

Pushed Beyond the Limits—Reactions to the U.S. Judiciary’s Expansion of Additional Insured Coverage

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October 10, 2013

Additional insured requirements are among the most important and popular tools utilized by contracting parties as a means of allocating risk of loss through the use of insurance.

When coupled with contractual indemnity provisions in an underlying contract, additional insurance provides financial security to the additional insured, and often entitles the additional insured to a number of direct benefits under the named insured’s policy. ISO originally intended for additional insured coverage to be limited to vicarious liability. Unfortunately, conflicting court rulings and inconsistent application of additional insured endorsements over the last three decades have greatly expanded the coverage afforded to additional insureds, so that, in some instances, additional insureds are granted coverage even for their sole and/or concurrent negligence.

ISO has periodically revised its additional insured endorsements over the past thirty years in response to the judiciary’s trend of broad application, to no avail. In a pointed effort to curb the judiciary’s seemingly unlimited expansion of additional insured coverage, ISO and individual state legislatures are independently enacting certain mechanisms to confine additional insured coverage to that assumed in a contract and to ensure that counter-parties are prevented from transferring risk for their sole and/or concurrent negligence.

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