

Additional Issues: **Maximizing Coverage for Additional Insureds**

By David P. Bender Jr. and Diana Shafter Gliedman

The hospitality industry relies on insurance coverage to protect against a wide range of risks, from simple slip-and-falls to devastating property damage. Every entity is different, and selecting the most appropriate insurance coverage for a particular property or company is crucial. Yet it is increasingly common for members of the hospitality industry to have themselves named as “additional insureds” on another entity’s policy, rather than reviewing, comparing and then selecting a policy for itself. Franchisors frequently have themselves added to their franchisees’ insurance policies. Property owners often delegate the responsibility of purchasing insurance to companies that manage and maintain the property. While this often makes economic sense in the short term — the company delegating responsibility for purchasing insurance saves money on premiums, brokers’ fees and other costs — permitting another company to purchase your insurance is not without risks of its own. Members of the hospitality industry (or any other industry) seeking to have themselves named as an additional insured should not simply sit back and allow the named insured to procure the insurance. By participating in the process, additional insureds can maximize the likelihood that there will be coverage for claims if and when they occur.

Be As Specific As Possible in Establishing the Insurance You Need

Frequently, franchisors and franchisees enter into licensing agreements that cover everything from franchise fees and construction and design guidelines to the franchisee’s duty to purchase and maintain insurance coverage. The specifications for purchasing insurance are often extremely general. For example, the licensing agreement may require the franchisee to purchase a commercial general liability, or CGL, policy with \$10 million in limits of liability — but say nothing about the deductible, fail to specify between aggregate limits of liability and limits for individual occurrence, or omit reference to crucial terms, conditions or endorsements. Likewise, some agreements state that the named insured must provide first-party property insurance for the additional insured — but do not specify whether the policy must cover adjacent or adjoining properties such as golf courses or beach fronts. Some agreements contain no specifications at all, simply stating that the franchisee must purchase “appropriate” insurance. Thus, it is not uncommon for a franchisor to discover that it has less insurance coverage than it understood. Franchisors seeking to be named as additional insureds on a franchisee’s insurance policy

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should take pains to be as specific and detailed as possible about the type and amount of insurance they expect the franchisee to procure.

Get A Copy of Your Policy, Then Read It, Twice

Few licensing agreements actually require that the franchisee provide the franchisor with a copy of the policy. As such, many additional insureds do not see a copy of their insurance policy until after an occurrence. This is too late. Franchisors should amend their licensing agreements to state that the franchisee will forward copies of all insurance policies naming the franchisor as an additional insured as soon as possible — preferably before the date of inception, so that the franchisor can review the policy and ensure it comports with all expectations and agreements before it is finalized.

All additional insureds should remember that under normal circumstances, the insurance company *is not bound by the terms of the licensing agreement*. If the licensing agreement says that the named insured will purchase cyber liability coverage, but that type of coverage is, in fact, excluded under the insurance policy purchased by named insured, the additional insured will probably have no recourse against the insurance company. While most licensing agreements include indemnification agreements between the franchisor and franchisee, if the franchisee does not have sufficient funds or assets to make up for the lack of coverage, the franchisor may be left to shoulder the burden of its loss.

Furthermore, some insurance companies seek to limit the coverage available to additional insureds by adding endorsements that restrict additional insured coverage to injury involving negligence *by the named insured*, rather than injury involving only negligence by the additional insured, which may have the result of leaving the additional insured with no insurance coverage for a loss or liability it assumed was covered. Additional insureds should protect themselves by reviewing the policy — and demanding changes, if necessary — before a loss occurs.

If You Don't Have a Policy, Check Your Certificate of Insurance — And Hold the Insurance Company to its Terms

As discussed above, insurance companies are not bound by the terms of licensing agreements, franchise agreements, or any other contracts entered into between its named insured and additional insureds. Insurance companies are bound by the representations made in its certificate of insurance. It is not uncommon for an additional insured under a liability insurance policy to receive a certificate of insurance verifying that all of the agreed upon insurance require-

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ments have been met — only to discover, after a claim has occurred, that an undisclosed exclusion in the policy defeats coverage. Many state courts have refused to permit insurance companies from defeating the reasonable expectations of additional insureds in this manner.

One of the leading cases on this subject is the oft-cited *International Amphitheater Co. v. Vanguard Underwriters Insurance Co.*, 532 N.E.2d 493 (App. Ct. Ill. 1998), (“International Amphitheater”). In this case, International Amphitheater Co. entered into an agreement to lease its Chicago arena to a concert promoter, and arranged to be named as an additional insured on the promoter’s liability insurance policy. See *International Amphitheater*, 532 N.E.2d at 496. The Amphitheater never received a copy of the policy itself, but did receive a certificate of insurance. *Id.* During the concert, several persons in attendance allegedly were attacked, and four lawsuits were subsequently filed against the Amphitheater and certain other defendants, alleging negligent and willful and wanton conduct resulting in the plaintiffs’ injuries. *Id.* The Amphitheater sought coverage under the policy. Vanguard denied coverage, citing two endorsements in the policy that they claimed vitiated coverage. *Id.* at 497. Neither endorsement was referenced or listed in the certificate of insurance. *Id.*

The Appellate Court of Illinois, First District, Third Division, first held that:

Where a contract of insurance consists of a policy and other papers or documents, executed as a part of one transaction and accompanying the policy or incorporated therein by attachment or reference, they must be construed together in order to determine the meaning and effect of

the insurance contract. In the instant case, the certificate of insurance is an accompanying document since the main policy is referred to in the certificate by its number.... Therefore, the certificate incorporates the policy by reference and **the two documents must be read together in order to determine the meaning and effect of the policy.**

Id. (emphasis added). The court continued that: ...where the certificate and master policy conflict, the certificate generally controls. In this case, the policy contains, in endorsements numbers 3 and 4, significant limitations on coverage which are not contained in the certificate.... [T]he insureds should not be held to have knowledge of significant exclusions of which they were not made aware. **We find that since the policy containing the exclusions in endorsements numbers 3 and 4 was not tendered to the additional insureds here, the extent of coverage in the instant case was uncertain.**

It is well settled that all uncertainty in the construction of insurance contracts should be resolved in favor of the insured.

Accordingly, the conflict created in the instant case between the policy and certificate regarding exclusions in coverage must be construed in favor of Amphitheatre. Therefore, we find that the trial court properly found that Vanguard could not rely on endorsements numbers 3 and 4 to deny coverage to Amphitheater.

Id. at 502 (emphasis added).

Conclusion

There are many benefits to being named as an additional insured on another policyholder’s insurance policy. In order to maximize the potential for recovery under the policy, however, additional insureds should not simply sit back and let the named policyholder do all the work. Additional insureds should emphasize precisely the type of coverage they need, and obtain and review the policy (or, at the very least, a certificate of insurance) to ensure that coverage has been purchased. By participating in the process, additional insureds can ensure there is insurance to be had if and when it is needed. ▲



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