



Understanding Additional Insured for the Independent Loss Control Rep (Contracting Risks)

Most loss control surveys simply ask if the insured is getting named as additional insured by their subcontractors.

My favorite is from a carrier I personally cannot stand

“Risk shown as “Additional Insured” on COI?” More on this question later.

For the purposes of this discussion to make things easy to follow we are going to use two layers of risk in a contract.

The General Contractor (GC), and the subcontractor. The subcontractor is going to be insured with BulletProof Insurance Company.

The intent of this article is to improve your ability to communicate to the underwriter the effectiveness of the contractual risk transfer in the insurance policy. This is not designed to take a deep dive into the issues like New York City and other areas that have very specific laws and other concerns. It is also not designed to take you to the point of needing to have an understanding of the insurance policy that a licensed agent should have with phrases such as “primary & noncontributory” or “third party action over exclusions”.

It is important to understand the hold harmless agreement in the contract is the “risk transfer” portion of the contract. The insurance requirements including the additional insured provision provide the “funding” or “deep pockets” to pay for the risk transfer. An additional insured endorsement without the hold harmless agreement is not effective.

The concept of the additional insured is actually not difficult. It is simply having the insurance policy of the subcontractor add the GC to the policy as an insured. In short if the GC is an insured on the subcontractor’s BulletProof policy they are afforded all of the rights an insured has, including defense and indemnity on the policy. In other words, even though the GC did not purchase the insurance for the subcontractor, they have the right to call them up and file a claim with them. To be fair, the additional insured endorsement narrows the scope of the coverage available to GC. It must be from the actions of the subcontractor acting on behalf of the GC. To put it another way, if the subcontractor is performing carpentry work for the GC, and someone trips and falls over the carpenter’s extension cord, it is the GC that is going to get sued because it is “his” job. However, the GC was doing nothing at that spot. The GC as an additional insured on the carpenter’s policy has the right to send the notice of suit directly to BulletProof insurance as an additional insured on the carpenter’s policy.

Pretty simple concept, correct? Unfortunately, insurance is never that simple. The problem is getting to be an insured on the subcontractor’s policy and at the time of the claim.

There are 2 concepts that need to be discussed. Triggering the coverage for the additional insured, and making sure it is still in effect at the time of the claim.



Triggering the coverage.

As a loss control rep, one needs to understand that although ISO is the standard for policy forms, just about every insurance company uses their own manuscript language regarding additional insured language. Most insurance companies will grant the additional insured status *when required by written contract*. In short, an LCR must look at the written contract to see if it requires the GC to be named as additional insured. If the LCR is told “we make sure that we get certificates showing additional insured status” (satisfying the above captioned insurance company’s standards cited in the first paragraph) and there is no requirement in the contract. A recommendation should be issued because most likely the additional insured is not going to be triggered.

A word about certificates.... A COI showing additional insured status is worthless. I challenge you to read the wording on a blank COI. In summary, it says “I am not worth the paper I am written on.” A certificate is still the benchmark currently used by most.

Let’s assume we see additional insured is required in the contract and the COI is collected showing the same. All should be good, correct? NO!!!

An insurance policy has two basic coverages for the operations of a contractor. They are “ongoing operations” and “completed operations”. Ongoing operations would be for someone getting injured while on site (someone trips over an extension cord). Completed operations are for damages caused by the work after the subcontractor has left. For example, a flooring contractor strikes a water line with a nail and a year later the nail rusts and causes the pipe to leak causing property damage to the existing subflooring, ceiling below the flooring, etc.

Most additional insured endorsements granted by a requirement in the contract will only provide additional insured status for ongoing operations unless the contract specifically requires that the additional insured endorsement be for completed operations as well.

In light of this information, if the contract states “subcontractor shall provide GC with additional insured status” a recommendation should be generated to modify the contract to require additional insured status for both “ongoing” and “completed” operations. To push it further, the additional insured for completed operations coverage should be for a specified period of time (the occurrence is when the nail rusted and caused the leak, not when the nail was shot through the plumbing). The strongest of contracts will required the additional insured status for completed operations for the period of the statute of repose.

The two take away points are

- The written contract should require additional insured status.
- The requirement should include “ongoing” and “completed operations”

These are simple and non costly recommendations that will help you raise the bar for the clients you serve. This is no way replaces the valuable input that should be sought from a licensed agent or a coverage specialist who can further assist an insured with other insurance requirements that go way beyond the scope of this agreement.