



# It Pays to be Covered: Constructing the Best Insurance for You

April 28, 2016

*Presented by: Katherine J. Henry and Amy E. Garber*

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## Overview

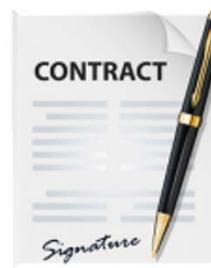


- American Institute of Architects (“AIA”) Form insurance language for construction contracts
- Contractor Commercial General Liability Obligations
- Coverage expansions and restrictions in Additional Insured endorsements
- Align coverage between the contract and the insurance policy



## Construction Contract Forms

- **American Institute of Architects ("AIA")**
- Associated General Contractors of America ("AGC")
- Engineers' Joint Contract Documents Committee ("EJCDC")
- ConsensusDOCS LLC



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## AIA Document A201-2007: General Conditions

- American Institute of Architects
- Standard forms
- Every 10 years
- **Next revision is in 2017**



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## AIA Standard Agreements (A102-2007)

### DRAFT AIA® Document A102™ - 2007

Standard Form of Agreement Between Owner and Contractor  
where the basis of payment is the Cost of the Work Plus a  
Fee with a Guaranteed Maximum Price

AGREEMENT made on the 10 day of July in the year 2008  
(or words, indicate day, month and year)

BETWEEN the Owner:  
(Name, legal status, address and other information)

Mr.  Mrs.  Ms.  Dr.  Other \_\_\_\_\_

and the Contractor:  
(Name, legal status, address and other information)

Mr.  Mrs.  Ms.  Dr.  Other \_\_\_\_\_

and the Project:  
(Name, location and detailed description)

Residential Project  Commercial Project  Other \_\_\_\_\_

The Architect:  
(Name, legal status, address and other information)

Mr.  Mrs.  Ms.  Dr.  Other \_\_\_\_\_

The Owner and Contractor agree as follows:

### ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.  
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of insurance or bond      Limit of liability or bond amount (\$0.00)

Insurance that Contractor, or its subcontractors, or suppliers, may reference, or not see with respect to insurance coverage under this document is not valid.

ADDITIONAL COPIES OF ANY  
portion of this Agreement  
may be obtained  
by contacting the  
Contractor or Owner  
as set forth in the footer  
of this document.

Any changes made to this  
document, or any portion  
thereof, shall not be  
binding unless signed  
by both the Owner and  
Contractor.

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## AIA Document A201-2007: General Conditions

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, its subcontractors, its agents, and its employees, from and against all claims, damages, losses and expenses, including but not limited to, any claims, damages, losses and expenses resulting from the Contractor's performance of the Work in the affected area of, in fact the material or in fact the Work, or in the vicinity of the Work, if the Work or expense is attributable to bodily injury, sickness, disease or death, or to damage to property, except to the extent that such damage, loss or expense is due to the negligence of the party seeking indemnification.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 10.3.4 The Owner shall not be responsible under the Section 10.3 for materials or to the site unless such materials or substances are required by the Contract Documents requested by the Owner, or are required to be used in the Work, except to the extent that such materials or substances are used in the use and handling of such materials or substances.

#### § 11.2 OWNER'S LIABILITY INSURANCE

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs if a material or substance the Contractor brings to the site and negligently handles, or (2) where the C

#### § 11.3 PROPERTY INSURANCE

§ 10.3.6 Without negligence on the part of the Contractor, the Contractor shall indemnify the Owner for all cost and expense directly incurred

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

§ 10.3.7 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or expenses of time caused by the Contractor

#### § 11.3.3 LOSS OF USE INSURANCE

§ 10.3.8 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or expenses of time caused by the Contractor

§ 10.3.9 The Contractor shall not be liable for any damage to the Work or to any other property caused by the Contractor's negligence, or by any subcontractor or by any person directly or indirectly employed by any of them, or by anyone for whom such any of them may be responsible.

