

Jim O’Leary has handled many construction accounts in his 40-plus years as an insurance agent. He is convinced that all of his contractor and subcontractor customers should have the “blanket” additional insured endorsement attached to their commercial general liability (CGL) policies. Specifically, Jim has instructed his sales staff to use with all the agency’s contractor and subcontractor customers the ISO additional insured endorsement CG 20 33 – Additional Insured – Owners, Lessees or Contractors – Automatic Status When Required in Construction Agreement With You. While Jim is aware that the CG 20 33 does not protect the additional insured for the products-completed operations hazard, it is his view that this “blanket” endorsement is sufficient for every other additional insured requirement.

“Blanket” Additional Insured – CG 20 33 – Written Contract or Agreement is Required

Sherman Roofing Company is a longtime customer of Jim’s agency, The O’Leary Agency. Sherman operates primarily as a subcontractor, installing both residential and commercial roofing. As do all O’Leary’s accounts, Sherman’s CGL includes the CG 20 33.

Sherman took a job replacing the roof on a residence. In this instance, Sherman contracted directly with the homeowner. Although not addressed in the written proposal accepted by the homeowner, Sherman promised to provide the homeowner with a certificate of insurance that shows the homeowner as an additional insured.

At Sherman’s request, a certificate of insurance was issued by The O’Leary Agency that included the homeowner as an additional insured.

Jim overheard the certificate request and, after checking, found that the agreement to add the homeowner as an additional insured was not in writing. After reviewing the CG 20 33, Jim now understands that the “blanket” additional insured CG 20 33 applies only if the contractor or subcontractor agrees in a written contract or agreement to add the person or organization as an additional insured. In other words, despite the “blanket” label of the CG 20 33, the homeowner was not an additional insured on Sherman’s CGL policy due to the lack of a written agreement to add the homeowner as an additional insured.

“Scheduled” Additional Insured – CG 20 10 or CG 20 26 – Specifically Schedule the Additional Insured

Jim informs his staff that coverage for the additional insured must be scheduled when there is no written agreement between the named insured and the additional insured. In the case of Sherman, the additional insured had to be added to Sherman’s CGL policy using either the ISO CG 20 10 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization, or possibly CG 20 26 Additional Insured – Designated Person or Organization. In either case, the homeowner’s name needs to be specifically listed on the endorsement schedule to provide the promised additional insured coverage.

“Blanket” Additional Insured – CG 20 33 – “Flow down” Provision

On a larger commercial project, Sherman has been engaged as a subcontractor by Malcolm General Contractors. The owner of the project is Oak Hill Towers, and the project is a 10-story, mixed-used office and retail building; Sherman has contracted with Malcolm to fabricate and install all of the roofing.

In its contract with Oak Hill Towers, Malcolm, as a general contractor, has agreed (in writing) to add Oak Hill Towers as an additional insured to its own CGL policy. Malcolm has also agreed in its contract with Oak Hill Towers to require any subcontractors of Malcolm to include Oak Hill Towers on the subcontractor’s CGL policy. This is the “flow down” provision – Malcolm’s agreement to require all of its subcontractors to include the owner as an additional insured.

In its subcontract with Malcolm General Contractors, Sherman has agreed (in writing) to include Malcolm as an additional insured. In accordance with the contract between Malcolm and Oak Hill Towers, and to fulfill the “flow down,” the subcontract between Malcolm and Sherman also requires (in writing) that Sherman include the owner, Oak Hill Towers, as an additional insured on Sherman’s CGL policy.

The O’Leary Agency has always presumed that the CG 20 33 will automatically include any person or organization that Sherman is required by a written agreement to add as additional insured, including the owner, Oak Hill Towers. In other words, The O’Leary Agency understands the “flow down” provision would also include coverage for the owner as an additional insured because Sherman has agreed in writing to include the owner as an additional insured.

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CG 20 33 – Flow Down Does Not Apply to the Owner

Jim and everyone at The O’Leary Agency were very surprised that Malcolm rejected the use of Sherman’s CG 20 33; the risk manager at Malcolm cites case law to support the rejection. According to that case law, the CG 20 33 includes as an additional insured only the person or organization with whom Sherman has a *direct* written contract – in this instance Malcolm. As Sherman does not have a direct written contract with the owner, Oak Hill Towers, the CG 20 33 would not afford additional insured coverage to the owner on Sherman’s CGL policy.

Malcolm’s risk manager suggests a few different approaches. Sherman could add the owner using a scheduled additional insured endorsement, such as CG 20 10 or CG 20 26, listing Oak Hill Towers as an additional insured on Sherman’s policy. An alternative suggested by Malcolm’s risk manager is the new ISO additional insured endorsement – CG 20 38.

CG 20 38 Additional Insured – Owners, Lessees or Contractors – Automatic Status for Other Parties When Required in Written Construction Agreement

Malcolm’s risk manager points out this additional insured endorsement was recently (April 2013) developed for use by ISO to provide some degree of the “flow down” coverage¹. The direct contract requirement – meaning Sherman would have to contract directly with the owner, Oak Hill Towers – has been removed from CG 20 38. Based on the current contract arrangements, by using the CG 20 38 instead of the CG 20 33, not only would Malcolm automatically be an additional insured but the owner, Oak Hill Towers, would also automatically be an additional insured. Based on the new information, The O’Leary Agency replaces the CG 20 33 with the CG 20 38 on Sherman’s liability policy.

Conclusion

So-called “blanket” additional insured endorsements are not a universal remedy. With respect to the ISO automatic or “blanket” additional insured endorsements, coverage applies only if there is a written contract or agreement in which the named insured has agreed to add the person or organization to its policy as an additional insured; a different additional insured endorsement must be used in the absence of such a written agreement. The best approach may be to use a scheduled additional insured endorsement such as CG 20 10 or CG 20 26 – and specifically list the persons or organizations that are to be additional insureds.

Finally, even if there is a written contract or agreement, the CG 20 33 has been found to provide additional insured coverage only to those persons or organizations with which the named insured has a direct contract. Other parties listed in the contract will not have additional insured status under the CG 20 33 unless the named insured has directly contracted with that party.

The recently introduced CG 20 38 provides some of the expected “flow down” coverage for those who the named insured had not contracted with directly, but with whom the named insured has agreed in writing with others to provide additional insured status. However, with either the CG 20 33 or CG 20 38, coverage applies only to the extent the named insured is performing ongoing operations for the additional insured.

¹Coverage in the CG 20 38 (and also the CG 20 33) applies only when the named insured is performing ongoing operations for the additional insured.

About the Author - Craig F. Stanovich, CPCU, CIC, CRM, AU is co-founder and principal of Austin & Stanovich Risk Managers, LLC, a risk management and insurance advisory consulting firm specializing in all aspects of commercial insurance and risk management, providing risk management and insurance solutions, not insurance sales. Services include fee based risk management, expert witness and litigation support and technical/educational support to insurance companies, agents and brokers. Email at cstanovich@austinstanovich.com. Website is www.austinstanovich.com.