

Additional Insured Endorsements

Which Should Vendors Choose?

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Often, parties to a contract will agree that one party will be an additional insured on the other party's insurance policy. The problem with that agreement is that most of those additional insureds don't know anything about the endorsement form their new "business partner" chooses to use to fulfill that agreement. That might be bad, because all additional insured endorsement forms are not created equal, and this holds particularly true in the context of retail sales agreements.

Most insurers use some version of the

standardized additional insured endorsement forms produced by ISO. Most vendors have an understanding of what a standardized additional insured endorsement does, and may realize that a variety of standardized additional insured endorsements are available. However, few review the different endorsements and go so far as to require a particular endorsement when setting up their contracts.

Different Forms

There are many different types of standardized additional insured endorsements. For purposes of form numbering, each endorsement number is indicated on the bottom left of the endorsement. ISO standardized

additional insured endorsements are identified by form numbers beginning with "20," followed by two digits indicating the particular risk to be covered. There are many different types of standardized additional insured endorsements. So, for example, if one were looking for a standardized additional insured endorsement for oil or gas operations, he or she would want a 20 13 form. If one were looking for a standardized additional insured endorsement for "any person responsible for the use of saddle animals," a 20 14 form fits the bill. Construction contracts often require a 20 10 form, which add owners, lessees or contractors as additional insureds when re-



quired by contract. Four more digits follow in the form number sequence; these indicate the month and year that the state approved that particular form for use. Note that the wording of the forms may change from year to year.

Retail Risk

ISO offers a specific additional insured endorsement for retail risks. The “Additional Insured – Vendors” endorsement, numbered 20 15, is intended to cover liability arising out of the sale of a product. This form adds the vendor as an additional insured to the manufacturer’s policy. Vendors may find that some manufacturers include these endorsements in their policies as standard practice, to satisfy their larger distributors.

At this point, the vendor has two categories of standardized additional insured endorsements from which to choose. First, the vendor could ask the

manufacturer to obtain the vendor’s endorsement, which focuses on the product and covers liability arising from the sale of the product. Alternatively, the vendor could request a standard broad form endorsement, worded similar to the 20 10 form, which focuses on the manufacturer and provides coverage for liability caused in whole or part by the insured manufacturer’s acts or omissions. Whether the retailer selects one or the other depends on the scope of the vendor’s operations.

Vendor Endorsement

As an aside, very few vendors specifically require the vendor’s endorsement from the manufacturer. Why is it that the vendor so infrequently selects the vendor’s endorsement, which may be better tailored to its operations? There are three related reasons. First, the retailer may lack a sufficient understanding of the different endorsements forms available. The retailer may not realize

that a specialized form exists, or know when to request it; moreover, its broker may not fully understand the nature of the retailer’s business. Second, the vendor may have a real or perceived lack of bargaining power. Smaller retailers simply don’t demand that the manufacturer change its insurance practices. Third, some vendors may believe they have sufficient coverage, because their manufacturer’s policy contains an additional insured endorsement in their favor: “I already use a regular broad form endorsement. What’s the difference?”

The differences between the vendor’s endorsement and the standard broad form endorsement are material. A “regular” additional insured endorsement (the standard broad form endorsement) would likely provide coverage to a vendor as an additional insured for liability, for example, caused in whole or part by the named insured’s acts or omissions. The ven-

endorsement is much more specific. It covers the vendor as an additional insured for liability arising out of the named insured's products.

Initially, there is a clear difference in the triggering language with these two types of forms. The standard broad form endorsement requires liability "caused by" the named insured's "acts or omissions," while the vendor's endorsement responds to liability "arising out of" distribution of the "product." When ISO revised virtually all of its forms in 2004 to modify the coverage trigger from "arising out of" to "caused in whole or part," ISO did not change the vendor's additional insured endorsement, so the vendor's endorsement retains the arguably broader "arising out of" language still today.

Beyond the triggering language, the vendor's endorsement covers a vendor for liability arising from the sale of a product. This includes inspection, demonstration, installation, adjustment, service, or repair at the vendor's premises — sometimes even if the vendor is negligent. However, it is important to note that the vendor's endorsement excludes all of the foregoing if performed off the vendor's premises, so one should be hesitant to choose this type of form if the nature of the business is one where the product's demonstration, installation, adjustment, service and repair is occurring off the vendor's premises.

Case Studies

Some real-life examples of the vendor's endorsement in use are helpful. In one case, a storm door on display came loose from a Home Depot display and fell onto plaintiff. Home Depot sought coverage under the door manufacturer's policy, which included a vendor's endorsement. The door manufacturer's carrier argued that there was no defect in the product, so the manufacturer in no way caused the accident. The Kansas court deciding the coverage issue held that the door manufacturer's carrier must cover the accident under the vendor's endorsement, because the injury

arose out of the distribution or sale of the manufacturer's doors.

In another example, K-Mart agreed to purchase wrought iron patio furniture sets from the manufacturer. K-Mart employees assembled the display models, and immediately thereafter K-Mart began receiving claims in which customers were injured when the display chairs collapsed. K-Mart admitted negligence, and then sought coverage from the manufacturer's insurer. The manufacturer's carrier claimed that the endorsement only covered product defects and not active negligence by K-Mart. The court ruled that the vendor's endorsement covered K-Mart for the displays.

Notably, in these examples, the accidents arose out of the sale of the product. Although the results are often venue-specific, the above retailers may not have had additional insured status if they had simply accepted a standard broad form endorsement that covers liability caused by the manufacturer's acts or omissions. Simply put, the manufacturer did not provide a defective product, nor was the manufacturer negligent, but by virtue of the vendor's endorsement, the vendor was entitled to defense and indemnity under the manufacturer's policy.

Off-Premises Liability

On the other hand, what happens if the accident is caused by a defective product, but occurs away from the vendor's premises? Imagine one hypothetical, where an employee of a soda manufacturer injures himself when the product explodes during delivery of the product. In interpreting policy language substantially similar to the vendor's endorsement form, a court could hold that the resultant bodily injury did not occur on the retailer's premises, and deny coverage.

As another example, a retailer that typically sold goods through its retail outlets agreed to install a product at the customer's premises. The retailer hired a third-party installer, and

shipped directly from the manufacturer to the installer. Unbeknown to the retailer, the manufacturer shipped the product with defective hardware, which later failed and caused injury. Under the 20 15 vendor's endorsement, there may be no coverage because the installation work is excluded by the vendor's endorsement unless the installation is done on the vendor's premises, which was not the case in this instance.

These examples suggest scenarios where a vendor may not be covered by the specialized language in the vendor's endorsement form. In these cases, the delivery or the installation occurred away from the vendor's own premises, negating coverage. Thus, these vendors may have been better off with a standard endorsement form, which would provide coverage, if the liability had been caused (in whole or in part) by the manufacturer's acts or omissions, irrespective of location.

Choose Wisely

The moral of the story for vendors — require manufacturers to provide you with additional insured coverage using the ISO vendor's endorsement for goods typically stocked on shelves and carried away by consumers. This way, liability connected to the sale of the product is covered. For goods involving potential risk away from the vendor's premises, such as delivery or installation liability, require manufacturers to use a standard broad form endorsement with language similar to a standard 20 10 form. This form covers liability caused by the manufacturer's acts or omissions. If the retailer's operations involve a mix of brick and mortar selling, delivery, and installations, both forms should be requested of the manufacturer to cover the complete risk package. 

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