

## Manager/Supervisor Risk Management

#109– 11/27/12

A twice weekly e-mail training for YCPARMIA members

### TOPIC: CANCELLATION AND NON-COMPLIANCE

As the past topics have indicated, the entity goes to a lot of trouble to ensure that the coverage required by the contract terms is in place, but there is also the issue of keeping it in place. What rights does an additional insured have to be notified that the named insured's policy was canceled (usually for non-payment of premium)? Note, the contract is between the entity and the contractor; the insurance company is not a party to the underlying contract. A cancellation notice requirement in the contract would not normally be enforceable against the insurance company, so the entity's rights would probably be confined to going after the contractor.

The insurance policies generally promise, and California law requires, that the named insured will receive notice of cancellation; there is no automatic right of notice for any additional insured. The ACORD form states that notice of cancellation will be "delivered in accordance with the policy provisions" – in other words to the named insured. You might see language on certificates that indicate that the insurance company will "attempt" to mail, or "endeavor" to give notice to the certificate holder. This is probably similar to a New Year's resolution involving diet and exercise – questionable intentions and no guaranteed results.

So the bottom line is that the additional insured faces the potential exposure of a contractor's insurance policy being canceled. A possible solution is requiring that the policy be endorsed to require that the carrier provide the additional insured notice of cancellation. The insurance carriers often resist taking on that duty, so the entity might anticipate difficult negotiation on the issue. Another safeguard is to keep an eye on your contractor. If their work or practices suggest financial problems, additional scrutiny over whether they are paying their premiums is probably necessary. An option might be for the entity to pay the premium out of monies owed under the contract.

A related issue involves the contractor agreeing to the insurance requirements, and then failing to either obtain the required coverages, or failing to provide the needed proof of coverage and endorsements. In the 1990's, one of our members was regularly being billed for completed contracts prior to receiving any documentation of insurance. They ultimately adopted the working rule that no contractor would be allowed to start any contract work, and no payments would be made, until the entity received documentation of compliance. Some departments were concerned that the requirement would slow down performance, but the problem quickly resolved when contractor's realized that the only way to start earning money under the contract was to provide the required proof of compliance.

Next topic: Tendering a claim/suit