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Construction Update - June , 2013

New Additional Insured Endorsement Forms May Reduce Coverage

Starting in April, 2013, the insurance industry rolled out new standard form additional insured endorsements. The additional insured endorsement is a part of the insurance requirements for virtually every construction contract. Generally, the Owner requires the general contractor and all of its subcontractors to name the Owner as an additional insured on their general liability policies. The general contractor, likewise, requires its subcontractors to name it as an additional insured on their policies. Most construction contracts specify certain ISO form additional insured endorsements. The new editions of those forms contain some changes which may reduce coverage available to the additional insureds.

One aspect of the new form is to limit the amount of coverage available to the additional insured to the amount of coverage required by the contract requiring the additional insured endorsement. For example, if the construction contract requires a contractor to obtain $1 million in coverage, but the contractor actually carries limits of $2 million, the additional insured will receive coverage of up to $1 million, not $2 million. The additional insured will not get the benefit of the $2 million limits actually purchased by the named insured. Care should be taken in drafting the insurance requirements included within your contracts in order to maximize your potential insurance coverage.

Owner Who Paid In Accordance With Sworn Statement Protected From Union Laborers' Mechanics Lien

The Illinois Appellate Court recently issued an opinion applying well-established mechanics lien law. In Doors Acquisition, LLC v. Rockford Structures Constr. Co., 2013 IL App (2d) 120052 (2nd Dist. 2013), the Owner paid a general contractor based on a sworn statement that specifically claimed that D&P Chicago, Inc. (its subcontractor) had been paid in full. D&P, however, did not pay its union laborers and did not make required contributions to the union's benefit funds. When the laborers sought to enforce a mechanics lien against the owner, the trial court enforced it. The Appellate Court, however, overturned that decision, once again pronouncing that "an owner can rely on sworn statements from its general contractor." The only exception to that rule is when the owner has actual notice of a subcontractor's role on the project. In that case, the owner cannot rely on a sworn statement that does not identify the subcontractor. The case serves as a reminder to pay careful attention to the contractor's sworn statement and do not knowingly permit sworn statements that omit subcontractors.

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