



Navigating Additional Insured Coverage for Construction Defect Cases

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AGENDA











What is additional insured coverage and why is it important?



When should you tender your claim for additional insured coverage?



What documents guide the process?



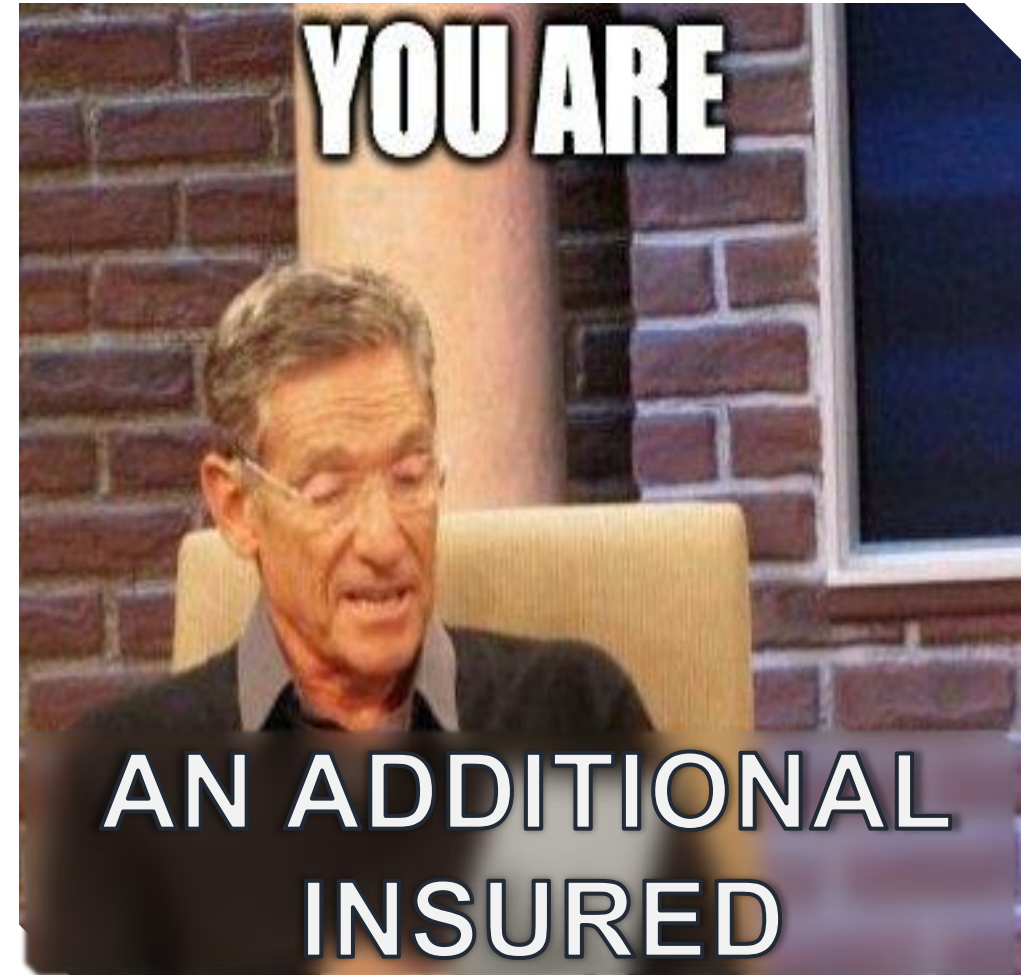
How to tender and what to include.



Understanding how to maximize additional insured coverage.

What is Additional Insured Coverage?

Coverage that extends to individuals or entities not initially named as policyholders under the policy.



What is additional insured coverage?

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

What is Additional Insured Coverage?

Risk Transfer
Mechanism

Supplement to
Contractual
Indemnity

Streamline
Access to the
Insurer

Why is Additional Insured Coverage Important?

Broader coverage

- Protects AI from own negligence and vicarious liability
- AI coverage ensures that resources are available to fund the loss exposure.

Alignment of defense

- Protects the downstream party from potential out of pocket expense.
- Prohibits subrogation.

Avoids impact to AI's loss history



When is Coverage Triggered?

Causation Triggers In Additional Insured Endorsements

- 18.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

The 558 Process

Notice of Claim



Response Period



Resolution

Trigger Language

Limited benefit to Additional Insureds

- Vicarious liability language: providing AI Coverage

Moderately beneficial to Additional Insureds

- “with respect to liability . . . caused, in whole or in part.”

More beneficial to additional insureds

- “arising out of” language.

Whenever your client has liability exposure, the first question should be: where do we tender?

What Documents Guide the Process?

Contracts



Other documents

Policies

Invoices

Documentation
of prior
conduct/course
of performance

How to Tender

627.4137 Disclosure of certain information required.—

(1) Each insurer which does or may provide liability insurance coverage to pay all or a portion of any claim which might be made shall provide, within 30 days of the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

- (a) The name of the insurer.
- (b) The name of each insured.
- (c) The limits of the liability coverage.
- (d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
- (e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request.

(2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to such statement.

(3) Any request made to a self-insured corporation pursuant to this section shall be sent by certified mail to the registered agent of the disclosing entity.

What is Covered?

Duty to defend

- Very broad
- Florida Rule

Indemnification

- Higher standard
- Importance of allocation

Duty to Defend

Florida follows the minority position of the 8 Corners Rule

- “Pursuant to Florida law, the determination of an insurer’s duty to defend falls under the so-called ‘eight corners rule,’ the name of which refers to the four corners of the insurance policy and the four corners of the underlying complaint.” Mt. Hawley Ins. Co. v. H&M Builders, LLC, 2024 WL 134989, *3 (S.D. Fla. Jan. 11, 2024).

Florida is also in the minority regarding the interpretation of "caused in whole or in part by" when determining whether there is a duty to defend.

So long as even one theory of liability triggers coverage, the duty to defend applies to the entire suit, including uncovered claims.

The allegations of the complaint do not have to be true to trigger a defense.

- “When adjudicating whether the insurer has a duty to defend, the Court will only consider the factual allegations from the allegations in the complaint against the insured, not by the true facts of the cause of action against the insured, the insured’s version of the facts or the insured’s defenses.” Mt. Hawley Ins. Co. v. H&M Builders, LLC 2024 WL 134989 *3 (S.D. Fla. Jan. 11, 2024)

Maximizing Additional Insured Coverage

Develop
discovery with
an eye on
coverage

Determine
scope of
coverage
available

When is
allocation of
damages
required?

Key
considerations
for trial that may
impact coverage



Take Aways

Tender early to minimize out of pocket defense costs.

The duty to defend is very broad. Even if the allegations of a complaint are not true, you still may be entitled to a defense based off of those allegations.

Get a copy of the policy ASAP. Make sure to incorporate a statutory demand for insurance information in any tender and request a copy of the policy during discovery.

Coverage should always be a consideration when developing your case. Understanding the buckets and scope of coverage available is crucial to maximizing coverage.

Make sure you understand the coverage you are entitled to. A denial from the carrier does not necessarily mean there is no coverage under that policy.

SDV
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THANK YOU



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