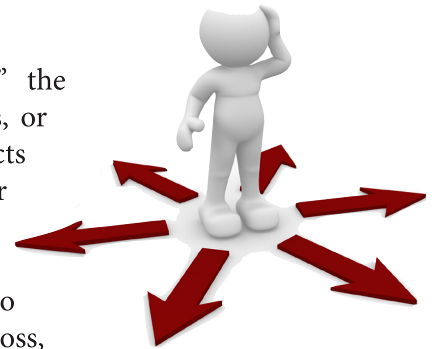
Additional Insureds = Additional Dilemmas

Insurance companies need to understand the exposures they are underwriting to remain profitable. An insurance company will not bind coverage on a risk they know nothing about. However, when there are additional insureds involved, this is exactly what can happen. Additional insured exposures are often connected with contracting risks, but they can be found in nearly any business, from a building tenant to someone who leases office equipment. There are more than three million people employed as contractors and more than 35 million renter-occupied housing units in the United States. These all represent potential additional insured exposures. Understanding the coverages and risks associated with additional insureds is key to maintaining profitability.

Indemnification/hold harmless agreements and additional insured coverage requests are the source of much confusion and litigation. The entity asking to be named as an additional insured is looking to transfer the responsibility for loss to another party. This can present a problem when the coverage provided is not what the additional insured intended. The insurance company may refuse to defend and/or indemnify the additional insured, or they may bring the additional insured's primary liability carrier into the claims process. This contradicts the additional insured's intent in asking to be named as an additional insured in the first place. In many cases, compliance with the request for additional insured status is a prerequisite for the named insured to obtain the contract or lease.

An additional insured does not have the same rights and coverage as the named insured. The additional insured is covered for operations that are connected to the named insured. The insurance company does not underwrite the additional insured, so the company is taking on unknown exposures. In some cases, coverage is provided even if the additional insured was solely responsible for the loss. In recent years, the trend has been to restrict coverage for the additional insured when the loss was not wholly or partially due to the negligence of the primary insured.

Whenever possible, the contract wording should be reviewed to determine the scope of coverage the additional insured is looking to obtain. For example, a contract may require the named insured to indemnify the additional insured for claims "arising out of" the named insured's operations, for injuries "occurring on or about" the named insured's premises, or arising out of negligent acts of the named insured, their employees, agents or invitees. Others may require the additional insured to be indemnified for any loss, regardless of whether or not the additional insured is responsible or negligent.



Defense is an important part of the coverage for the additional insured. Depending upon the contract terms and additional insured endorsement wording, the insurer may have to defend the additional insured even if the named insured is not negligent. The insurance company may also end up paying claims on behalf of the additional insured, reducing the coverage available to the named insured.

Additional insured endorsements can provide coverage in several ways: blanket or specified named insured, primary and noncontributory, and with or without products/completed operations.

Blanket Basis

All additional insureds are covered, and do not have to be added to the policy on an individual basis.

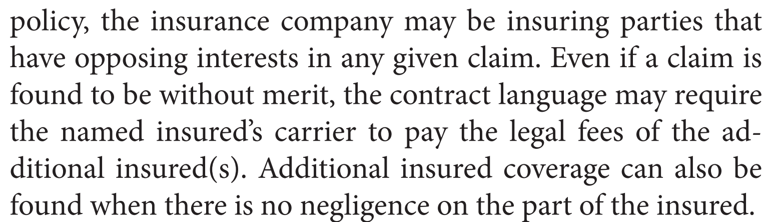
Primary and Noncontributory Basis

The additional insured is covered under the named insured's policy without contribution from the additional insured's policy. The named insured's policy provides coverage as if it were the only policy in effect for the additional insured.

Products/Completed Operations

Coverage may or may not be included for the additional insured. If the policy is cancelled, the additional insured may sue the named insured for breach of contract. Breach of contract would not be covered under the insured's policy, but the insured might sue their agent for not providing the proper coverage.

By adding multiple additional insureds to a policy, such as the general contractor and building owner on a subcontractor's



policy, the insurance company may be insuring parties that have opposing interests in any given claim. Even if a claim is found to be without merit, the contract language may require the named insured's carrier to pay the legal fees of the additional insured(s). Additional insured coverage can also be found when there is no negligence on the part of the insured.

In Keiffer vs. Best Buy, plaintiff Ms. Keiffer fell in a Best Buy store, claiming the floor was slippery. She sued Best Buy, the cleaning general contractor American Industrial Cleaning (AIC) and the cleaning subcontractor, All Cleaning Solutions, the company that actually cleaned the floors. The court determined there was no negligence on the part of the defendants, but there was still the question of who would pay the legal fees of the three defendants. Best Buy had a contractual agreement with AIC stipulating that AIC would indemnify and hold harmless Best Buy, including legal costs. AIC was required to indemnify Best Buy due to their broader contract language. The contract between AIC and the subcontractor All Cleaning Solutions was less broad and did not include the requirement to pay legal costs if All Cleaning was not negligent. All Cleaning was ultimately not required to indemnify Best Buy and AIC, because the contract between Best Buy and the general contractor (AIC) required the general contractor to indemnify Best Buy. However, the general contractor's insurance company was required to pay for Best Buy's defense pursuant to an insured contract.

Additional insured coverage can be found to apply even if the accident causing the injury did not seem to have anything to do with the named insured. In Harrah's v. Harleysville, the plaintiff had been shopping at a store that was a tenant in Harrah's. Upon leaving the casino, the plaintiff was hit by a car driven by a Harrah's valet. Harrah's was an additional insured under the tenant store's policy, and it was determined that the reason the plaintiff was at the casino was to shop in the store, and tenant was obligated to indemnify Harrah's.

Too often, insureds and additional insureds rely on information contained in certificates of insurance. Certificates of insurance represent the coverage at a point in time. They may or may not account for any impairment of limits that may exist due to prior claims against the policy. A certificate of insurance does not change the policy terms and conditions. Agents sometimes alter certificates of insurance to include additional insureds at the request of their client, which often contradicts the policy language. This has led to numerous lawsuits, as additional insureds rely on the certificate wording rather than the policy wording. In some cases, insurance companies have told their agents not to send the company the certificates of insurance an agent issues. This leads to problems when the agent-issued certificate is incorrect. Legislative solutions are currently being looked at in New York to help resolve the continual problem of certificates of insurance not matching the actual policy.

Forms and scope of additional insured endorsements vary greatly, ranging from coverage for specific additional insureds for specific operations/activities to broad "blanket" coverage for any additional insured, whether or not they have been specifically added to the policy. In many cases, it is not the intent of the insurance company to cover the additional insured for liability that they would have in absence of the contract or additional insured status. Additional insured situations are inevitably going to be tricky, so the best solution is to thoroughly review the contract and additional insured requests to eliminate or at least reduce costly litigation.

This article originally appeared in the NYIA NY Connection Magazine.