

Manager/Supervisor Risk Management

#105– 11/8/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: ADDITIONAL INSURED – WHY?

The liability insurance policy is a contract between the insured and the insurance company that creates duties for both sides. The named insured has to pay the premium, cooperate, and report claims; the insurance company has to defend and indemnify after the claim is reported. As parties to the contract they are both bound by its terms and conditions. The public entity, relying on the insurance to finance the contractor's promise to defend and indemnify, is not a party, and therefore has no rights under the insurance contract – they are in privity of contract with the contractor, not his insurance carrier.

It is therefore a standard risk transfer practice for the entity to require that it be named as an “additional insured.” The contractor's policy is endorsed to add the public entity as a party to the insurance contract; the policy defines who is insured, and the additional insured entity is added to that list – subject to limitations.

There are a number of reasons that being an additional insured benefits the entity:

- If the hold harmless/indemnity agreement proves unenforceable, the entity can seek defense and indemnification under the insurance policy. The hold harmless clause and the insurance policy, while interrelated, each stand on their own as a separate obligation.
- An additional insured has a direct right to a defense. It is not dependent on the insurance carrier's defense of the named insured, and does not require that the additional insured provide its own defense and then seek reimbursement from the contractor.
- In most cases, being an additional insured eliminates the insurance carrier's rights to pursue subrogation against the entity for its portion of fault.
- Most importantly, the additional insured status allows us to deal directly with the insurance carrier without going through the contractor. The carrier has to respond directly to us when we demand defense and indemnification.
 - Additionally, the insurance carrier is subject to the statutory requirements found in the California Insurance Code section 790.03 – Unfair Claims Practices. In simple terms the statute requires them to respond to our demand for defense and indemnification in a timely manner.

There is a significant exception to requiring that the entity be named as an additional insured. The entity cannot require that it be named as an additional insured on the contractor's workers' compensation policy. If the entity was named as an additional insured, all of its employees would be covered under the contractor's WC policy, regardless of involvement in the contracted services. Therefore the additional insured requirement is typically limited to the general liability and auto liability coverages.

Next topic: Additional Insured – Scope of Endorsement