

there has to be a principal-agent relationship at the time of the accident, if coverage is to apply.

There are two things that readers need to keep in mind about this endorsement and the additional insured category:

First, if a person or organization desires protection against its vicarious liability under commercial auto coverage, specify that in a written contract. If this intent is not clear, some insurers will contest that status, since it can be costly to an insurer that is having to provide defense.

Second, additional insured status is automatic, at least under the standard ISO policy, but coverage is not. The reason, as noted above, is that there must be a principal-agent relationship. In other words, there also must be some employment or contractual relationship showing that the principal is exercising the kind of control that would create the relationship that gives rise to vicarious liability.

The key, therefore, is control. Generally, independent contractors are not considered to be agents, because, as independents, they are not commonly controlled. To the extent they can be under the direction and control of another, it may then be possible to establish the principal-agent relationship. But it is not easy to show this principal-agent relationship in order to obtain the coverage offered by the Business Auto Policy.

Another reason why this additional insured status should be prescribed by contract is that not all insurers use the ISO Business Auto Policy but, instead, rely on their own independently filed forms that can differ from the standard approach. If a policy that requires that the additional insured coverage be prescribed by contract and the contract is silent, no coverage may need to be provided.

A case in point is *Bituminous Casualty Corporation v. McCarthy Buildings Companies, Inc.*, No. 04-08-00152-CV, Tex. 4th Dist. Ct. App. 2009. A general contractor [GC] contracted with a subcontractor [SC] requiring the latter to procure a commercial general liability policy and a commercial auto policy but only requiring additional insured coverage on the CGL policy.

After an employee of the SC was killed by his employer's truck, his estate filed suit against the GC who, in turn, looked to the SC's insurance company for defense and indemnity. The SC's insurer refused to defend the GC because it claimed that the GC was not named as an additional insured on the SC's commercial auto insurance.

Unfortunately for the GC, under the language of the policy issued by the SC's insurer, the GC qualified as an additional insured only if it were "an organization for whom the insured had agreed by written contract to designate as an additional insured."

So here is a bit of advice. If a person or organization desires additional insured status under a commercial auto policy of another, that intent should be prescribed in a written contract. Whether an endorsement is issued really does not matter. In fact, for some strange reason, some underwriters will not issue an endorsement, even like the one offered by ISO! Showing intent is the key to avoiding arguments.

The next two hurdles are for the person or organization to be sued alleging liability against it, and to prove that there was a principal-agent relationship at the time of the accident.

Employees as Insureds coverage

The Business Auto Policy covers employees while using a covered auto owned, hired, or borrowed by the named insured, but it will not cover employees while using their personal

autos for business. What is required to obtain this coverage, often looked upon as an employee benefit, is a generous employer and an endorsement.

The standard ISO endorsement used for this purpose is titled Employees as Insureds Endorsement CA 99 33. It, however, is not always readily available. Underwriters usually want some assurances that the employees are maintaining modest limits, higher than the limits required by financial responsibility laws, even though this endorsement applies as excess to the employees' personal auto limits.

Employers probably feel the same way as underwriters do. To permit employees to operate their autos on company business with low limits could activate the employer's policy a lot sooner and have an impact on future pricing. Some companies are known to have written documents suggesting the minimum limits to be maintained.

When this kind of endorsement is issued, it modifies the Who is an Insured provision to include as an insured any employee of the named insured while such employee is using his own automobile in the named insured's business or personal affairs. This is highly recommended.



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