

WHAT TO LOOK FOR IN ADDITIONAL INSURED ENDORSEMENTS

Additional Insured Status v. Indemnification

- Indemnification agreements have limited enforceability depending on state law
- Indemnity agreements may not cover AI's sole negligence

Broad v. Narrow AI Coverage

- Causation v. Nexus
 - Broad: "arising out of"
 - Narrow: "caused by" or "resulting from"
- May be limited to work performed *for* AI

Specifically Named v. Blanket AI

- Specifically listed in endorsement
- Blanket endorsement: "that insured has agreed in writing"

Scope of Coverage

- "Separation of Insureds" clause requires that all provisions of the policy apply:
 - separately to AI
 - regardless of contract limitations
- Limits are shared
- Certain exclusions/deductibles may not apply to AI

"Other Insurance" Clause

- Conflicts between AI and indemnitee's policy
- "Other insurance" clause will not affect indemnity
- Horizontal v. Vertical exhaustion:
 - non-insurance documents may affect which policy is primary
 - intent of the parties may control risk transfer

CHECKLIST FOR THE ADDITIONAL INSURED

1. Blanket endorsement: "WHO IS AN INSURED - is amended to include as an insured any person or organization whom you have agreed in a written contract" to provide liability insurance...The AI's name need not be typed in.
2. If not blanket endorsement, the AI's name should appear on the endorsement. If it does not, then send it back and do not accept it. For "completed operations" coverage on occurrence based policies, the AI must be named on future policies until the Statute of Limitations/Repose expires.
3. Obtain certificate of insurance, AI endorsement, and declarations page.
4. Endorsement should cover "completed operations." Avoid specific exclusion for "completed operations."
5. Make sure that the endorsement reads "liability arising out of your work" as opposed to "liability arising out of your on-going operations."
6. The endorsement should state that the subcontractor's policy will be primary to all other valid and collectible insurance available to the AI. It is also acceptable, albeit less desirable, if the endorsement states that it will be excess unless the contract or agreement requires the insurance to apply on a primary basis.
7. The endorsement should read "liability arising out of" as opposed to "liability resulting from" or "liability caused by."
8. The endorsement should require notification of cancellation to AI.
9. The endorsement should not state that insurance is subject to the execution of the agreement prior to the "bodily injury" or "property damage."
10. If the AI does not have a contractual relationship with a named insured, be careful that the AI endorsement is not limited to work done on indemnitee's behalf.
11. Insist on waiver in contract of claims covered by insurance.
12. An AI is immune from subrogation. In any event, insist policy includes waiver of subrogation endorsement.

GENERAL TIPS TO REMEMBER

Immediately Provide Notice to All Insurers

- Notice is always an issue in coverage cases.
- Give notice as soon as practicable after learning of a potentially covered claim.
- Insurers routinely deny coverage by alleging late notice.
- Prejudice is an issue in many states. In some states (including New York), forfeiture of coverage is automatic if the notice is untimely.
- If the insurer does not timely disclaim coverage after late notice, it may waive its right to assert late notice as a defense of coverage.

Check All Policies For Coverage

- Coverage excluded under one policy may be granted under another (e.g. primary v. umbrella, pollution v. professional liability).
- Umbrella policies may “drop down” to provide primary coverage if their coverage grant is broader than that in the primary CGL policy.
- Identify any policies under which you may be entitled to coverage as an additional insured.

Never Destroy Old Occurrence Policies

- Claims can be brought long after the damage or injury which occurred during the policy period.
- Missing policies may be proven by secondary evidence, such as: correspondence, invoices or cancelled checks, certificates of insurance, and policy renewal information.
- Burden of proof is on insured to prove existence and contents of policies (including limits). Once coverage is established, burden of proof shifts to insurer re: exclusions.

INSURANCE COVERAGE EXPERIENCE AND SERVICES

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Over the past 10 years, SDV has represented large corporate policyholders, small companies, non-profit institutions, municipalities, state governments, utilities, and individuals. The firm works directly with CEOs, CFOs, in-house counsel, insurance managers, brokers, risk managers, and their staff to resolve their insurance coverage disputes. An important facet of SDV’s attorneys’ skills is our experience in alternative dispute resolution. The firm regularly counsels clients concerning out-of-court alternatives, including arbitration, mediation, and other less formal resolution techniques.

SDV’s experienced team of trial lawyers has tried numerous insurance coverage cases in both state and federal courts nationwide. Our attorneys have the skills to prepare for trial effectively, are focused on critical issues, and are prepared to argue those issues persuasively. SDV has argued successfully in a wide variety of appellate courts including federal circuit courts of appeal and numerous state appellate courts throughout the nation.



WE ARE COMMITTED TO:

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- Providing clients with a thorough analysis of claims
- Assisting clients in seeking the maximum possible recovery
- Maintaining our personal commitment to each client
- Partnering with risk managers, CFOs, in-house counsel, and other corporate leaders to resolve disputes quickly and effectively
- Dedicating our entire firm to policyholder coverage
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