

Additional Insured Endorsements—A Potential Minefield (Part 1)

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It's a standard, run-of-the mill, you've seen one you've seen them all recommendation—make sure you get listed on someone else's commercial general liability (CGL) policy as an additional insured. Maybe more importantly, you have just agreed to list someone on your CGL policy. What did you give? What did you get?

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Considering that all additional insured endorsements are not created equal, the need for some analysis becomes apparent. But where do you start? How do you compare one additional insured endorsement to another? This analysis becomes more complicated when your client hands you an additional insured endorsement that contains an insurer's own unique wording.

Here are some areas to consider in a basic analysis of any additional insured endorsement. How much weight to give any particular area depends on a great number of variables—not the least of which is the actual wording (or lack of wording) in the contract that requires your client to list another organization as an additional insured.

Connection to Named Insured

The coverage afforded an additional insured is usually restricted in some manner. Aside from the issue of *who* may be liable for the injury or damage, usually some *connection* between the named insured and additional insured must first be established.

Vendor

Let's say a cell phone manufacturer, Cell Maker, Inc. (the named insured), using the Insurance Services Office, Inc. (ISO), Additional Insured—Vendors endorsement (CG 20 15 07 04), lists as an additional insured on their CGL policy a retailer (vendor) who sells Cell Maker's phones. A claim is made against the retailer/vendor for injuries suffered by a customer caused by a cell phone. The retailer sends the claim to Cell Maker's CGL insurer, seeking protection for the claim as an additional insured.

It quickly becomes apparent the cell phone that caused the injury was made by a competitor of Cell Maker and not by Cell Maker. As the retailer/vendor is an additional insured only for the cell phones *manufactured by* Cell Maker, the necessary connection has not been established between the retailer and Cell Maker. The retailer/vendor is not covered as an additional insured for this claim.

Leased Equipment

Here's another example. A restaurant leases a walk-in freezer from a leasing company. As required by the lease contract, the restaurant (named insured) lists as an additional insured on their CGL policy the leasing company (lessor), using the ISO Additional Insured—Lessor of Leased Equipment endorsement (CG 20 28 07 04). While visiting the leasing company's premises to inspect an oven she is considering leasing, the restaurant owner falls and severely injures her knee.

She brings suit against the leasing company, who in turn seeks coverage as an additional insured under the restaurant's CGL as an additional insured. Again, the connection is not sufficient—the injury was not caused in any way by the leased walk-in freezer. The lessor has no coverage as an additional insured under the restaurant's CGL policy for the restaurant owner's injuries.

Contractors

The use of additional insureds, and the coverage disputes that result from additional insured coverage, are so common in the construction industry that any discussion about additional insureds must include a mention of contractors.

Office Project. Gerald's General Contracting, Inc., compels every subcontractor, including Paul's Painting, Inc., to add Gerald's as an additional insured to the subcontractor's CGL policy using the ISO Additional Insured—Owners, Lessees or Contractors endorsement (CG 20 10 07 04) listing the covered operations as the new office building project (wouldn't it be nice if insurance requirements were this clear?). Paul's complies and provides Gerald's General Contracting with the requested certificate, including the express notation that Gerald's General Contracting is an additional insured via CG 20 10 07 04 for the office project.

School Project. For a separate school project in which Paul's Painting is not in any way involved, Gerald's General Contracting, who is the general contractor for the school project, has borrowed Paul's scaffolding. Unfortunately, the scaffolding at the school collapses, and several people are injured, including a passerby. Gerald's General Contracting is quickly besieged with claims and lawsuits—all of which are sent to Paul's Painting's CGL insurer by Gerald's General Contracting, demanding defense and indemnity as an additional insured. Gerald's General Contracting is considerate enough to include along with the claim documents the certificate of insurance from Paul's issued for the office building project that conclusively demonstrates Gerald's is an additional insured on Paul's CGL policy.

No Connection. Paul's insurer denies any obligation to defend or indemnify Gerald's General Contracting. Gerald's is an additional insured on Paul's CGL only for *ongoing operations performed by Paul's Painting at the new office building project*. Lending the scaffolding to Gerald's does not fit within "the performance of ongoing operations for the additional insured at the locations designated." The connection between Paul's (the named insured) and Gerald's (the additional insured) is not sufficient to even suggest the possibility of coverage for Gerald as an additional insured under Paul's CGL.

In sum, unless the requisite connection between the named insured and additional insured is established, coverage is not available for the additional insured, regardless of fault or any other terms contained in the additional insured endorsement. In other words, this is the first cut—if you can't get past this issue, there is no coverage for the additional insured.

Part 2 will deal with the scope and order of coverage. Part 3 will cover additional exclusions, conditions, and other coverage restrictions.

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