



Design Professional Insurance Advisory

Why project owners cannot be named as additional insureds on design firm's Professional Liability Insurance Policies

While it is common practice to name the project owner as an additional insured on a construction contractor's general liability insurance policy, it is not appropriate to do this on a design firm's professional liability insurance policy. This is because *naming the project owner as an additional insured would preclude the project owner from being indemnified for the design professional's negligence!* In other words, it voids the coverage for the owner. This certainly is not the intended result associated with the owner's request to be named an additional insured.

In the insurance industry, as it is practiced today, insurance companies will not name a project owner as additional insured on a professional liability policy. In denying a project owner's request to do so, insurance companies are trying to protect the project owner from the mistaken belief that they would benefit from the status as an additional insured on a professional liability insurance policy.

How this works

The practice of adding the project owner as an additional insured makes good sense in the context of the construction contractor's general liability coverages.

The contractor is typically the party that is primarily responsible for the activities going on at a construction site. The project owner, as an additional insured, is covered by the

contractor's general liability insurance policy so long as a claim is for damages which arise out of the construction work. As an additional insured, the project owner is typically covered not only for the contractor's negligence, but for their own negligence.

If a third party (not the owner or the contractor) was injured on a construction site, the injured party would likely make a claim against the owner and perhaps the contractor

the status of additional insured on a professional liability insurance policy would void coverage for the owner.

also. In either case, the contractor's general liability coverage would respond to the claim even if the injury was caused by a decision or action of the owner. Naming the owner as an additional insured provides clarity as to which insurance policy will respond (the contractor's, not the owners) without having to prove who is at fault.

Even though it doesn't cover much of any real exposure, we frequently add the project owner as an additional insured to the design firm's general liability policy.

Being an additional insured on the design firm's general liability policy covers the project owner for liability to third parties for property damage, bodily injury, and personal injury caused by the design firm's work. However, this coverage excludes liability caused by the design firm for providing or failing to provide "professional services". The policy is

designed so that coverage for "professional services" falls under the design firm's professional liability insurance policy, not their general liability policy.

Note that little is being accomplished by adding the project



owner as an additional insured on the design professional's general liability policy. There is not much exposure to covered losses caused by the design firm's work, but not caused by the design firm's "professional services". Nevertheless, we are frequently asked to add the project owner as an additional insured. It is easy to do and it costs nothing. As such, we name the project owner as an additional insured on the design firm's general liability policy whenever requested.

Professional Liability Insurance is different

Professional liability insurance covers the design firm's liability to others resulting from their professional services. In insurance terms, professional liability insurance will pay on behalf of the "named insured" in the event of a negligent act in the performance of professional services performed by the "named insured". It covers only the design firm and only professional services.

Further, the policy does not cover the design firm for work they perform for themselves. For example, the policy does not cover the architect for the design of their own office building (or an office building owned by the design firm's partners). In insurance terms, professional liability insurance policies contain an "insured vs. insured" exclusion, meaning coverage does not apply to any claim by any insured against itself or against another insured.

The crux of the issue is that the status of additional insured extends a policy's

coverage to acts of the additional insured. Extending professional liability coverage to the acts of the project owner does not make sense in the context of how a professional liability insurance policy works.

First of all, the project owner's representative may not be a licensed professional, so what does professional liability coverage mean with regard to the acts of a person who is not a licensed professional? More importantly, the professional liability policy does not cover acts of the insured on their own projects. As an additional insured, the policy's coverage would not be available to the project owner because they have become an insured under the policy.

Conclusion

A project owner cannot be named an additional insured on a design firm's professional liability insurance policy. The request to do this is based on a misunderstanding of how professional liability insurance works and how it differs from general liability.

Rather than providing increased access to the policy in the event of a claim, the status of additional insured on a professional liability insurance policy would void coverage for the owner. This certainly is not in the owner's best interest or in the best interest of the design professional.



HALL & COMPANY

19660 10th Avenue NE, Poulsbo, WA 98370 [P] 360.598.3700 [F] 360.598.3703 www.hallandcompany.com