

Allocating Risk With “Additional Insureds”

by Quenda Behler Story

You’re starting to get contracts on bigger and bigger jobs, even — can you believe it? — government contracts. Good for you. But it’s important to know what you’re getting into: These contracts may contain terms you don’t typically see on smaller jobs.

Sometimes, for instance, the construction contract between the contractor and the property owner requires the contractor to name the property owner as an “additional insured” on the contractor’s liability insurance policy.

The same is true of many contracts between the prime contractor and the subcontractor — they name the

contractor as an “additional insured” on the sub’s own liability policy.

Extending Liability Protection

So what’s this “additional insured” business all about? Basically, it has to do with protecting a person or company from the impact of someone else’s negligence.

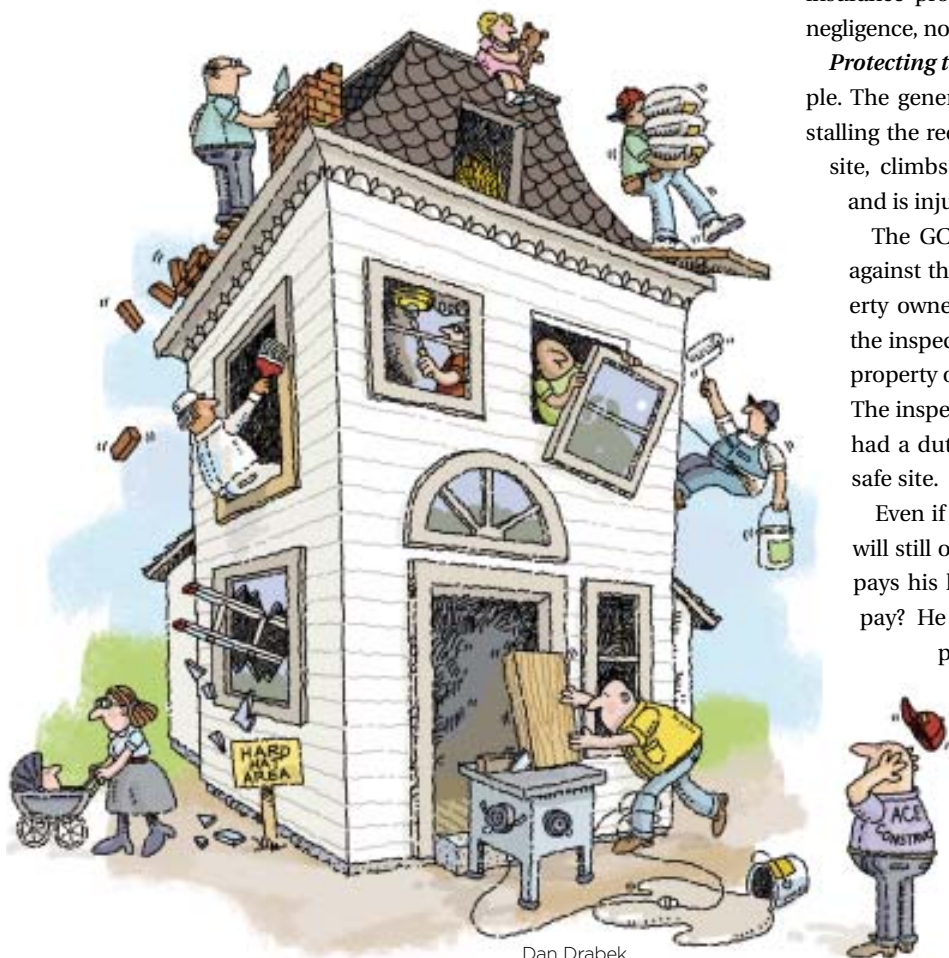
The people who want you to name them as additional insureds on your liability policy are afraid that you’re going to do something careless or reckless, and that not only you will be sued for it, but they will be, too. They want to be an additional insured because their liability insurance protects them from only their own acts of negligence, not yours.

Protecting the property owner. Let’s look at an example. The general contractor erects staging without installing the required guardrails. An inspector visits the site, climbs the staging to inspect something, falls and is injured, and sues the GC for negligence.

The GC’s liability policy should protect the GC against this claim — but it won’t protect the property owner if the inspector sues him. Why would the inspector sue the property owner? For one, the property owner may have more assets than the GC. The inspector could claim that the property owner had a duty to pick a GC who knew how to run a safe site.

Even if the property owner wins the lawsuit, he will still owe legal fees — so who, in this example, pays his legal fees and whatever claim he has to pay? He does. The only way the GC’s liability policy will cover it is if the GC has named the property owner as an additional insured.

Thus, when the property owner asks you, the contractor, to name him as an additional insured on your liability policy, he is trying to make sure that he does not become liable for a claim caused by your negligence.



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Protecting the GC. For similar reasons, as the prime contractor — even on smaller jobs — you may want to require your subs to name you as an additional insured on their liability policies in case their negligence causes a problem for you.

Let’s say, for example, that the masonry sub forgets to put a piece of plywood over the hearth opening in the floor and later that day the property owner or another sub falls through the opening and is injured. The mason was clearly negligent and can be sued, but so can you: As the GC, you allowed this to happen by “failing to supervise.”

Your own liability policy may or may not cover you for this, which is why you would want to be an additional insured on the sub’s liability policy. That way, you can make sure that someone other than you — your insurer or the sub’s insurer — pays this claim.

Workers’ comp. How does workers’ comp fit into all of this?

Here’s how: If your roofing sub’s employee falls off the roof, he can sue only his employer for workers’ compensation. But he might be able to sue the property owner and the GC for negligence, because he’s not their employee.

If the injury happened because the roofing contractor allowed his crew to work without safety harnesses, for instance, the roofing sub’s injured employee could plausibly claim that the property owner and the GC were at fault for “failure to supervise” by allowing the

roofing sub to send his crew onto the roof without harnesses.

Ask Your Insurance Agent

In sum, the idea is to protect the additional insureds (the property owner or the prime contractor) from paying for the negligent acts of the insured. That’s good.

Still, there are things you have to watch out for when you are getting that protection, because we’re talking about insurance companies, and they don’t like to pay claims.

You might want to ask if the additional insureds are covered for problems that show up after the work is completed. That they would be covered is a logical assumption; after all, the problems were caused by something that happened during the process of construction. But sometimes insurance doesn’t work that way, so if it’s important for you to be covered for something like this, you need to check with your insurance agent.

Certain words in the policy endorsement should tip you off to the fact that coverage is being limited to problems that occur while the work is being done, not problems that show up later on. Endorsements that cut off protection as soon as the work is finished use phrases like “ongoing operations” or include exclusions for claims “after all work ... has been completed” or for claims “after” the project has already been put to “its intended use.”

To cover problems that show up after

the work is over, you need an endorsement that covers “completed operations.”

Remember too that even endorsements that cover completed operations have an expiration date. After that point, it doesn’t matter how the endorsement was written.

Something else you may want to ask your insurance agent to clarify — because it’s too complicated to explain here — is whether the endorsement for additional insureds has a requirement that everybody else in the potential chain of liability carry additional insured endorsements as well. This is an issue that could potentially exclude you from coverage you thought you were paying for.

Added cost. No discussion of insurance would be complete without mentioning cost. If the customer expects to be added to your policy as an additional insured, you need to find out how much the insurance company will charge you for that change.

The company won’t do it for free, because the addition increases the amount that might have to be paid out if there is a claim.

I can’t tell you how much more you should expect to pay, because the cost and availability of liability insurance varies greatly from place to place.

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