



## Current Articles 2008 – June

### Additional Insured vs. Additional Named Insured

When I started to research this topic, I realized the complexity of the terms and proper and full discussion could compromise a book of its own.

Many times your clients or their sub-trades will use these terms interchangeably. However, and depending upon the terms of the contract between your client (the entity named on the policy) and another party (additional insured), the conditions in the event of a claim can vary considerably.

Consider that your client has been asked by the other side to be added on your client's policy as an "additional named insured". Is there a difference if the other party is added as an "additional insured" or as an "additional named insured?" As one legal report stated: *"The actual extent of the differences between these two terms can be summed up by the dreaded two-word legal axiom: **It depends!**"*

An Additional Named Insured is an individual or entity which is added to a policy with the status of named insured after the policy is written. Although there have been few court proceedings in Canada, there are several USA court decisions with regard to the pitfalls of adding an Additional Named Insured. Some courts have stated that by adding an Additional Named Insured, this party, in effect has a liability policy to cover damages even if the damages are not related to the owner of the policy to whom it has been added. Another court has stated that since the Additional Named Insured has the full benefit and rights of the policy that they may alter, change or even cancel the policy. Another decision, however, states that the Additional Named Insured may be responsible for the premium or premium adjustments if the Named Insured does not pay.

In most cases it will require the terms of the contract between the two parties to determine the extent of coverage for the additional parties. As a good rule, it is recommended that you restrict the use of an Additional Named Insured to entities owned or controlled by the original insured named on the policy

The additional Insured endorsement gives rights under the Insured's policy by virtue of the additional insured endorsement. There is no standard endorsement and until you review the contractual requirements (and maybe engage their lawyer for a legal opinion) it is difficult to know the exact requirements. In general terms, the named insured extends protection to the additional insured under the terms and conditions of the named insured's policy. This could be limited to liability arising out of the operations performed by or on behalf of the named insured. This means that typically the coverage will only respond to damages incurred by the additional insured if there is some connection with the operations of the named insured.

Occasionally you may be requested by an automobile leasing company, usually in relation to short term leasing, to be added as an Additional Named Insured. This cannot be done in Ontario as we do not have such an endorsement. If you complied with this request, you would be extending all the provisions of an OAP 1 to the leasing company! This usually stems from Canadian subsidiaries of US leasing companies. Many of the States have an Additional Named Insured Endorsement for auto insurance policies but it is written to limit the coverage to a specific vehicle that is being leased. Cannot do it here! I had a situation that required a certificate for the lessor and that

included provisions of their Additional Named Insured endorsement. When the request was refused and after several discussions, I asked the leasing manager how many of their endorsements were signed by agents or brokers? His response was "more than 50%!"

With any request for additional insureds to be added and if in doubt, forward the request to the insurer. A wise insurer, particularly for construction risks, may also want to see the contract with your client.

To sum this up and without writing a book, if in doubt ----don't sign!

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