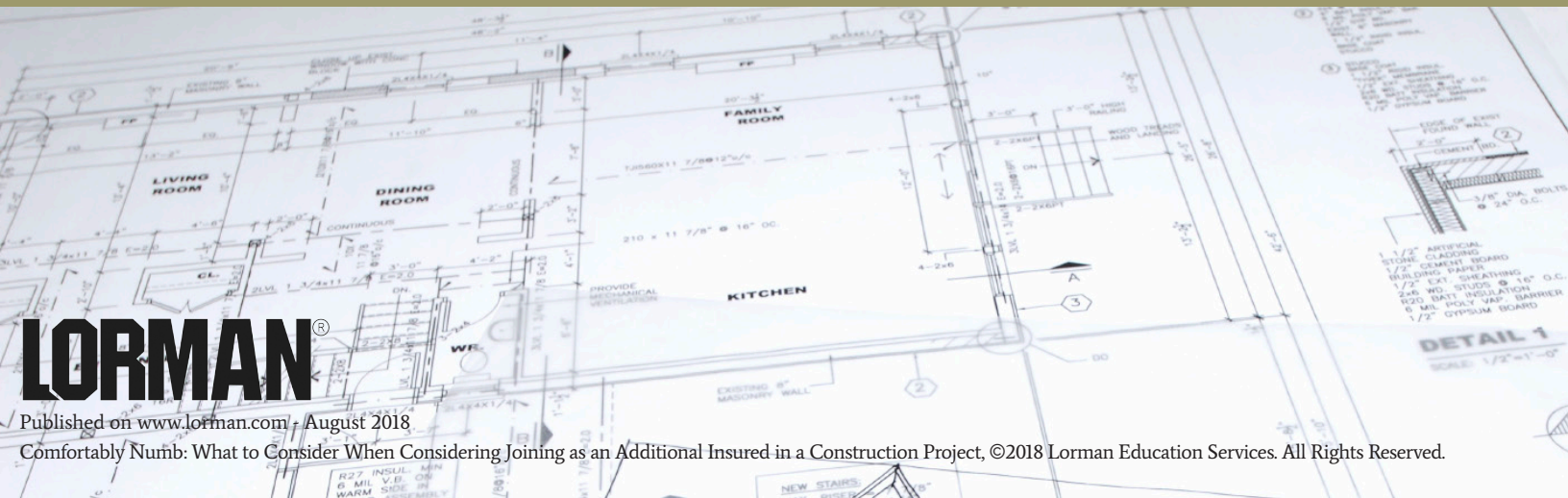




Comfortably Numb: What to Consider When Considering Joining as an Additional Insured in a Construction Project

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COMFORTABLY NUMB: WHAT TO CONSIDER WHEN CONSIDERING JOINING AS AN ADDITIONAL INSURED IN A CONSTRUCTION PROJECT

April 11, 2018 by Charles B. Jimerson, Esq. and Evan Reid, JD Candidate

Construction worksites are frequently dangerous, and nobody wants to be on the hook for a subcontractor's unsafe practices. It is increasingly common for construction contracts to require subcontractors to name general contractors as additional insureds in their insurance policies. The purpose of these additional insured provisions is to allocate the cost of defending claims that arise from the contract from the general contractor's insurance policy to the subcontractor's insurance policy. They can also be used to spread risk from one subcontractor to another, or from a land owner to a subcontractor.

General contractors frequently require a certificate of insurance from the subcontractor before work can begin. For subcontractors, designating a party as an additional insured means that their insurance policies may be more expensive. As such, any party considering entering a construction project in Florida as an additional insured should carefully consider that decision.

The following points serve as a starting point for evaluating additional insured commitments.

Read all paperwork carefully. This is the golden rule in any contract.

Unfortunately, it is not always followed. While insurance policies are a far cry from leisure reading, taking the time to understand what they say is crucial. Insurance policies are expensive, so policyholders should have an understanding of exactly what they are paying for. In addition to reading the policy, policyholders should ask questions when something is not clear.

Keep all documents. After carefully reviewing paperwork, it is crucial that all parties retain copies. There are two main ways in which a party can be added as an additional insured in a commercial general liability policy. The first is by being specifically mentioned as an additional insured. The second is through a blanket additional insured endorsement, which does not require a party to be specifically named in the policy to be covered. Instead, this type of policy covers a group or class of parties. Retaining all documentation and agreements between parties is important in helping establish who is actually covered under a policy.

Being named in the policy does not mean a party is covered. This relates back to the duty to carefully read paperwork because some carriers assume that policyholders do not read their policies. Sometimes, carriers insert so much qualifying language in additional insured clauses that in fact there is no coverage for the parties named. This limiting language can be buried within the numerous pages relating to additional insured coverage. Generally speaking, if an additional insured endorsement has fewer words, then it is more likely to have broad coverage. The opposite is also true; more words tend to mean less coverage. Many additional insured provisions can be thoroughly explained in a page or less. As such, any party that wants

to be covered under a policy should make sure that there is clear, unambiguous language to support their claim to coverage.

Consider why additional insured status is required. While requiring additional insured status is a common industry practice, that alone is not a good enough reason to require it. Parties should contemplate why they are seeking the coverage. There is no one size fits all insurance coverage and the specific details of a given project may not warrant additional insured status.

Joining as an additional insured may have unintended consequences. Insurers usually retain the exclusive right to defend claims that arise under their policies. The importance of this for additional insureds is that the insurance company may admit to things that the additional insured does not want to admit. The outcome from litigation where an insurance company is a party may be a source of information later for another party to sue the additional insured. Keep this in mind when thinking about why a party wants additional insured status in the first place.

Make sure coverage extends to completed operations. If coverage only applies to ongoing operations, then any damage that arises after construction is finished will be outside the scope of the policy. Parties seeking additional insured status want to be covered for any damage that arises during operations *and* after operations are finished.

When possible, start with standardized forms. There are comprehensive standardized forms for commercial general liability that will save parties from drafting from scratch. These can be relied upon for structure and a general outline of terms to include but should not be blindly

copied and pasted into a contract. Some examples include additional insured forms for engineers, architects or surveyors and owners lessors or contractors. There are no widely accepted samples for umbrella coverage policies or contractor's pollution liability policies, so parties should seek help in drafting these. Keep in mind that standardized forms will usually need to be customized to reflect the parties' specific intentions.

There are many moving pieces to consider in deciding whether to seek additional insured status. It is an important decision with potentially significant consequences. Overall, the best piece of advice to keep in mind is to not hesitate to reach out for help when needed.

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