



Additional Insured Status: Is The Protection Illusion or Reality?

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There are myriad circumstances under which an individual or company may seek to be added as an insured under another's insurance policy. But how does that person or company *really* know whether they actually became an additional insured under that insurance policy? And if they actually became an additional insured, how do they know that the additional insured status that they obtained will actually provide access to the insurance benefits that they are hoping for? This article provides some practical information to assist with the determination of whether additional insured status is an illusion or a reality.

An insurance policy is a written contract of indemnity between an insurer and an insured. The "named insured" is the person for whom the insurance policy is supposed to provide indemnity in the circumstance of a covered loss. If a lawsuit is filed against the named insured with respect to a potentially covered loss, it is the expectation of the named insured that the insurer will provide it with a defense to that lawsuit. These are the reasonable expectations of an insured under an insurance policy.

An insurance policy may also, in certain circumstances, provide indemnity for someone other than the named insured. Additional insured is a term that is generally understood to reference that "someone," in addition to the policy holder, who is also insured for a covered loss under an insurance policy. It should be noted that the term "additional insured" is not necessarily the same thing as an "insured" or a "named insured" under a policy of insurance.

A Certificate of Liability Insurance is a document that is frequently provided in response to a request to be added as an additional insured under another person's insurance policy. Many of these certificates purport to identify the requesting party as an additional insured under the relevant insurance policy on the face of the certificate itself.

While a Certificate of Liability Insurance is a customary document that is regularly issued in the insurance industry, **be warned:** a Certificate of Liability Insurance is virtually worthless as it relates to additional insured status. Its only potential value is to provide information regarding the identification of certain insurance policies that are represented to exist.

This is because a Certificate of Liability Insurance is merely evidence that a policy has been issued. It is **not** a contract between the insurer and the certificate holder, e.g., the person hoping to be added as an additional insured. A Certificate of Liability Insurance is issued by an insurance broker, who is an agent of the insured, not the insurer. It is normally not issued for a fee, or at least not a fee to the insurer, and therefore does not provide a contractual basis to bind an insurer to an additional insured representation.

An individual or company seeking additional insured status under another person's insurance policy should request to be added as an additional insured by an endorsement to the insurance policy. An endorsement is an amendment to, or a modification of, an existing insurance policy. It is not a new and separate contract of insurance. Instead, an endorsement modifies or changes the terms of an existing policy to add new terms or to delete terms.

An endorsement in the context of a person seeking to become an additional insured amends or modifies an existing insurance policy to provide that a noninsured is now an insured, an additional insured or an additional named insured. Depending upon the terms of the particular insurance policy at issue, whether or not a noninsured is classified by endorsement as an insured, an additional insured or as an additional-named insured, may be critical to obtaining the hoped for coverage for a covered loss—the very reason for which the process to become an additional insured under the policy was initiated.

As stated above, an insurance policy is generally obtained to satisfy two primary goals. The first is to obtain indemnity in the circumstance of a covered loss. The second is to obtain a legal defense paid for by the insurer if a lawsuit is filed with respect to a potentially covered loss. Becoming an additional insured under an insurance policy does not, in and of itself, satisfy both of these goals, the reason being that an insurance policy **does not always** provide for a duty to defend any insured.

For example, an insurance policy may provide for a duty to defend lawsuits involving a potentially covered loss, but that defense duty may properly be limited to the named insured only. This means that even if an individual or company obtained the recommended endorsement modifying the policy to add them as an additional insured, their additional insured status



may not provide them with a defense to a lawsuit resulting from a potentially covered loss. Instead, despite obtaining additional insured status, the additional insured may have to foot the bill for a defense that may dwarf the amount of indemnity ultimately paid out at the end of the case.

Therefore, it is critical to determine at the outset whether or not the additional insured status you obtain provides the type of protection that you seek.



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