



## POLICYHOLDER INSURANCE COVERAGE E-UPDATE

### TEN TIMESAVING TIPS FOR ADDITIONAL INSURED COVERAGE

By Mitchell B. Reiter

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In today's business environment, efficiency is the name of the game. To save yourself time (and frustration), consider using this checklist each time that you address issues of additional insured coverage on your liability policies.

1. For endorsements beginning with, "WHO IS AN INSURED - is amended to include as an insured the person or organization shown in the Schedule...", the Additional Insured's name must appear on the endorsement. If it does not, send it back and do not accept it. If there is no name actually shown on the face of this type of endorsement, then the endorsement does not provide Additional Insured coverage to anyone and it is essentially worthless.
2. For endorsements beginning with, "WHO IS AN INSURED - is amended to include as an insured any person or organization whom you have agreed in a written contract...", the Additional Insured's name need not be typed. However, you must make sure that each and every party for whom you are providing Additional Insured coverage (or who is providing Additional Insured coverage to you) has signed a contract with you that provides for such coverage and that you have a copy of that fully signed contract.
3. At a minimum, obtain copies of the Declarations page of the policy, the Additional Insured endorsement, and the Certificate of Insurance from each party who is supposed to be making you an additional insured under their policies. Keep these in your files for at least 3 years after the matter is completed (because an injured person has 3 years from the date of injury to file suit for his/her damages).
4. For construction projects, the endorsement should cover "completed operations." Avoid language stating that the coverage is limited to "ongoing operations." If the endorsement only provides coverage for "ongoing operations," that means that the Additional Insured coverage ends when you finish the job. This is dangerous for you and the Additional Insured because if someone is later injured at that location, and sues the Additional Insured for injuries arising out of your work, there would be no Additional Insured coverage available for that claim.
5. Make sure that the endorsement covers "liability arising out of your work" as opposed to "liability caused by your work." Although these two phrases sound very similar, the courts have interpreted them very differently. The phrase "liability arising out of your work" is interpreted much more broadly by the New York courts and, consequently, is much more likely to extend coverage to your Additional Insured for a broader range of events.
6. If your contract requires the Additional Insured coverage to be primary to all other coverage available to the Additional Insured, make sure that your policy contains an endorsement stating the same. The endorsement itself may state as follows (or some variation thereof):



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If the Named Insured has agreed in a written contract to provide the Additional Insured(s) coverage on a primary basis, the coverage provided to such Additional Insured(s) hereunder will be primary to, and will not seek contribution from, said additional insured's policy(ies) of insurance.

7. The Additional Insured endorsement should require notification of cancellation to the Additional Insured. Do not be satisfied with just a Certificate of Insurance that says that advance notice of cancellation will be given to the Additional Insured. In New York, the courts have ruled that Certificates of Insurance are not binding on the insurance company. You need to see the policy.
8. The Additional Insured endorsement should not state that insurance is subject to the execution of the agreement prior to the "bodily injury" or "property damage." If the endorsement restricts coverage to injuries or damage occurring only after the execution of your contract, the insurer will likely deny coverage if you begin work without a fully executed contract and an injury or property damage occurs.
9. Make sure that the Additional Insured endorsement does not require the indemnitor's negligence or exclude

coverage where the Additional Insured may be partially at fault. If your insurer inserts these terms into the endorsement, it will deny any duty to defend the Additional Insured whenever it determines that you were not at all at fault for the occurrence, or whenever it believes that the Additional Insured was even remotely responsible for the occurrence. This leaves you without insurance coverage for the Additional Insured, who may well sue you directly to obtain a defense and indemnity from the claim.

10. Do not fall into the trap where your contract contains overly broad language regarding your duty to indemnify the Additional Insured. To avoid this situation, while still triggering the maximum allowable indemnity, try to craft the indemnity provisions of your contract to provide for indemnity "to the fullest extent permissible by law." This phrase is flexible enough to help you achieve your true purpose regarding indemnification.

Let this checklist be your guide when you deal with issues of Additional Insureds. We are confident that you will save yourself a lot of time and potentially avoid a lot of stress.