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

2. Claims for loss of or damage to property of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

3. Claims for bodily injury or death of bodily injury, occupational sickness or disease, or death of any person other than the Contractor's employees;

4. Claims for damages incurred by the Contractor under liability coverage;

5. Claims for damage to the Work and/or to other property caused by the Contractor's negligence, or by any subcontractor or by any person directly or indirectly employed by any of them, or by anyone for whom such any of them may be responsible;

6. Claims for damage to the Work and/or to other property caused by the Contractor's negligence, or by any subcontractor or by any person directly or indirectly employed by any of them, or by anyone for whom such any of them may be responsible;

7. Claims for bodily injury or property damage arising out of completed operations;

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## Owner's Obligations

- “Usual” Liability Insurance
- Builder’s Risk Insurance
- Boiler and Machinery Insurance
- Loss of Use Insurance



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## Contractor's Obligations



- Commercial General Liability Insurance
- Workers Compensation Insurance
- Employers Liability Insurance
- Business Automobile Liability Insurance

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## Commercial General Liability



## ARTICLE 11 INSURANCE AND BONDS

## § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;  
 are applicable to the Work to be performed;  
 .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

**4 Claims for damages insured by usual personal injury liability coverage;**  
 .4 Claims for damages insured by usual personal injury liability coverage;  
 .5 Claims for damages other than to the Work itself because of injury to or destruction of tangible property, including loss of use resulting therefrom;

**5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;**

**7 Claims for bodily injury or property damage arising out of completed operations**  
 .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under  
 Claims involving contractual liability insurance applicable to the Contractor's obligations under  
 Section 3.18.

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## Commercial General Liability



- Bodily injury and property damage (.3, .5)
- Personal and advertising injury liability (.4)
- Contractual liability (.8)
- Completed operations (.7)



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## Subcontractor's Obligations: AIA Document A401-2007



**ARTICLE 13 INSURANCE AND BONDS**

**§ 13.1** The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract.

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
<small>§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final account and termination of any coverage required for the Subcontractor's operations and completed operations.</small>	
<b>§ 13.1</b> The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract.	
<small>§ 13.2 Certificates of commencement of the Subcontractor's Work shall contain a pre-arranged provision to permit the Subcontractor to furnish continuation of such any information concerning the Subcontractor with its Subcontractor with it.</small>	
<b>§ 13.4</b> The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.	
<b>§ 13.7 Performance Bond and Payment Bond:</b> <i>(If the Subcontractor is to furnish bond, insert the specific requirements here.)</i>	
<small>§ 13.8 PROPERTY INSURANCE</small>	
<b>§ 13.8.1</b> When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.	

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## Contractor/Subcontractor's Obligations: Additional Insured



### Prime Contract (A201-2007)

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.



### Subcontract (A401-2007)

**§ 13.4** The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.



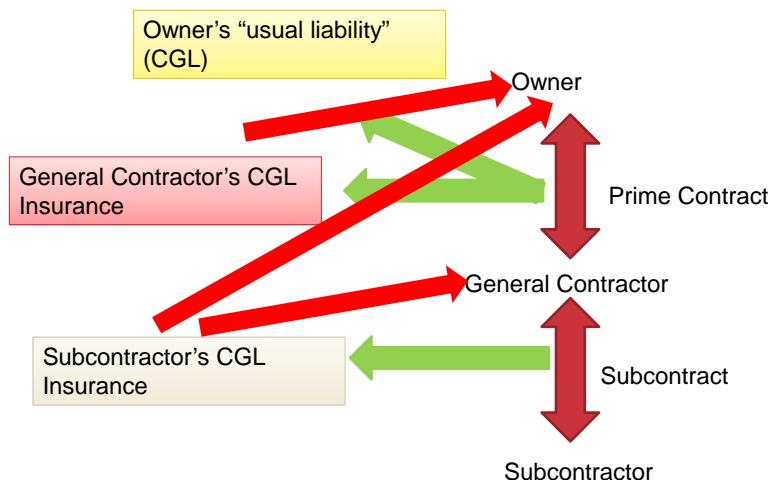
## Additional Insured



- Added as an insured on named insured's policy
- Protects AI from liability arising from named insured's negligence
- Benefits for AI:
  - Coverage without premium
  - No responsibility for deductibles or SIRs
  - No erosion of AI's policies

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## Construction Contracts and Insurance



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## How?

