

Legal-Related News



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“Additional Insured's” And Construction Contracts

You may routinely see language in construction contracts requiring the contractor or subcontractor to name the owner, engineer and possibly others as additional insureds on the contractor's insurance policy. You may be accustomed to providing certificates of insurance to the owner (or general if you are a subcontractor) before beginning work onsite, but have you ever examined what risks you are taking on by doing so? Also, if you are named as an “additional insured” do you know what protection you are really getting?

What Are The Risks?

When you name another entity as an additional insured, claims made against that entity will be covered by your insurance policy, pursuant to the policy terms, as if the additional insured had purchased the insurance. Of course you (the “principal

insured”) pay the insurance premium and also suffer the claims history if a claim for coverage is made on the policy by the additional insured. Depending on the policy language, an additional insured could turn to the insurance carrier for coverage even if the principal insured did not cause a claim or loss sustained by the additional insured.

Claims made by additional insureds become part of the principal insured's claim history and are considered when an insurance company determines the insured's premiums. Any payments resulting from an additional insured's claims are deducted from the aggregate insurance limits otherwise available to the principal insured.

What Are You Getting As An Additional Insured?

Additional insureds may think they have more coverage than they actually do. Many insurance policies exclude coverage for claims associated with professional services, thereby arguably excluding most coverage for work done by engineers, who are often required by owner's contracts to be named as additional insureds on contractor's policies.

Certificates of insurance are usually provided by contractors before starting work as “evidence” of compliance with the additional insured requirements of the subcontract. The fine print on the certificates state coverage is determined by policy terms and the certificate of insurance is not binding. Savvy owners have started reading the fine print and have begun requiring a copy of the policy with the additional insured endorsement, in addition to the certificate of insurance.

tract documents, including AIA A201, "General Conditions of the Contract for Construction," and AIA A401, "Standard Form of Agreement Between Contractor and Subcontractor," **do not** require the contractor to name others as additional insureds. In fact, A201's 1997 edition explicitly states that "the Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's liability insurance coverage."

As a contractor if you are required to name the owner and others as additional insureds, make sure the contract language states that naming an additional insured is intended to apply only to **your** own negligent acts or omissions that cause claims to be asserted or losses to be sustained by the additional insured. Without this language, naming another entity as an additional insured can negate a negotiated contractual indemnification clause that limits a claim or loss to your own negligence.

Finally, follow through and make sure that you can and do obtain the additional insured coverage required by your contract (at a price you can live with). If your contract requires insurance coverage that your policy does not provide you risk becoming responsible for claims that would have been covered had you obtained the required insurance.

The above article was developed for informational purposes and should not be viewed or relied upon as legal advice. After Wynne LLP urges readers to consult legal counsel regarding specific legal issues and factual circumstances.

Tips

Although additional insured requirements are quite common, contractors should take note (and use this in negotiations when appropriate) that the American Institute of Architects' (AIA's) standard construction con-

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