



The Risk of Overlooking Additional Insured Coverage

by Robert M. Horkovich and Nicholas R. Maxwell

Contracting parties need to pay attention to additional insured provisions in insurance policies. In most contracts for services, at least one of the parties (typically the purchaser) will require the other party to indemnify it for third-party claims arising from the project at issue. The indemnifying party (the “indemnitor”) is also usually required to name

the indemnified party (the “indemnitee”) as an additional insured on certain insurance policies. Parties place great emphasis on securing the best possible indemnity language in their contracts. However, parties sometimes neglect to subject the corresponding additional insured provision in the indemnitor’s insurance policy to equal scrutiny.

Failing to closely analyze additional insured provisions can be costly. The form endorsements used by most general liability insurance companies reflect an ongoing effort to narrow the coverage available to additional insureds, making close scrutiny of a contract’s insurance requirements vital. Even with precise, unambiguous indemnity language, additional insured coverage still can be what makes or breaks a contract when something goes wrong, such as:

- Where the indemnitor is a small business, it may not have the resources to satisfy its indemnity obligation, leaving the indemnitee with only the additional insured coverage the indemnitor can secure from the indemnitor’s insurance company.
- In states with anti-indemnity statutes that limit the scope of indemnity one party may provide to another, the same limitations do not apply automatically to the corresponding additional insured coverage.
- Where the contract limits the value of the indemnitor’s obligation—often to the value of the contract—the

indemnitee must turn to its additional insured coverage when defense costs or a judgment exceed that limit.

For these and other reasons, ensuring a robust additional insured provision is key to the financial soundness of any services contract. Fortunately, there usually is ample room for negotiation over these terms.

NEGOTIATING ADDITIONAL INSURED PROVISION

Parties finalizing a deal often treat insurance as an afterthought, especially if one party presents standard language. However, insurance terms can vary greatly, leaving many opportunities to improve your potential coverage, including:

- *Maximize limits:* As an indemnitee, do not assume that the vendor’s proposed limits are adequate—the lower the limits you agree to, the cheaper the policy is for your indemnitor, so your interests are not fully aligned.
- *Minimize deductibles:* In lower dollar value cases, an unnecessarily high deductible can render additional insured coverage meaningless.
- *Require completed operations coverage:* Products completed operations hazard coverage covers losses that occur after your work on a contract is complete. Most general liability policies include completed operations coverage for the named insured, but additional insured endorsements may exclude it. Ensure that the indemnitor’s policy has



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completed operations coverage for a reasonable number of years after project completion and does not carve out additional insureds.

- *Specify insurance provider requirements:* Smaller vendors may purchase insurance from smaller insurance companies offering cheaper policies with more trap doors, especially for additional insureds. Require that the policies providing your additional insured coverage be issued by an insurance company meeting criteria satisfactory to you.

MORE THAN JUST THE LIMITS

Even if the indemnitor promises to name you as an additional insured under specified terms the insurance company is only bound by what the policy itself says. There are many different types of additional insured policy language. The standard form endorsements drafted by insurance industry trade groups change frequently, often to the detriment of additional insureds.

- Beware of language that requires a direct contractual agreement between the named insured and the putative additional insured. While there most often is such a relationship, sometimes it is the bank financing a project, rather than the owner itself, that contracts to provide additional insured coverage.
- Beware also of language limiting additional insured coverage to instances where the underlying loss exclusively is caused by the named insured's negligence. Additional insured clauses can be broader without violating public policy.
- If possible, secure policy language that will provide addi-

tional insured coverage even if you are partially at fault. Savvy indemnitees can go as far as specifying a precise additional insured endorsement form.

THE IMPORTANCE OF DOCUMENTATION

Given that an insurance company is only bound to provide additional insured coverage according to its policy, indemnitees must ensure that their indemnitors purchase the coverage they say they will. Insurance companies rarely will provide the entire policy to a putative additional insured, but you should try to get the policy or at least a certificate of insurance confirming the limits of liability and confirming your additional insured status. If at all possible, make the insurance company, rather than the indemnitor's broker, issue your certificate of insurance. A certificate of insurance is not a guarantee of coverage no matter who issues it, but it is more useful for the purposes of establishing estoppel if it comes from the insurance company rather than a broker. Finally, try to obtain a copy of the policy's additional insured endorsement from your counterparty or from the insurance company directly. That way you can evaluate for yourself whether you truly have the additional insured coverage you think you have. ■

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