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***Probuilders Specialty Insurance Company, RRG v. Phoenix Contracting, Inc. et al.,***
**Case No. 6:16-cv-00601-AA (D. Or. January 2, 2017)**

## Significance for Seminar Discussion

General contractors risk voiding coverage completely if they do not maintain written subcontracts (with adequate indemnity and insurance provision), ensure compliance therewith, and collect certificates of insurance. This opinion is very troubling from the insured's perspective and is likely to be appealed.

## Summary

The District Court enforced a "Contractors Special Conditions" endorsement to preclude all coverage under a CGL policy. This endorsement imposed a "condition precedent" to coverage for any claim "in whole or in part based upon work performed by independent contractors," requiring the insured to have, prior to the date of loss: (1) received a written indemnity agreement from the independent contractor; (2) obtained certificates of insurance from the independent contractor; and (3) maintained records evidencing compliance with these requirements.

The court held that the provision was unambiguous, precluding all coverage for liability "in whole or in part based upon work performed by independent contractors" in light of the insured's admitted failure to satisfy the condition. The court distinguished Oregon authority that requires insurers to prove prejudice before voiding coverage based on policy conditions, stating that the "Contractors Special Conditions" endorsement is not a "technical provision" but rather "bears directly on the insurer's exposure to liability." In any event, the court also determined that the insurer was prejudiced by the absence of an indemnification agreement with the subcontractors, which the court stated could have reduced the insured's liability.