

You Want Me to Insure Whom? A Discussion of Additional Insured Status

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- A. Terms defined
- B. Benefits for Additional Insured
- C. Disadvantages for Additional Insured
- D. Implications for the Named Insured
- E. Requirements for Additional Insured Coverage

1) The Contract

2) The Insurance Policy

i. Two Types of Endorsements:

- 1. Scheduled Additional Insured endorsements
- 2. Blanket Additional Insured endorsements

3) Limiting Language in Blanket Endorsements

a. The Writing Requirement – “written contract, agreement or permit”

1. Written Document Required

Palmer v. Martinez, 45,318 (La. App. 2 Cir. 7/21/10), 42 So. 3d 1147, 1152;

Quincy Mut. Fire Ins. Co. v. Imperium Ins. Co., 14-612, 2015 WL 1759146, at *6 (E.D. Pa. Apr. 17, 2015) (on appeal).

2. Non-Written Agreement or Permit Sufficient

Superior Ice Rink, Inc. v. Nescon Contracting Corp., 861 NYS2d 362 (NY App Div 2008)

b. “Contract” may not be needed

Jessop v. City of Alexandria, 2003-1500 (La. App. 3 Cir. 3/31/04), 871 So. 2d 1140, 1145-46;

KB Home Tucson, Inc. v. Charter Oak Fire Ins. Co., 236 Ariz. 326, 340 P.3d 405, 410 (Ct. App. 2014)

c. Prior Execution Requirement

Jessop v. City of Alexandria, 2003-1500 (La. App. 3 Cir. 3/31/04), 871 So. 2d 1140, 1145;

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ACE Am. Ins. Co. v. Freeport Welding & Fabricating, Inc., 699 F.3d 832, 841 (5th Cir. 2012)

d. Direct Contractual Relationship Is Not Always Required

1. Privity of Contract with Named Insured Not Required

ACE Am. Ins. Co. v. Freeport Welding & Fabricating, Inc., 699 F.3d 832, 841 (5th Cir. 2012)

Pro Con, Inc. v. Interstate Fire & Cas. Co., 794 F.Supp.2d 242, 252 (D.Me.2011)

First Mercury Ins. Co. v. Shawmut Woodworking & Supply, Inc. 48 F. Supp. 3d 158, 166-167 (D. Conn 9/23/14)

2. Privity of Contract with Named Insured Required

Westfield Ins. Co. v. FCL Builders, Inc., 407 Ill.App.3d 730, 731, 350 Ill.Dec. 46, 948 N.E.2d 115 (2011)

F. Scope of Additional Insured Coverage

1) Sole Negligence of the Additional Insured?

- a. “arising out of”
- b. “caused, in whole or in part, by”

Maldonado v. Kiewit Louisiana Co., 2013-0756 (La. App. 1 Cir. 3/24/14), 146 So. 3d 210, 219 (La. Ct. App. 3/24/2014) – held “caused by [named insured’s] acts or omissions” expressly limits coverage to the additional insured’s vicariously liability for the fault of the named insured.

- c. “as permitted by law” and “required by the contract”

2) “As Permitted By Law”

Examples of Anti-Indemnity Provisions Under Louisiana Law

- a. The Oilfield Anti-Indemnity Act – La R.S. 9:2780
- b. Motor Carrier Transportation Contract and Construction Contract - La. R.S. 9:2780.1

See Rubin v. Brookshire Grocery Co., 13-1611, 2014 WL 949843, at *5 (W.D. La. Mar. 10, 2014).

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3) Coverage “Will Not Be Broader Than” The Contract Requires

a. Limitation on Scope of Coverage –

In Re Deepwater Horizon, 13-0670, 2015 WL 674744, at *5 (Tex. Feb. 13, 2015),
reh'g withdrawn (May 29, 2015);

*Underwriters at Lloyd's Syndicate 1036 v. Danos & Curole Marine Contractors,
L.L.C.*, 2014-375 (La. App. 3 Cir. 10/1/14), 149 So. 3d 877, 885

b. Limitation on Limit of Liability

Urrutia v. Decker, 992 S.W.2d 440 (Tex. 1999);

Bovis Lend Lease LMB, Inc. v. Great Am. Ins. Co., 53 A.D.3d 140, 146-47, 855
N.Y.S.2d 459 (2008)

- G. Other Insurance Issues
- H. Other Issues/Recent Cases
- I. Questions