- Endorsement specifically names AI; OR
- Standard blanket endorsement with privity requirement; OR
- Blanket endorsement extends AI rights to any person or entity that the downstream party agrees to name as AI

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## Endorsement that Specifically Names AI

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY CG 29 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
**ADDITIONAL INSURED – OWNERS, LESSEES OR  
 CONTRACTORS – SCHEDULED PERSON OR  
 ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE
Name of Additional Insured Person(s) Or (Organization(s))

Information required to complete this Schedule, if not the  
Schedule is attached.

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:

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

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance provided to the additional insured will not be broader than that which you are required to provide by the agreement to provide for such additional insured.

injury or damage arises has been put to an intended use by any person or organization other than the additional insured or engaged in performing operations for a principal as a part of the same project.

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CG 29 10 04 13

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Page 1 of 2

## Standard Blanket AI Endorsement: Privity (CG 20 33)

COMMERCIAL GENERAL LIABILITY  
CG 20 33 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured 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. Such person or organization 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:

- 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.

However, the insurance afforded to such additional insured:

- 1. Only applies to the extent permitted by law; and
- 2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. 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.

This is not included in the more general "bodily injury", "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of services or the failure to render any professional architectural, engineering or surveying services.

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## Coverage Expansion: No Privity (CG 20 38)

COMMERCIAL GENERAL LIABILITY  
CG 20 38 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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 status as 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.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1, above are completed.

B. 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.



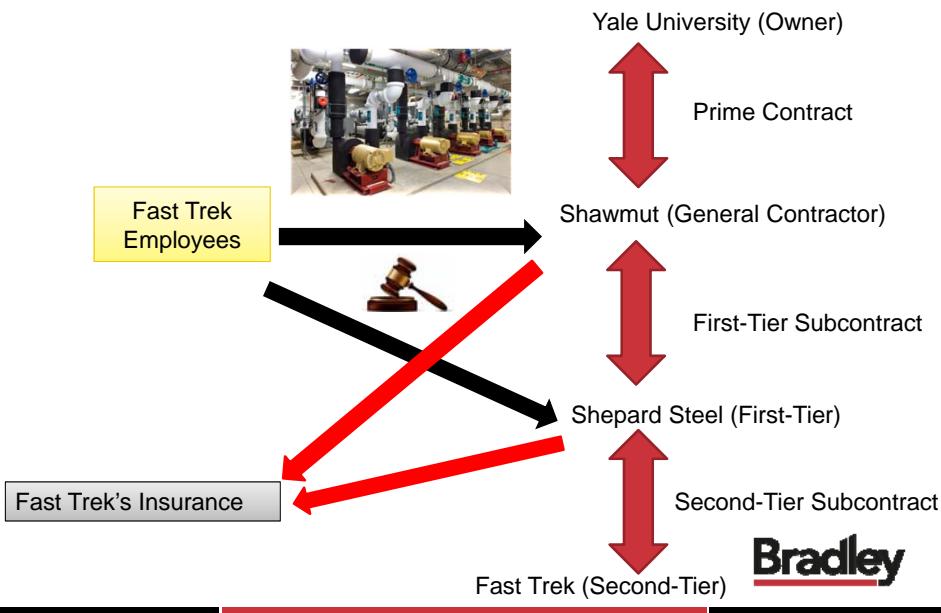
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## Coverage Expansion: Privity

CG 20 33	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
CG 20 38	<ol style="list-style-type: none"> <li>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;</li> <li>2. <u>Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above</u></li> </ol>

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## Case Example: *First Mercury Ins. Co.*



### Case Example: *First Mercury Ins. Co.*

- Fast-Trek's CGL AI endorsement  
*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. Such person or organization 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*
  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.

