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Are You Getting Your Money's Worth In Additional Insured Coverage?

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Many commercial contracts require that one of the parties be included as an "additional insured" on the general liability policies of its contracting partner (which is the "named insured" on those policies). General contractors typically require subcontractors to include them as additional insureds on the subcontractors' policies. Lessors often require the same from their lessees, and manufacturers from their suppliers.

From the perspective of the party seeking to be an additional insured, the reason is to shift some or all of the burden of providing coverage onto the other party's insurers for liabilities with some connection to that other party. This preserves the limits of the general contractor's, lessor's, or manufacturer's own policies for claims that have no connection to the other party.

Not all additional insured coverage is created equal, however. Depending on the language of the additional insured endorsement, courts frequently interpret some kinds of additional insured coverage to apply more broadly than others. The following types of additional insured language, for example, have subtle (or not so subtle) differences in wording that could, depending on the jurisdiction and facts, result in different outcomes on the question of whether coverage is available for the additional insured. The key differences in the policy language are italicized:

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- liability *arising out of the named insured's ongoing operations* performed for the additional insured
- liability *caused, in whole or in part, by the named insured's ongoing operations* performed for the additional insured
- liability *caused, in whole or in part, by the named insured's acts or omissions in the performance of the named insured's ongoing operations* for the additional insured
- liability *caused by the named insured's negligent acts or omissions at or from the named insured's ongoing operations* performed for the additional insured

In the last example, coverage for the additional insured is available, on the face of the policy, if the liability is "caused by the named insured's negligent acts or omissions." The other three examples are not limited, on their face, to the named insured's negligence. Courts frequently find additional insured coverage to exist under this broader language even when the named insured was not negligent, as long as there is some connection between the named insured and the liability.

For example, there may be coverage for the *additional insured's* negligence if the plaintiff was injured in the course of their employment with the named insured, or if the plaintiff was injured in an area where the named insured was doing its work—even if the named insured itself was not negligent.

Because some types of additional insured coverage are potentially broader than others, entities seeking additional insured coverage from their contracting partners frequently specify the precise type of coverage the other party must obtain, often by identifying the exact policy form to be used. It's important to understand the nuances in language for additional insured coverage and how that language can be interpreted by insurers and courts.