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Additional Insured Coverage: An FAQ

Whether you are an owner, general contractor, subcontractor or sub-subcontractor, additional insured (AI) issues can arise. Depending on where anyone stands in the chain of contracting, you may be looking to shift risk and obtain additional insured status from someone below you, or someone may be looking to you and your insurer to provide them with additional insured status.

Below are some factors to keep in mind.

What is the Time of the Obligation?

Additional Insured status is often dependent on whether the claim involved is an “ongoing operations” claim, or if it is a “products-completed operations claim.” As seems logical, the first is a claim which arises out of continuing, ongoing work. The latter is a claim which occurs after the work is completed, and put to its intended use. There are sometimes blurry lines but, most often, it is clear which type of claim is involved. AI endorsements are often issued specifically to either ongoing or completed operations, so make sure that you have the coverage you planned for. Many insurers issue only ongoing operations AI endorsements, with the intent to not provide AI coverage on construction defect types of claims.

Who Is An AI?

Most insurance policy AI endorsements contain a schedule, which may have a variety of wording; it may say “As required by written, fully executed contract, entered into prior to the date of any loss.” Or it may have variations of that term. Or, the schedule may, instead of a descriptive term, specifically list an entity by name, i.e. the schedule may simply say “ABC Corporation.”

Still other forms (i.e., CG 20 33), don’t have a schedule but, in the body of the text, indicate that it only applies to the party the named insured has entered into a contract with. You should always make certain that the schedule includes the right terminology.

Does the AI Coverage Apply on a Primary, Excess or Other Basis?

Virtually every insurance policy contains a section that discusses how “Other Insurance” will apply to a loss. The three easiest possibilities are that a specific policy will apply on a primary basis, on an excess basis over other policies, or that the various policies may apply concurrently. These can have widely divergent results. Often, it will stem back to the contract and the insurance procurement language; does the contract require that the insurance naming a party as an AI be “primary and non-contributory,” is the contract silent, etc.

Does the Policy with AI Coverage have Exclusions?

Often, you may receive “good news-bad news” from an insurer; Good news, the policy does name you as an additional insured but, bad news, the policy of the sub contains an exclusion which applies to negate coverage. You cannot always know what is contained in the policy of a lower-tier entity who may owe AI coverage, and short of demanding the policy before any loss, you may not know what’s contained therein. Steps should always be taken to make sure that the coverage from a sub is at least what is required or likely to occur.

I Have a Certificate of Insurance Naming Me As An AI. I’m Covered, Right?

Certificates of Insurance (COI) are a commonly used method of checking on the coverage an entity has, and also to see additional insured status. However, beware relying solely on a COI. Each and every COI contains language similar (or identical) to the following:

- “This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not, amend, extend or alter the afforded by the policies below.”
- “IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed... a statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).”

Therefore, the COI is for information only. Even though the COI may state that someone is an additional insured, it does not necessarily mean that the policy has actually been endorsed with an appropriate additional insured endorsement.

So Long as I’m an Additional Insured, Does It Matter What Forms Grant Me AI Status?

The short answer is a very big “yes.” There are scores of additional insured endorsements, both from the Insurance Service Office (ISO), and also in manuscript form. These have a large variety of language differences and provide vastly different scope of coverages. Some only provide AI status to those in direct privity of contract, others may be broader. Some provide AI status for liability ‘arising out of’ operations, while other provide AI status for liability “caused in whole or in part by an act or omission” of the named insured. The language of the coverage grant is critical, and may be the difference between an AI tender being accepted or rejected.

Once My Tender Is Accepted By Another Party, My Policies Are Not Involved, Correct?

The answer is “maybe.” It will depend on a number of factors too complex for this brief memo, but they may include the value of the underlying case, if the accepting carrier has any coverage defenses, if the coverage will be examined on “vertical” or “horizontal” exhaustion, etc. It may still be necessary and good practice to monitor cases even if defense has been accepted by another carrier. Remember, a carrier accepting defense is different from a carrier accepting defense AND indemnity.



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