

Understanding AI Form Changes

by Lynda A. Bennett and Eric Jesse

As organizations begin preparations for spring and July 1 renewals, it is important to scrutinize additional insured (AI) endorsements included on general liability insurance policies and to pay attention to AI endorsements provided to the company to confirm that coverage has been secured. New revisions to “standard form” endorsements can significantly impact—and restrict—the scope of AI coverage provided. In fact, the changes strike at the heart of AI coverage: they affect the validity of coverage under state law, limits of liability and scope of coverage available.

Additional insured requirements arise from the contracts companies enter into every day. These include services provided to customers, supplies received to conduct business and leases for facility locations. Sometimes a business receives AI coverage from others, but it can also provide AI coverage to the contracting party. A company’s goal in providing AI coverage is for the terms to be restrictive

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so that policies remain primarily available to protect and insure the company. Conversely, when a company is receiving AI coverage, it wants the scope of coverage to be as broad as possible to avoid tapping into its own insurance policies for mistakes made by others.

Changes to Standard Policy Forms

Recently, the Insurance Services Office (ISO) changed the way businesses may

contract with each other by revising 24 AI endorsements in three material ways.

First, it added language stating AI coverage is only available “to the extent permitted by law.” Second, the new forms state that AI coverage will not be broader than the contract requires and, third, liability limits will be no greater than required by the contract.

The common consequence of these revisions is that AIs and named insureds can no longer simply rely upon the AI endorsement, declarations, certificates of insurance or even the general liability policy to understand the coverage available. Instead, they must also rely upon their contract, which is now integrated into the policy. They should also be aware of state law limitations that could invalidate coverage.

To the Extent Permitted by Law

While the full implications of the language “to the extent permitted by law” cannot be known, it is likely to be far-reaching, creating uncertainty and likely leading to litigation. The language will come into play where state law bars indemnification of a party’s sole or concurrent negligence. Therefore, additional insureds need to know the limitations of relevant state law and how it applies to AI coverage. Companies should consider alternative contract provisions to address this potential coverage gap. Parties providing AI coverage also need to be aware of such limitations to avoid potential breach of contract claims.

No Broader Than Required

By and large, AIs enjoy the same coverage as the named insured under general liability policies, regardless of what the contract states. But new language in the AI endorsements may restrict the scope of coverage available to AIs by “marrying” the policy and the contract.

In the new forms, the scope of coverage required may be defined by the contract rather than the policy. Therefore, parties must pay careful attention to the AI requirements in the contract to confirm that the scope of coverage intended to be given is clearly reflected in the terms.

Limits on Limits

While contracts that provide limit of liability requirements seem to set a floor, the new AI endorsements turn that floor into a ceiling.

For example, a contract may require Party A to provide Party B (the AI) with \$100,000 limits of liability for general liability claims and Party A may have a general liability policy with a \$1 million limit. Under previous AI endorsements, Party B could argue that it had access to the full \$1 million limit for a large exposure claim. The new forms, however, are intended to establish that the AI can access no more than the \$100,000 required by the contract. Thus, this change should lead companies receiving AI coverage to carefully consider the appropriate level of limits needed and how those requirements are reflected in the contract’s terms.

In short, the new ISO AI forms contain a number of nuanced and important revisions that will impact the scope of coverage provided. Whether companies are giving or receiving AI coverage, they must be aware of potential pitfalls that accompany the new revisions and understand the options available to mitigate and/or avoid the impact of the changes. ■

Lynda A. Bennett is the chair of Lowenstein Sandler LLP’s insurance coverage practice group.

Eric Jesse is an associate with Lowenstein Sandler and a member of the insurance coverage group.