



Negligence Law Section

NEGLIGENCE LAW SECTION QUARTERLY SPRING 2019

INSURANCE COVERAGE ADVISOR

Named Insureds, Insureds and Additional Insureds

There is a lot about liability insurance policies that is confusing, and sometimes even terms that seem like they should be simple are not. Consider the terms “insured,” “named insured” and “additional insured.” There is a fourth phrase that sometimes pops up but should be avoided because it causes confusion: “additional named insured.”

Named Insureds

Of the three terms that are permitted, the only one that is clear is “named insured.” The named insured obviously is the insured whose name appears in the declaration pages.

“Described” Insureds

But almost every policy that is issued to a single named insured will necessarily provide coverage to others as well. So every liability policy will go onto say who else is an “insured.” It will do that by describing them. The typical Commercial General Liability (CGL) policy has an entire section entitled “Who Is An Insured.” In there you will find a description of who else is covered under the policy. Depending on the form of the business entity that is the named insured, different persons also qualify as “insureds.” For a sole proprietor, a spouse is an insured, for purposes of her or his participation in the business. For a partnership, other partners and their spouses are insureds. For LLCs, other members are insureds. For a corporation, officers and directors are insureds, and so are shareholders, but only in their capacities as officers, directors and shareholders. Employees are also “insureds,” with respect to their activities for the business.

All of these are “insureds.” They might be called “described insureds,” but no one ever uses that term. They might be called “additional insureds,” because they are insured in addition to the named insured. But that term is taken, and this is where confusion can creep in, because the term “additional insured” has a definite meaning in the world of liability insurance.

Additional Insureds

An “additional insured” is a person or entity that is described in an Additional Insured Endorsement. There are several versions of these, because each is tailored to a specific underlying commercial relationship, but what they all have in common is that the coverage is limited.

First, this endorsement will identify the additional insured. Sometimes the name of the additional insured will be inserted at the top. A more common form is the Blanket Additional Insured endorsement. This will often describe the additional insured as someone the named insured is required by “written contract or agreement” to include as an insured. For example, most construction subcontracts require the subcontractor to name the contractor as an additional insured. That contractual obligation will trigger the additional insured coverage.

The important thing about an Additional Insured endorsement is that the coverage it provides to the additional insured is limited, in terms of who is covered, what risks are covered and how much coverage is provided. The endorsement will usually limit coverage to claims “caused, in whole or in part,” by the “acts or omissions” of the named insured (the subcontractor in our hypothetical) or the sub’s own subs. In other words, the additional insured is not covered for its own acts or omissions.

Second, the Additional Insured endorsement will often contain an “other insurance” clause that says that the coverage provided to the additional insured is “excess over any other valid and collectible insurance available to the additional insured . . . unless a contract specifically requires that this insurance be primary.” This may raise one of the more interesting and intricate coverage issues – conflicting “other insurance” clauses, as each insurer politely insists the other insurer (or insurers) should pay first. But that’s a topic for another day.

Named Insured Endorsements

What if there is a Named Insured Endorsement? These are endorsements that identify specific persons or entities as insureds by naming them. What about the persons named in the Named Insured endorsement? Are they “named insureds,” “additional insureds,” or “additional named insureds”?

The answer is that they are named insureds. They are not “additional insureds,” because “additional insured” is a term of art, restricted to persons described in an Additional Insured Endorsement.

And never call them “additional named insureds,” especially if you are speaking to an insurance coverage practitioner. It will cause confusion, accompanied by facial tics. In the world of insurance coverage, there are “insureds,” “named insureds,” and “additional insureds” – and each one is different – but there are never additional named insureds. Words are always important in all areas of practice, but especially in the world of liability insurance, “additional named insured” is an oxymoron.

The underlying lesson in all of this is that every insurance policy must be read slowly and carefully, because specific words matter. Remember, this is an area of law where courts are careful

about even the small words, like “an” (which means “any”) and “the” which means only the specific person at issue.

We . . . hold “that by excluding insurance coverage for injury or damage intentionally caused by ‘an insured person,’ Allstate unambiguously excluded coverage for damages caused by the intentional wrongful act of *any* insured under the policies.”

Allstate v Freeman, 432 Mich 656, 694-695; 443 NW2d 734 (1989)

While plaintiff dismisses this distinction [between “an insured” and “the insured”] as being irrelevant semantics, we conclude that the distinction is dispositive.

Vanguard Ins Co v McKinney, 184 Mich App 799, 804-805; 459 NW2d 316 (1990)

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