For questions, call Jason Callicoat
(312) 540-7646

Querrey & Harrow
www.querrey.com®
© 2024 Querrey & Harrow, Ltd. All rights reserved.

ILLINOIS LAW MANUAL
CHAPTER XI
INSURANCE COVERAGE AND DEFENSES

G. ADDITIONAL INSURED ENDORSEMENTS AND TENDER OF DEFENSE

1. Additional Insured Endorsements

Occasionally, in contracts between insureds and other parties for services, the insured is required to name other parties as additional insureds on its liability policies before being allowed to begin performing its services. Insureds then have the additional parties named as additional insureds on the insurance contract. The additional insured is generally not given a copy of the insured's policy with the endorsements, but only receives a certificate of insurance naming the party as an additional insured.

Neither the business policy nor the homeowners policy contains language of an additional insured endorsement. This is to be understood since this is an endorsement incorporated into a policy only after naming an additional insured.

A typical additional insured endorsement states:

> The Persons Insured provision of this policy is amended to include as an insured any Person or organization whom [insured] has agreed by contract, either oral or written, prior to loss, to include as an Insured with respect to operations performed by or on behalf of [insured]. Such insured shall hereinafter be referred to as an Additional Insured, and the insurance afforded in the liability portion of the policy above shall not apply to damages arising out of the negligence of the Additional Insured.

As the provision sets forth, the insurer must provide a defense for the additional insured, West Bend Mutual Ins. Co. v. Great American Inc. Co., 238 Ill. App. 3d 335 (1992), but limits its duty to indemnify to situations where the additional insured was not negligent. The Illinois Supreme Court has determined that an insured cannot contest the endorsement's language on indemnification until the additional insured's liability has been determined in an underlying case. National Union Fire Insurance Co. v. Glenview Park District, 158 Ill. 2d 116, 126 (1994).

It should also be noted that certain additional insured endorsements have been construed to extend coverage to the additional insured only where the additional insured is alleged to be vicariously liable, that is, where the additional insured is alleged to be liable only as a result of the acts or omissions of the named insured. In these instances, any allegation that the additional insured is liable because of its own acts or omissions defeated coverage. See e.g., Village of Hoffman Estates v. Cincinnati Ins. Co., 283 Ill.

App. 3d 1011 (1996); American Country Ins. Co. v. Kraemer Bros., Inc., 298 Ill. App. 3d

805 (1998).

The additional insured endorsement in American Country provided:

> 3. This endorsement provides no coverage to the Additional Insured for liability arising out of the claimed negligence of the Additional Insured, other than which may be imputed to the Additional Insured by virtue of the conduct of the Named Insured.

The additional insured endorsement in Village of Hoffman Estates provided:

> The "Persons Insured" provision is amended to include as an INSURED the person or organization named above but only with respect to liability incurred solely as a result of some act or omission of the Named Insured.

Each court emphasized the particular language of the endorsement in denying coverage to the additional insured. This scenario most often arises in construction litigation.

2. Certificates of Insurance

Under certain circumstances, coverage may be extended to a purported additional insured even if that entity is not named on an additional insured endorsement. This can happen where a certificate of insurance is issued that refers to the party seeking coverage as an additional insured. This is especially likely if other evidence suggests that the party seeking coverage was supposed to be named as an additional insured. West American Ins. Co. v. J. R. Construction, 334 Ill. App. 3d 75 (1st Dist. 2002). Without additional evidence, coverage based solely on a certificate is less likely. Pekin Inc., Co. v. American Country Ins. Co., 213 Ill. App. 3d 543 (1991).

3. Tender of Defense

A formal tender of defense is not required to activate an insurer's coverage obligation to its insured. An insurer which receives actual notice from any source of a lawsuit against its insured must either:

(1) defend the action unconditionally;
(2) defend the action under a reservation of rights; or
(3) file a declaratory judgment action to determine its coverage obligations.

An insurer who does none of these will be barred from raising coverage defenses in any subsequent coverage action by the insured. Cincinnati Ins. Co. v. West American Ins. Co., 183 Ill. 2d 317 (1998).

An insured whose claim or suit is covered by more than one policy issued by different insurers may select one policy/insurer to exclusively defend the claim or suit, and excuse the other(s) from providing coverage. John Burns Const. Co. v. Indiana Ins. Co., 189 Ill. 2d 570 (2000). If an insured selects one policy/insurer to provide exclusive coverage to the exclusion of another insurer(s), the insurer selected to provide coverage may not seek to recover any of the associated defense or indemnity expenses from the non-selected insurer(s). Id. at 575.

4. Recovery of Defense Expenses

An insurer that defends a policyholder under a reservation of rights may not recovery defense costs and expenses from the policyholder. General Agents Ins. Co. of America v. Midwest Sporting Goods, 215 Ill.2d 146 (2005).

For general informational purposes only
© 2024 Querrey & Harrow, Ltd. All rights reserved.