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### Case Example: *First Mercury Ins. Co.*

- Court considered subcontract and lower-tier subcontract to hold that Shawmut (general contractor) was AI
- Broad interpretation -- AI endorsement did not expressly require privity because only required that the parties "agreed in writing in a contract"
  - No requirement that both parties agree in the **same** writing
  - Shawmut-Shepard first-tier subcontract – Shepard agreed that its subcontractors would add Shawmut as AI
  - Shepard-Fast Trek second-tier subcontract – Fast Trek agreed to add the construction manager (Shawmut) as AI

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## AIA Completed Operations Requirement



### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by

- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

are applicable to the Work to be performed;

- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

#### .4 Claims for damages insured by usual personal injury liability coverage;

property, including loss of use resulting therefrom;

- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

Claims for bodily injury or property damage arising out of completed operations, and

Claims for bodily injury or property damage arising out of completed operations;

- .7 Claims for bodily injury or property damage arising out of completed operations;

- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

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## Ongoing vs. Completed Operations CGL Coverage

- Ongoing operations covers bodily injury and property damage arising out of ongoing work
- Completed operations provides coverage after work is complete

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## Ongoing Operations (Named)



POLICY NUMBER: COMMERCIAL GENERAL LIABILITY  
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE	
Name Of Additional Insured Person(s) (Or Organization(s))	Location(s) Of C

Information required to complete this Schedule, if not shown above, will be shown in

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:

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 removed by a contract or agreement, the insurance afforded to such additional insured will not be removed, but that when you are required by the contract or agreement to provide for such additional insured.

B. With respect to the additional insured, exclusions apply:

This insurance does not apply:

1. All work, including

construction work on the pr

maintenance or re

construction of, or additional (or similar) at the

location of the covered operations has been

2. That portion of your work out of which the

injury or damage to your property or

caused by any person or organization

other than another contractor or subcontractor

you are performing operations for as a

principal as part of the same project.

**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.

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## Ongoing Operations (Blanket)



COMMERCIAL GENERAL LIABILITY  
CG 20 33 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations or for whom you are rendering services or organization have agreed in writing in a contract or agreement that such person or organization will be an additional insured under your policy. Such person or organization 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:

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.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not consider them as an additional insured by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

This insurance does not apply:

1. "Sudden injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional, architectural, engineering or surveying services.

a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, changes in plans or drawings, and specifications; or

b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies only if the claims against any insured, or against other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "bodily injury", "property damage" or "personal and advertising injury" caused by the "bodily injury", "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional, architectural, engineering or surveying services.

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## Ongoing Operations (Blanket)

COMMERCIAL GENERAL LIABILITY  
CG 20 38 04 13

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS FOR OTHER  
PARTIES WHEN REQUIRED IN WRITTEN  
CONSTRUCTION AGREEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Section II – Who Is An Insured** is amended to

1. Any person or organization for whom you are performing operations for, and such person or organization have agreed in writing to include such person or organization as an additional insured on your policy.
2. Any other person or organization you are required to add as an additional insured under the construction agreement described in Paragraph 1, above.

Such person 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 others acting on in the performance of your ongoing operations for the additional insured described above.

Only applies to the extent permitted by law; and

b. Will not be by the contract or agreement to

provide for such additional insured.

A person or organization is included as an additional insured under this endorsement when your operations for the person or organization described in Paragraph 1, above are completed.

