

Additional Insured Endorsements—A Potential Minefield (Part 3)

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[Part 1](#) of this series deals with the connection between the named insured and the additional insured and provides some areas to consider in a basic analysis of any additional insured endorsement. [Part 2](#) examines the scope and order of coverage.

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This final installment on additional insured endorsements addresses additional exclusions, coverage restrictions, and conditions.

Additional Exclusions

Be aware that exclusions are often added by additional insured endorsements and may apply to the additional insured, the named insured, or both.

Products-Completed Operations Hazard

An example of such an exclusion can be found in the ISO Additional Insured—Owners, Lessees or Contractors (CG 20 10 07 04) endorsement. The *additional insured* has no coverage for any for injury or damage that occurs *after* work is completed. Of course, Insurance Services Office, Inc. (ISO), has promulgated a separate additional insured endorsement, Additional Insured—Owners, Lessees or Contractors—Completed Operations (CG 20 37 07 04), that will provide the additional insured coverage for injury or damage that occurs *after* the work is completed—work that is included within the "products-completed operations hazard."

Difficult To Obtain

Unfortunately, the Additional Insured—Owners, Lessees or Contractors—Completed Operations (CG 20 37 07 04) endorsement is notoriously difficult to obtain. Many insurers simply do not wish to provide such coverage. For some in the construction industry, the difficulty (or impossibility) of obtaining certain specific additional insured endorsements seems of little consequence. Witness the continued demand for the ISO Additional Insured endorsement CG 20 10 11 85 edition, which is generally not available today.

Other Examples

A couple more examples: Exclusions are also added to the Additional Insured—Lessor of Leased Equipment endorsement (CG 20 28 07 04) (coverage is excluded for any injury or damage that takes place after the equipment lease expires) as well as the Additional Insured—Managers or Lessors of Premises (CG 20 11 01 96) (coverage is excluded for any "occurrence" that takes place after the named insured ceases to be a tenant and coverage is excluded for any structural alterations, new construction or demolition performed by the additional insured or on the additional insured's behalf).

Company Specific Additional Insured Forms

As with the "other insurance" condition, an insurer's own additional insured forms vary widely as to the exclusions that have been added and to whom the exclusions apply. This is another area that requires a detailed review.

Injury to Employee Exclusion

For example, one insurer adds an exclusion for injury to the employees of *any insured*. The intent seems clear—if an employee of the *named insured* brings claim against the *additional insured* for injuries suffered at a job site, which is a very common event, no coverage is afforded the additional insured. This exclusion is quite troublesome as it eliminates coverage often provided to the additional insured. The result may be the named insured will be found not to have complied with insurance requirements of a construction agreement.

Other Coverage Restrictions

Exclusions do not contain all of the limitations that may apply to additional insured endorsements. A careful reading of the entire additional insured endorsement is vital to understanding the breadth of the coverage. The following coverage restrictions are most often found in an insurer's own additional insured endorsements, particularly those that offer automatic or blanket status to the additional insured.

Written Contract or Agreement

The automatic additional insured endorsements require the named insured to have agreed in writing (or in some cases in a permit) to add others to the policy as an additional insured. Therefore, if the named insured agrees to add a person or organization as an additional insured, but does not formalize the agreement in writing (or no permit exists), the reliance on the automatic or blanket endorsements is misplaced—the person or organization would have to be added separately as a scheduled additional insured for coverage to apply.

Written Contract in Effect

Some insurers require not only the existence of a written agreement, but further require the agreement to include a person or organization as an additional insured to be in effect *during the policy period*. While normally this should not pose a problem, it does broach the question as to what exactly the insurer means by "in effect."

Construction Contracts

Consider a construction contract where the insurance requirements are that the subcontractor will add the owner and general contractor as additional insureds to the commercial general liability (CGL) during the course of the work and for 2 years after the work is complete (in this example the subcontractor is expected to add the owner and general contractor as additional insureds for the products-completed operations hazard). Once the project is complete, and all the work called for under the contract finished, will the insurer for the subcontractor consider the continuing obligation to list the owner and general contractor as a written contract in effect during the policy period? The answer should be yes—performance on the written contract is not complete until all obligations are discharged—but clarification would be helpful here.

Limits

Many automatic or blanket additional insured endorsements will state the limits of liability provided to the additional insured by the endorsement will be the lesser of the limits required in the written contract or the policy limits. Such a limitation is generally fair to both the named insured and additional insured and a good idea. There is no reason to provide an additional insured with greater limits than requested or required.

Breadth of Coverage

Similar to limits, some additional insured endorsements will restrict the breadth of coverage provided to the additional insured by stating the actual coverage provided will not exceed that which was agreed upon in the written contract. This issue is a little trickier as the wording in many contracts as to the breadth of coverage to be provided the additional insured is either lacking or completely nonexistent, resulting in disputes and litigation. However, if the contract wording is clear, this is a desirable restriction as respects the named insured. Once again, there is no need to provide the additional insured with broader coverage than required.

Contractual Liability

One insurer restricts contractual liability coverage available to the named insured in their additional insured endorsement. By their form, if the named insured has not agreed in a written contract to add the additional insured for the products-completed operations coverage, the endorsement amends the definition of "insured contract" so the named insured has no contractual liability coverage for an agreement to indemnify the additional insured for injury or damage included within the products-completed operations hazard.

As hold harmless and indemnity agreements, such as the American Institute of Architects A201 General Conditions for the Contract of Construction—1997 edition, often do not make any distinction between indemnity for operations claims and indemnity for completed operations claims, this restriction is quite harsh and may leave the named insured with no contractual liability coverage for what might be a large indemnity obligation.

Additional Conditions

The ISO additional insured endorsements do not usually change the conditions that apply to an additional insured. However, it is very common for insurers who use their own endorsements to change or add conditions that apply to an additional insured. For example, several insurers require the additional insured to give prompt notice to the insurer of any occurrence or offense that *may* result in a claim as well as to immediately forward legal papers. Another condition applicable to the additional insured is the requirement to tender defense and indemnity to *any other insurer* that may cover the loss.

One insurer goes a step further and demands the additional insured make available any other insurance that the additional insured has for a loss, with no exception for the additional insured's own insurance. Such conditions may weaken or completely eviscerate that "primary and noncontributory" wording.

Conditions are important to consider as failure to comply may result in denial of coverage to the additional insured—and the resulting uproar from the additional insured that they were never made aware or agreed to such conditions now being imposed on them.

Conclusion

Additional insured endorsements seem to be like snowflakes—no two are alike. Not only do additional insured endorsements reflect a great discrepancy in the breadth of coverage provided to additional insureds, the issues that underlie coverage are numerous and complex. Whether you are providing additional insured coverage for others, requesting additional insured coverage for your organization, providing advice to clients about additional insured coverage, or placing and certifying coverage for additional insureds, understanding the workings of additional insured coverage is imperative.

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