

The Role of the Additional Insured

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Insurance can be an effective tool for reducing and allocating risk. Insurance terms, however, can be confusing, and clients often misunderstand the level of protection they may be receiving. This is particularly the case when dealing with “Named Insureds,” “Additional Insureds,” and “Additional Named Insureds”—three terms that may sound alike, but have very different meanings and convey very different rights and obligations.

Liability insurance policies typically provide defense and indemnity for parties named in the policy, protecting against claims due to personal injury, property damage, or death. In defining the persons or entities entitled to these protections, the policies typically include three types of designations: “Named Insureds,” “Additional Insureds,” and “Additional Named Insureds.”

The “Named Insured” is the owner of the insurance policy, and the one who is actu-

ally named in the insurance contract as the primary insured on the policy. Where the insurance policy covers a business or corporate entity, the entity purchasing the policy is typically (though not always) a named insured. Most insurance policies require the insurer to send any premium notices, notices of cancellation, or other formal notices to the named insureds.

Insurance policies may also protect other individuals or entities, who are added to the policy through a policy amendment called an “endorsement.” The endorsement may name specific individuals or entities or may include a “blanket additional insured endorsement,” which does not name a specific insured, but instead offers a general description of the type of individuals or entities who are entitled to coverage under the named insured’s policy.

These “Additional Insureds” are entitled to defense and indemnity under the applicable policy where the claim at issue arises out of the acts or omissions of the named insured. Additional insureds will not receive defense or indemnity under a policy for causes that do not arise from the named insured’s actions. Because the additional insureds do not hold the same “primary” status as named insureds, additional insureds typically do not pay any policy premiums and do not usually receive notice of policy changes (unless special requirements are included in the policy). The cost of adding an additional insured endorsement is usually low, when viewed in comparison to the premiums for being the named insured. This is because insurance

companies typically consider that there is limited additional risk where they are already insuring the named insured, whose conduct must be implicated for there to be a covered claim.

Additional insured status is often used to fulfill another party’s duty to defend and indemnify as party of a contract. A common example occurs where a contractor hires a subcontractor to perform work on a construction project. The contractor will typically require the subcontractor to indemnify and defend the contractor for any liabilities that may arise from the subcontractor’s work, and will often require the subcontractor to have them listed as an additional insured under the subcontractor’s insurance policy.

This requirement is designed to ensure that the subcontractor will be able to fulfill its indemnity obligation should the need arise. Even where an underlying indemnity agreement is deemed unenforceable, an indemnified party may still be able to recover the costs of its liability under the policy as an additional insured. It is also beneficial for a party to be covered as an additional insured since it reduces the loss history of the additional insured, which can ultimately lead to lower premiums. Instead, any losses from claims post against the policies of primary insured, and their premiums would likely increase.

Where a contractor is listed as additional insured, the contractor is entitled to insurance protection if the subcontractor or its agents do something that creates liability for the contractor. However, if a third party unre-

lated to the subcontractor causes the damage, the contractor may not be covered. Likewise, if claim against the contractor is based upon the contractor’s own actions (without regard to the subcontractor’s performance), the contractor will not be entitled to coverage under the additional insured endorsement on the subcontractor’s policy.

“Additional Named Insureds” typically have the same rights as the named insured without the obligation for the policy’s premium. They are frequently corporate affiliates or owners of the primary named insured. Additional named insureds are entitled to indemnity and defense for claims against them without the requirement that claims must be related to the primary named insured. Insurance carriers are generally obligated to provide notices to additional named insureds regarding cancellation or policy changes.

An additional insured amendment is a useful vehicle to complete the risk transfer associated with a promise to indemnify. Parties using this approach should be careful, however, to fully understand the coverage they are receiving in order to avoid unnecessary gaps and uncovered risks.

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