



You're an "Additional Insured" – What Coverage Are You Getting?

Builders routinely require their subcontractors to name the builder as an additional insured on the subcontractor's comprehensive general liability ("CGL") insurance policy. Prudent builders go further. They specify the scope of coverage the builder must receive as an additional insured, and they check the certificate of insurance supplied by the subcontractor to make sure that they get the required coverage. The builder who does not do so may be surprised by what little coverage the builder has actually gotten as an additional insured. This is because the forms of coverage for additional insureds vary widely, and some of the forms in fact provide very little coverage to the additional insured.

To receive the broadest coverage, builders should specify in the subcontract that the builder must be named as an additional insured on the subcontractor's CGL policy "for liability arising out of the subcontractor's work." Such coverage is provided by Insurance Services Office form CG 20 10 11 85, among others. The key words are "arising out of." The courts have construed this phrase very broadly. For example, in a recent case two employees of an excavation subcontractor were injured by a cave-in at a construction site. The employees sued not their employer (the subcontractor) but rather the contractor, alleging that the contractor failed to provide a safe workplace. The court held that the contractor was covered for the suit as an additional insured on the subcontractor's CGL policy, even though the subcontractor itself was not sued. The court held that the contractor's alleged liability "arose out of" the subcontractor's work.

But a builder might be an additional insured on a subcontractor's CGL policy and not get the coverage the builder expects. For example, some insurance policies cover additional insureds "with respect to liability arising out of [the subcontractor's] *ongoing operations* performed for the [the additional insured]" (emphasis added). A builder who expects to be covered as an additional insured for a construction defect suit alleging property damage occurring *after* construction was substantially completed could be disappointed by such coverage. Some courts have held that such a suit does not arise out of the subcontractor's "ongoing operations."

Another very common additional insured endorsement covers the builder only for liability "caused, in whole or in part," by the subcontractor's acts or omissions. Many courts have construed the phrase "caused, in whole or in part" much more narrowly than the phrase "arising out of." In the view of such courts, the builder as an additional insured would not be covered if the lawsuit against the builder alleged that the injury or

damage were caused only by the builder. For example, such courts would likely rule that the builder in the excavation cave-in example discussed above was not covered as an additional insured on the subcontractor's policy because the suit did not allege that the builder's liability was caused, even in part, by the subcontractor.

In addition to specifying in the subcontract the mandatory scope of coverage for the builder as an additional insured, the builder should confirm that it has actually received the required coverage. The subcontract should provide that the subcontractor must furnish a certificate of insurance and that the certificate must be sufficiently detailed to show that all the insurance requirements of the subcontract have been met. The certificate should show that the builder has been added as an additional insured on the subcontractor's CGL policy and should describe the terms of coverage provided to the additional insured and/or attach the actual additional insured endorsement.

In addition, the builder needs to take the time to read the certificate and to follow up with the subcontractor if the additional insured coverage does not meet the requirements in the contract, or if the certificate is not sufficiently detailed to make that determination. A builder who does not assure that its subcontractors have provided the required scope of additional insured coverage could be in for a rude awakening after a suit is filed and the builder seeks coverage as an additional insured on its subcontractor's insurance policy.

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