contract forms that they be named additional insureds under the subcontractor's and supplier's CGL policy.*

The term "additional insured" refers to an entity that has been added to another entity's insurance policy. The additional insured has direct rights on the insurance policy on which it has been added and enjoys the same coverage as the insured. The additional insured, unlike the insured however, has no responsibility to pay premiums or deductibles.

The CGL policy declarations page names the entities and persons covered under the policy. These persons are referred to as named insureds. In addition to named insureds, other persons or entities may be added. These add-ons to the policy are referred to as additional insureds. Using the term "additional" when describing an additional insured may be somewhat misleading.

What does this mean to the builder or general contractor as it relates to the subcontractor's and supplier's CGL policy? As an additional insured, a builder can become insured under such CGL policy. Therefore, if the builder is subjected to claims for bodily injury or property damage by a third party, and the claim relates in some way to the subcontractor's or supplier's scope of work, the builder can look to the subcontractor's or supplier's insurance company to defend and pay damages resulting from such a claim. This works very much like an indemnity provision, but as we will discuss, there are some important differences.

If the subcontractor or supplier is sued for something covered by its CGL policy, the insurance carrier will normally provide a legal defense and pay settlements or judgments as stated under the terms of the policy. This is generally the case regardless of whether or not the subcontractor or supplier was at fault. The same is true when the subcontractor's or

supplier's builder customer is sued; that is, if the builder has been named an additional insured under the subcontractor's or supplier's CGL policy.

Who benefits and who loses in such a situation? The answer is the builder obviously benefits and the loser is the subcontractor or supplier and their CGL insurer. Through the use of additional insured endorsements, the builder is able to effectively transfer its risks to the insurance carriers of their subcontractors and suppliers.

Essentially all insurance requirement provisions contained in builders' customer contract forms require their subcontractors and suppliers to carry a certain amount of liability insurance. To the builders and general contractors, taking the next step by asking manufacturers to also name them as additional insureds seems logical. This way, builders and general contractors obtain a direct contractual right on the part of the manufacturer's insurance carrier to cover certain types of claims. What's more, this contractual relationship doesn't include the responsibility of paying the policy premium or deductible. To add insult to injury, naming the builder or general contractor an additional insured may, in certain situations, require the subcontractor or supplier to pay an additional premium. That possibility should be investigated by the subcontractor or supplier before naming a builder or general contractor customer as an additional insured.