**B. With respect to the insurance afforded to these additional insureds, the following additional**

This insurance does not apply if:

1. "Bodily injury", "property damage" or "personal and advertising injury" caused by:
- a. The rendering of, or failure to render, professional services including:

a. The preparing, approving and supervising of plans, designs, opinions, reports, surveys and specifications; or

b. Supervisory, inspection, architectural or

This exclusion applies even if the claims against an insured allege negligence or other wrongdoing in the rendering of such services, training or monitoring of others by that insured, if the "bodily injury", "property damage" or "personal and advertising injury" or "property damage", or the offense which caused the "bodily injury", "property damage" or "personal and advertising injury" or "property damage" occurs while the rendering of, or the failure to render, any professional services, architectural, engineering, or surveying services.

**2. "Bodily injury" or "property damage" occurring**

in the course of:

- a. All work, including materials, parts or equipment, used in the performance of such work, on the project (other than service, labor or repair) to be performed by or on behalf of the additional insured(s) at the location of the covered operations that has been completed; or

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## Completed Operations

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY  
CG 20 37 04 13

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of

Information required to complete this Schedule, if not shown above, will be shown in the C

**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".

**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".

**B. With respect to the insurance afforded to these additional insureds, the following additional**

**Section II – Limits Of Insurance**

If coverage provided to the additional insured is limited by the amount of the liability limit of the additional insured, the additional insured will pay on behalf of the additional insured in the following manner:

1. Required by the contract or agreement; or
2. Required by the insurance shown in the Declaration of Insurance shown in the Declaration, whichever is less.

The additional insured shall not increase the applicable Limits of insurance shown in the Declaration.

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## Subcontractor's Obligations:

### AIA Document A401-2007



**ARTICLE 13 INSURANCE AND BONDS**

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract.

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
---------------------------	--

§ 13.2 Cover from the date of contract to the date of completed maintenance.

§ 13.3 Cert commence 13 shall co at least 30 are require continuat any inform Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor's claims caused in whole or in part by the Subcontractor's negligent operations and (2) the Contractor's negligent operations.

§ 13.5 The Contractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.6 The Contractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.7 Performance Bond and Payment Bond:  
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount (\$0.00)	Bond delivery date	Bond form
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§ 13.8 PROPERTY INSURANCE

§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

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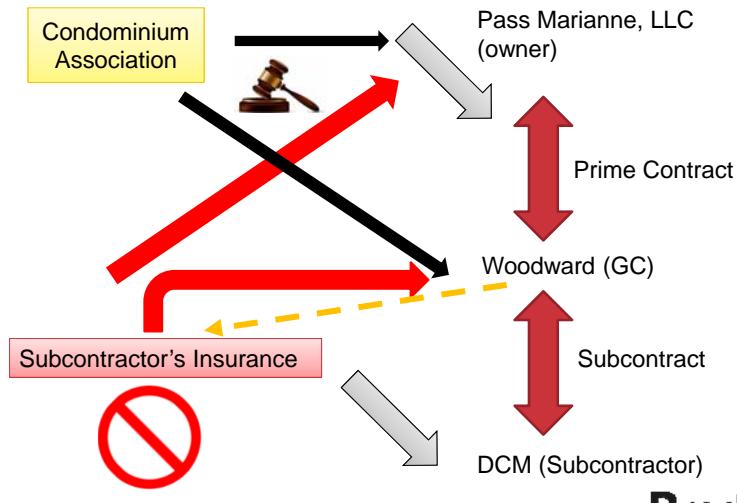
## Case Example: *Woodward*



- Condominium project in Mississippi
- General contractor named as AI on concrete subcontractor's policy

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### Case example: Woodward



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### Case Example: Woodward

- Exclusion in AI endorsement

*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 . . . To be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed*

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### Case Example: *Woodward*

- District Court said sub's insurer had duty to defend
- Fifth Circuit Court of Appeals reversed
- GC had **no coverage as AI** on subcontractor's policy
- Construction defect "quite logically" arose out of completed operations

