



Issue Alert

ADDITIONAL INSURED STATUS: 5 TIPS TO ENSURE YOU'RE COVERED



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National Construction, Inc. has just signed a contract to serve as general contractor for a \$20,000,000 project involving the renovation of a museum in New York City. National does not intend to self-perform any of the construction work and, therefore, is preparing to execute subcontracts with the various trades necessary to complete the museum project. Because each subcontract will require that National be named as an additional insured on the subcontractors' CGL policies, National expects to be covered by those policies should a claim arise. Unless they are vigilant, however, National may have a false sense of security and may expose their corporate insurance program to liability.

Prior to beginning the museum project, National approaches their expert broker, who recommends five important tips to ensure coverage.

Know the Priority of Coverage

First, National's broker recommends careful consideration of the coverage priority under the subcontractors' policies and National's corporate program. If a claim is filed against National, will the subcontractors' policies pay before National's corporate program? Coverage will hinge upon the policy language as well as the subcontract language.

For National to ensure that the subcontractors' policies are the first line of defense against a claim, the subcontractors' policies should provide **primary** coverage to National. The intent of the parties will rule if a coverage dispute arises, and subcontract language will be key to determining intent.

Also, each additional insured endorsement should state that it will be primary to all other insurance available to National. Another acceptable (but less desirable) option involves wording that identifies the endorsement as excess unless the contract requires the insurance be primary. In addition, National's own corporate policies (both primary and excess) should specify that they are excess to all insurance provided to National under the subcontractors' policies.

Acquire – and Maintain – Completed Operations Coverage

National's broker also recommends ensuring that their coverage as an additional insured on the subcontractors' policies includes **completed operations coverage**. CGL policies are occurrence based; the policy in place when the bodily injury or property damage occurs will generally be the policy that is triggered. In order to maintain completed operations coverage as an additional insured, the subcontracts should require that National ***continue to be named as an additional insured on the subcontractors' policies purchased after the museum project is completed. This additional insured status should be maintained until the state's statute of repose for the project expires.***

Require "Liability Arising Out of Your Work" Wording

National is also advised that to have adequate coverage, they should ensure that the subcontractors' policies provide coverage for "liability arising out of your work" as opposed to (1) "liability arising out of your ongoing operations"; (2) "liability caused by your work"; or (3) "liability resulting from your work". Eliminating this potentially limiting language will likely provide National with a broader scope of coverage should a claim arise.

Also, even though an additional insured should be immune from subrogation, National should insist that the subcontractors' policies include a waiver of subrogation endorsement.

Go Beyond the Certificate of Insurance

During the process of examining the museum project's coverage, National receives a certificate of insurance from every subcontractor. As a result, National feels confident that it has secured coverage under the subcontractors' policies.

That's when National's broker points out that, unfortunately, the certificates alone are not enough to confer additional insured status. Typically, certificates of insurance are issued by the subcontractors' brokers or agents, and may not be binding on the insurers who issue the subcontractors' policies.

The standard certificate of insurance usually contains a disclaimer that it is issued as a matter of information only and confers no rights upon the certificate holder. The certificate of insurance has value because it provides a necessary summary of information (including insurer name, limits, coverages, and the policy period) should a claim arise, **but National should also request a complete copy of the subcontractors' policy.** The policy could contain limitations that directly involve the type of work performed by the subcontractors. Reviewing the policy thoroughly is the only way National can ensure that the subcontractor is carrying the appropriate coverage. If unable to secure a copy of the policy, National should at least request a copy of the policy declarations and the endorsement naming National as an additional insured.

Ideally, the subcontractors' policies should contain either (a) an endorsement that specifically names National as an additional insured or (b) a blanket endorsement that automatically provides additional insured status to anyone declared as such by the named insured subcontractor.

Provide Notice to Insurers if a Claim is Filed

National executes sound subcontracts, carefully considering priority of coverage, obtaining completed operations coverage, including wording that provides an adequate scope of coverage, and collecting the appropriate policy-related documentation. However, all of this may not be enough to guarantee National coverage under the subcontractors' policies.

If an incident takes place during the museum project, National must provide notice to **all** insurers who may potentially cover it, **including to those carriers insuring the subcontractors' policies.**

Policies generally state that the insured must give notice as soon as "practicable" of an occurrence that may result in a claim under the policy. Because failure to give timely notice **may** result in forfeiture of coverage, if an incident occurs during the museum project, National should err on the side of caution and give notice rather than try to predict whether the incident will result in a claim.

Furthermore, **National should give its own separate and distinct notice under the subcontractors' policies, and should not depend on the named insured subcontractors to give notice for it.** Insurers routinely deny coverage by claiming an insured's notice is late. If in doubt, National should notify **all** insurers whose policies might cover a claim, both primary and excess.

With careful contract and policy review, proper documentation, and a solid understanding of additional insured rights, National can ensure fewer problems with its additional insured coverage.

Tips To Ensuring Additional Insured Coverage

- *Make sure it is clear in the contracts, policies, and endorsements that additional insured coverage is **primary** to any corporate policies held by the additional insured.*
- *The contract should require that the additional insured continue to be named as such for **completed operations coverage, even after the project is completed.***
- *Look for "**liability arising out of your work**" language in additional insured endorsements.*
- *In addition to a certificate of insurance, the additional insured should obtain at least a copy of the additional insured endorsement and policy declarations. If possible, the additional insured should also get a **copy of the policy.***
- *If there is any chance an incident will result in a claim, an additional insured should **give notice to all potential insurers.***

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