



DEADLY

Endorsements

7 Deadly Endorsements of Contractor's Liability Insurance

Endorsement #4 - The CG 21 39 – Contractual Liability Limitation

As a contractor, do you know the amount of liability you're assuming in a contract and whether your insurance covers contractual liability? Through an indemnification agreement, liability is transferred in most construction contracts. Such indemnification agreements vary from state to state, but let me go through an example of how it can usually work.

- The GC is automatically liable for the work of his subcontractor
- Through an indemnification agreement, the liability is transferred back to the subcontractor
- The subcontractor is now obliged to indemnify the GC in the case of a loss, and include the GC's defense costs

This should prompt you to your next question: Will the subcontractor's liability policy cover the subcontractor's contractual obligation to indemnify the GC? Maybe it does. We need to look at the exclusions section. Contractual Liability is excluded unless the contract is an **"insured contract"**.

Well, what is an insured contract? Under the Definitions section and **"insured contract"** means: **That part of any other contract or agreement pertaining to your business.** This means an indemnification agreement would be considered an insured contract under section 9.f. The CG 21 39 simply deletes sections 9.f. from the definitions of an "insured contract", meaning the subcontractor can be liable to pay for the legal expenses and liability of the GC in case of a loss.

It is crucial you check your insurance policy for a GC 21 39, before you sign an indemnification agreement.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. **This exclusion does not apply to liability for damages:**

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) **Assumed in a contract or agreement that is an "insured contract"**, provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.



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