

## **“ADDITIONAL INSURED” AND PROPER COVERAGE—THAT IS THE QUESTION**

It is common for project owners to include within the prime contract an insurance provision that provides: *“The Contractor is required to have the Owner named as an Additional Insured on its insurance policies, and it shall be required to furnish proof of compliance.”* That provision may even specify the policy(ies) and coverages for which the owner is demanding to be an “Additional Insured.” This may be insurance that the owner does not otherwise have. It is common for the owner to also mandate that the contractor have similar provisions in its subcontracts. Many contracts, which require “Additional Insured” coverage, also provide that work shall not start without proof of compliance, as well as indicating that no payments will be issued for work, without such proof. The contractor’s inclusion of similar provisions in its subcontracts is to ensure that it has similar protection as the owner. The Additional Insured provision is commonly tied to indemnification or hold harmless provisions.

Typically, the entity that is required to add Additional Insureds to its policy turns to its insurance broker for compliance. Customarily, a “Certificate of Insurance” or an “Endorsement Certificate” is furnished by the broker for the party required to name the Additional Insured, or by the insurer’s representative. The standard Certificate of Insurance, as well as many Endorsement Certificates, simply identifies the requesting party by name and states that it has been added to the policy as an “Additional Insured.” With the Certificate in hand, work goes forward; but, the critical issue remains as to whether the “Additional Insured” is actually insured under that policy or entitled to the coverage that it required. The answer is often determined by extensive litigation, which could have been avoided.

The resolution can be extrapolated from various unpublished decisions issued over the past 5 years. These decisions acknowledged that, under New Jersey law, the interpretation of an insurance policy is a question of law. Subject to specific facts and circumstances, insurance policies, along with Certificates of Insurance and Endorsements, are interpreted in accord with the plain language of the documents. This means that Certificates of Insurance and Endorsement Certificates cannot be taken for granted. The Certificates are not the policies and do not, by themselves, establish status as an insured.

In one instance, an Endorsement Certificate, which admittedly added an Additional Insured, was held not to have provided the coverage initially intended. The court noted that the certificate stated that it *“confers no rights upon the certificate holder, and it does not amend, extend or alter the coverage afforded by the policies below.”* It further stated that *“the policies were subject to all the terms, exclusions and conditions of such policies.”* Thus, due to the disclaimer language, the coverage that was sought did not automatically come into existence. In like fashion, the “Certificate of Insurance,” which is often used to show compliance with adding an Additional Insured, is a standard form. Although the Certificate may state that “XYZ” is an “Additional Insured,” the forms also contain extensive language that disclaims Additional Insured coverage, unless an amendment to the policy issued and was confirmed by a policy endorsement. In one

case, the Certificate of Insurance stated in bold letters, that *“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 coverage afforded by the policies below.”* Standard certificates often state that *“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).”* As can be seen, the plain language in the Certificates of Insurance often disclaims Additional Insured coverage and the Endorsement Certificate might negate Additional Insured coverage for the particular insurance that was sought.

The specific language of the specific policies for which you are seeking Additional Insured coverage or liability protection, must be carefully read, and specific endorsements may have to be drafted, approved, and included within the policy for the Additional Insured to have protection and coverage. The mere insertion of “Additional Insured” on a Certificate of Insurance or Endorsement Certificate is not sufficient, without a proper Policy Endorsement.

#### WHAT SHOULD YOU DO IF YOU EITHER REQUEST OR ARE REQUIRED TO FURNISH ADDITIONAL INSURED COVERAGE?

I. Do not rely upon the Certificates as proof that Additional Insured status has been conferred. Check to see if the Certificates and the policy include disclaimer language that require a particular Policy Endorsement to add the Additional Insured and proper coverage.

II. Even if there was an Endorsement Certificate, which created Additional Insured coverage, unless you know the terms and conditions of the underlying policy, a simple endorsement may not furnish you with the coverage you requested or were required to provide. Review the entire Policy to know whether the coverage provided satisfies the terms of the contractual obligation.

III. Both entities should have their insurance representatives review the actual policy to which the Additional Insured endorsement is added, and confirm in writing that the requirements for creating Additional Insured status has been fulfilled and the desired insurance and coverage is applicable. Do not rely upon the receipt of a standard Certificate of Insurance or Endorsement Certificate. Expend the effort to obtain a comprehensive Policy Endorsement.

IV. Ensure that the Certificates name you as a “Certificate Holder” and require the carrier to notify you of any changes in coverage. This will help protect you from situations where policies are secured and then terminated, or cancelled without notice to you.

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