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### Broader view: *Employers Ins. Co. v. Harleysville Ins. Co.*

- New Jersey snow removal contract
- Contract on as-needed basis
- Slip-and-fall was part of contractor's ongoing operations



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## How to avoid Woodward



- Get completed operations coverage for AIs
- Make sure that downstream construction contract requires completed operations coverage for AIs
- Recall discussion of subcontract AIA form language – owners should require completed operations

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## Coverage Reduction: Limits of Insurance (20 33 07 04)

COMMERCIAL GENERAL LIABILITY CG 20 33 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS WHEN  
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section 8 – Who Is An Insured is amended to include as an additional insured any person or organization with whom you have an automatic relationship when you and such person or organization have agreed in writing that such person or organization be added as an additional insured. This endorsement does not affect the fact that your organization is an additional insured only with respect to "bodily injury" or "property damage" occurring during:

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 protection of your interests, or
3. A person's or organization's status as an additional insured under this endorsement, or
4. Your acts or omissions in preparing for your operations for that additional insured to be completed.

B. With respect to the insurance afforded to these additional insureds, the following additional endorsement applies:

This insurance does not apply to:

"Bodily injury," "property damage" or "personal injury" resulting from the negligent acts or omission of, or the failure to render proper services by, an architect, engineer, surveyor or surveying organization, including:

a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, plans, specifications, blueprints, contracts, change orders or drawings and specifications;

b. Supervising, inspecting, architectural or engineering services;

2. "Bodily injury" or "property damage" occurring after:

a. All work, including materials, parts or equipment furnished in connection with the preparation, supervision, inspection, service, maintenance or repair(s) to be performed by the additional insured (as insured) at the location of the covered operations;

b. That portion of "your work" out of which the additional insured (as insured) is intended by any person or organization other than another contractor or subcontractor to be used in the preparation or completion for a principal as a part of the same project;

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## Coverage Reduction: Limits of Insurance (20 33 04 13)

COMMERCIAL GENERAL LIABILITY  
CG 20 33 04 13THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS WHEN  
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Section I – Who Is An Insured** is amended to read:  
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 described in Paragraph 1 above to be an additional insured only with respect to liability for "bodily injury" 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.  
However, the insurance afforded to such additional insured only with respect to liability for "bodily injury" and "advertising injury" caused, in whole or in part, by:  
1. Only applies to the extent permitted by law; and  
2. Will not be broader than that which you are required by the contract or agreement described in Paragraph 1 above to provide for the additional insured.  
A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:  
1. Required by the contract or agreement you have entered into with the additional insured; or  
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

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## Coverage Reduction: Limits of Insurance (20 38 04 13)

COMMERCIAL GENERAL LIABILITY  
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ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS FOR OTHER  
PARTIES WHEN REQUIRED IN WRITTEN  
CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**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 described in Paragraph 1 above to be an additional insured only with respect to liability for "bodily injury" 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.  
However, the insurance afforded to such additional insured only with respect to liability for "bodily injury" and "advertising injury" caused, in whole or in part, by:  
a. Only applies to the extent permitted by law; and  
b. Will not be broader than that which you are required by the contract or agreement described in Paragraph 1 above to provide for the additional insured.  
A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

**C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:  
1. Required by the contract or agreement described in Paragraph A.1.; or  
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

