

A SMART Policy

GOING THE EXTRA MILE TO ENSURE ADDED COVERAGE

Contractors listed as 'additional insureds' must be vigilant

By **TRACY ALAN SAXE**
and **ALICIA R. BROMFIELD**

When a contractor is added as an additional insured on a subcontractor's policy, he expects to be covered by that policy should a claim arise.

Unfortunately, being added as an additional insured may breed a false sense of security. Many times being named as an additional insured is not enough. Additional insureds need to be vigilant both before and after a covered occurrence to be sure that they preserve their rights as additional insureds under the policy.

Certificates of Insurance

The certificate of insurance is much less helpful than its name suggests. Even though a certificate of insurance indicates that an entity is an additional insured on a policy, the certificate alone is not enough to confer additional insured status.

Tracy Alan Saxe is a partner at Saxe Doernberger & Vita in Hamden, where his practice focuses exclusively on the representation of policyholders in insurance coverage disputes. Alicia R. Bromfield is an associate at the firm and focuses her practice on a variety of insurance coverage-based litigation on behalf of policyholders.



Since, typically, the certificate of insurance is issued by the subcontractor's broker or agent, it is not usually binding on the insurer. In fact, 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.

On the other hand, a certificate of insurance does provide a critical summary of information necessary should a claim arise, including insurer name, limits, coverage, and the policy period. The prudent contractor looking for additional insured

coverage should always request not only a certificate of insurance, but also a copy of the policy declarations and an additional insured endorsement naming the contractor as an additional insured.

Ideally, a contractor should obtain a copy of the blanket additional insured endorsement that automatically provides additional insured status to anyone the named insured subcontractor agrees to name as such in a contract or agreement. If a blanket endorsement is not possible, the contractor should make sure the contrac-

tor's name specifically appears on the endorsement as an additional insured.

TIP 1: 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.

Timely Notice

When an incident takes place, it is imperative that a contractor provide notice of it to any and all insurers who may cover a claim, including the insurer under whose policy the contractor has been named an additional insured. Because failure to give timely notice may result in forfeiture of coverage, if a contractor is unsure as to whether an incident should be reported to an insurer, it is always better to err on the side of giving notice. With regard to notice requirements, the additional insured should consult an attorney or, at the very least, should consult the policy if



it is available.

The policy will generally state that the insured must give notice as soon as "practicable" of an occurrence that may result in

a claim under the policy. A contractor should make it a practice to give notice rather than try to predict whether an incident will result in a claim under the policy.

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

TIP 2: If there is any conceivable chance that an incident will result in a claim, a contractor should give notice to any and all insurers, including policies where he is named as an additional insured.

Completed Operations

The prudent contractor will ensure that coverage as an additional insured includes completed operations coverage where appropriate. 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.

To maintain completed operations coverage as an additional insured, the contractor must continue to be named as an additional insured on policies purchased after the project is complete and generally until the statute of limitations/statute of repose expires.

This requirement should be specifically delineated in the contract, because a standard "blanket" additional insured endorsement in post project policies may not provide coverage unless there is a written requirement of continued additional insured coverage.

TIP 3: The contractor should make sure that the subcontract requires that the contractor continue to be named as an additional insured for completed operations coverage even after the project is complete.

Subcontractor's Policy

The intent of additional insured coverage is to have the additional insurer be the first line of defense and pay its indemnity limits before the contractor's policy pays. The subcontract should specifically require that the subcontractor's policy

provide primary coverage to the additional insured.

The additional insured endorsement on the subcontractor's policy should also state that the additional insured policy will be primary to all other valid and collectible insurance available to the additional insured.

In addition, the contractor's policy should specifically state that the contractor's policies (both primary and all excess) are excess to all insurance provided to the contractor by the additional insured policy.

TIP 4: Make sure it is clear in the policies, endorsements and contract that additional insured coverage is primary to any corporate policies held by the additional insured.

Parties seeking to be named as additional insureds and the counsel representing those parties need to be aware of various issues that can arise particular to additional insured coverage. With careful policy and contract review, however, problems can be avoided and additional insured coverage will be available when needed. ■