



Will The Additional Insured Endorsement Actually Cover The Claim?

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Imagine this scenario. Your company hires a contractor to do some repair or renovation work. The contract requires the contractor to have commercial general liability insurance and make your company an additional insured under that policy. The contractor does so. Someone is injured on the jobsite and sues your company. You tender the case to the contractor's insurer. Will that insurer defend and, if necessary, settle the case for your company?

Depending on further facts and the governing state law, this question may be more complicated than you hoped. Two new cases, one from Illinois and one from the state of Washington, illustrate.

In the Illinois case, *Core Construction Svcs. of Illinois, Inc. v. Zurich Am. Ins. Co.*, general contractor Core Construction hired Schindler Elevator as a subcontractor to perform work on escalators, curiously at a facility owned by State Farm.

The contract between Core and Schindler required Schindler to name Core and State Farm as additional insureds on Schindler's policy with Zurich. Schindler did so. The policy contained a standard endorsement providing additional insured coverage for liability for injury or damage "caused, in whole or in part," by Schindler's acts or omissions in the performance of its ongoing operations for Core or State Farm.

One of Schindler's employees was injured while working on an escalator. He

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sued Core and State Farm, alleging they were negligent in permitting unfettered access to the jobsite, which resulted in him coming into contact with 1,700 pounds of equipment.

Core tendered the case to Zurich, which refused to defend because there was no allegation that Schindler was negligent. The Illinois court said that is neither surprising nor determinative, because workers compensation immunity prevented the plaintiff from suing his employer, Schindler. Because the accident occurred while the plaintiff was working on an escalator, the court found it was possible that Schindler was negligent. The court therefore held that Zurich had the duty to defend Core.

In the Washington case, *Mt. Hawley Ins. Co. v. Zurich Am. Ins. Co.*, Granite Market Place was the owner and JSH Properties was the manager of an office building in Seattle. They hired JTM Construction to repair the sidewalk outside the building. As required by the contract, JTM made Granite and JSH additional insureds, under essentially the same endorsement language as in the Illinois case and coincidentally with the same insurance company, Zurich.

Three days before the work was to begin, a pedestrian was injured when her foot became stuck in a hole in the sidewalk. She sued Granite, JSH and JTM.

Zurich refused to defend Granite and JSH, contending that they could not be additional insureds for a project that had not yet begun. Zurich did defend JTM, which won summary judgment against the plaintiff because JTM's work had not begun. Granite and JSH eventually settled with the plaintiff and then sued for reimbursement from Zurich.

The Washington court held that Zurich did not have to reimburse the settlement, agreeing with Zurich that Granite and JSH were not covered because JTM's work had not started. However, the court also held that Zurich had breached the duty to defend Granite and JSH. That is because the original complaint alleged that JTM was responsible for the sidewalk, and the duty to defend is determined by the allegations rather than the ultimate outcome of a case.

These two new cases used different analytical approaches and reached different results from a [New York case we discussed in an earlier post](#). In that case, the New York court found no coverage for an additional insured because the court construed the phrase "caused, in whole or in part, by" as requiring proximate rather than but-for causation.

Basically, the same policy language yielded three different results in three different courts using three different rationales to analyze three different sets of facts. That alone suggests caution whenever someone makes a broad assertion about how an additional insured endorsement will apply to a given hypothetical or real-life scenario. Moreover, there are dozens of so-called standard form additional insured endorsements, plus countless non-standard versions.

When purchasing insurance policies and when entering into contracts with insurance requirements, it's important for businesses to think carefully about the endorsements actually available and how they might relate to the most likely risk scenarios. Understanding these nuances can help a business consider whether to challenge an insurance company if a potential loss occurs and the insurance company denies coverage.