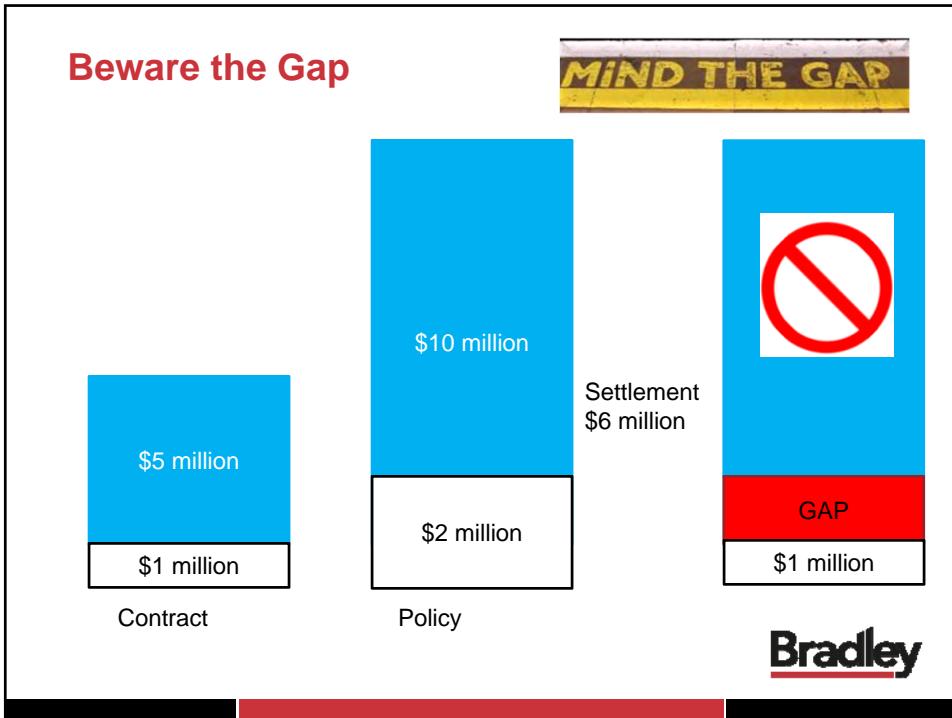
This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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**Coverage Reduction: Scope of Coverage**

COMMERCIAL GENERAL LIABILITY  
CG 20 38 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Section II – Who Is An Insured** is amended to include as an additional insured:

- Any person or organization for whom you are performing work or rendering services if such person or organization have agreed in writing in a contract or agreement that such person or organization will be an additional insured on your policy; and
- Any 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" arising out of the work or act, by:

- Your acts or omissions; or
- The acts or omissions of those acting on your behalf in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- Only applies to the extent permitted by law; and
- Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. Work Performed In The Insurance Afforded To Such Additional Insured**

This endorsement applies to any insured under the policy for the period of the insurance coverage for the rendering of, or the failure to render, any professional, architectural, engineering, or surveying services:

- "Bodily injury" or "property damage" occurring during:

  - All work, including materials, parts or equipment furnished in connection with such work, or any service or services other than service, repair, or storage of property to be furnished by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

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## Scope of Coverage: Completed Operations Example

- Construction contract is silent as to completed operations coverage (broader)
- Downstream party gets completed operations coverage
- AI endorsement limits coverage to ongoing operations

**Bradley**

## Contractual Indemnity (A201-2007 Example)

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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## Scope of Coverage: Legal Restrictions on Indemnity

- Coverage for an AI will only be as broad as:
  - 1) as limited by applicable law; and
  - 2) the contractual indemnity obligations that the named insured has to the AI

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## Primary Non-Contributory Endorsement: Downstream Policy

COMMERCIAL GENERAL LIABILITY  
CG 20 01 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

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.

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.

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## “Other Insurance” clause: Upstream Policy

- Upstream policy should state that coverage will be excess over “other valid and collectible” insurance that AI maintains

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## Summary



- American Institute of Architects (“AIA”) Form insurance language for construction contracts
- Contractor Commercial General Liability Obligations
- Coverage expansions and restrictions in Additional Insured endorsements
- Align coverage between the contract and the insurance policy

**Bradley**

## Take-Aways



- Pay close attention to AIA forms and contract language
- Make sure contract matches policy
- Make sure coverage is as broad as form
- Ask to see policy endorsements from downstream parties
- AIA form: good template, but does not stand alone

**Bradley**

## Questions?

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**Bradley**