Recognizing the Unique Status of Additional Named Insureds

Mark Pomerantz
NOTE
RECOGNIZING THE UNIQUE STATUS OF ADDITIONAL NAMED INSUREDS

INTRODUCTION

The two major parties to a liability insurance policy are the insurer and the insured. The term “insured” encompasses different categories. For example, the distinction between a named insured—a party specified in the insurance policy—and the insured—another party to the policy who is not a named insured, but is covered by the policy—has been made. National Sec., Inc. v. Johnson, 14 Ariz. App. 31, 33, 480 P.2d 368, 370 (1971); 12 G. Couch, supra note 1, § 7001, at 13; see 1 R. Long, Law of Liability Insurance § 1.02[1] (1984).


3. Davis, supra note 2, at 25. The insured is the entity that will receive a certain sum on the happening of an event specified in the insurance policy. Pleasant v. Motors Ins. Co., 280 N.C. 100, 104, 185 S.E.2d 164, 167 (1971); see Kent v. Dairyland Mut. Ins. Co., 177 Neb. 709, 724, 131 N.W.2d 146, 154 (1964). There is no distinction between the words “assured” and “insured.” 1 R. Long, supra note 2, § 1.02[3].

cally designated as the insured in the original policy—and an additional insured—a party protected under the policy without being named therein—is well established. The two entities are treated differently in many aspects of insurance law.


The courts sometimes recognize the existence of a third type of insured known as an additional named insured. This is an entity specifically designated as an insured subsequent to the issuance of the original policy. A party typically becomes an additional named insured pursuant to an agreement obligated the named insured to add the additional named insured to the named insured's pre-existing policy. For exam-

299 A.2d 704, 710 (1973) (implied permission found); Thompson v. Ryan, 547 P.2d 1340, 1341 (Utah 1976) (unpermitted use covered because it furthered general purpose of named insured). This is true even when the additional insured is specifically designated on the policy. See, e.g., Ohio Casualty Ins. Co. v. Goodman, 163 Okla. 243, 245, 22 P.2d 997, 998 (1932); Swift & Co. v. Zurich Ins. Co., 511 S.W.2d 826, 830-31 (Mo. 1974); Holthe v. Iskowitz, 31 Wash. 2d 533, 549, 197 P.2d 999, 1004-05 (1948). But see Unigard Ins. Co. v. Studer, 536 F.2d 1337, 1339 (10th Cir. 1976) (court unwilling to relegate additional named insured to same status he had prior to being named in the policy).


ple, a property owner seeking to make improvements may hire a contractor. As part of the arrangement, the owner may bargain for the contractor’s obligation to procure liability coverage in favor of the owner. This is referred to here as an “agreement to procure.” The contractor’s insurer, usually for little or no extra premium, will issue the contractor an endorsement that adds the owner as an additional named insured to the policy in which the contractor is the named insured. The previously executed policy and the endorsement insuring against new risks form the new insurance policy.

Courts need an understanding of the contractual structure of the relationship of the parties in order to determine properly the extent of coverage afforded to an additional named insured and the other rights and duties of such a party. Because the courts have failed to appreciate the unique circumstances involved in an additional named insured controversy, they have blindly treated additional named insureds as either named or additional insureds. They have consequently reached results contrary to the intent of the parties. For example, the court in Oak-

1091, 1091 (1978). The practice of agreeing to procure insurance protection as part of a contract is common. For example, in maritime contracts the standard charter agreement usually requires that the charteree name the charterer as an additional named insured. See Wedlock v. Gulf Miss. Marine Corp., 554 F.2d 240, 242 n.2 (5th Cir. 1977). It is standard practice for sublease provisions to require the sublessor to name the sublessor and the owner on insurance policies. Ambassador Ins. Co. v. Shopwell, Inc., 116 Misc. 2d 24, 26, 455 N.Y.S.2d 54, 56 (Spec. Term 1982).


14. See infra note 43 and accompanying text.

15. See infra note 44 and accompanying text.
land Stadium v. Underwriters at Lloyd's\textsuperscript{16} failed to recognize the unique status of the additional named insured and treated him as a named insured. The court applied a provision in the main policy that eliminated coverage for stadiums\textsuperscript{17} although the endorsement expressly added Oakland Stadium as an additional insured.\textsuperscript{18} In reaching this result, the court made the dubious statement that an insurer need not be conferring any benefit whatsoever when adding a party to a pre-existing policy.\textsuperscript{19}

This Note proposes that additional named insureds be treated as a distinct class of insureds apart from the traditional named insured/additional insured dichotomy. Such treatment would enable the courts to apply a more sophisticated analysis beyond that employed in resolving the usual insured-versus-insurer controversy. By recognizing an additional named insured as a unique type of third party beneficiary\textsuperscript{20} and examining the structure of the relationships among insurer, named insured and additional named insured, the courts would be more likely to reach results consistent with the intentions of these parties.

Part I of this Note proposes standards of construction applicable to liability insurance policies containing additional named insureds. Part II discusses how these standards can be applied to determine the extent of coverage afforded an additional named insured and the other rights\textsuperscript{21} and duties\textsuperscript{22} of that party.

I. ESTABLISHING GUIDELINES FOR THE CONSTRUCTION OF LIABILITY POLICIES INVOLVING AN ADDITIONAL NAMED INSURED

The purpose and guiding principle of insurance contract\textsuperscript{23} construction\textsuperscript{24} is to give effect to the intent of the parties.\textsuperscript{25} In accordance with

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  \item[16.] 152 Cal. App. 2d 292, 313 P.2d 602 (1957).
  \item[17.] Id. at 296-97, 313 P.2d at 604-05.
  \item[18.] Id. Oakland Stadium was added to the policy as a condition to its allowing the race sponsored by the named insured to take place. Id.
  \item[19.] Id. at 299, 313 P.2d at 607. The court may have based its decision on the fact that no additional premium was charged and that the endorsement stated "all other terms and conditions" of the policy remain in effect. Id. at 296-97, 313 P.2d 604-05.
  \item[20.] See infra notes 31-42 and accompanying text.
  \item[21.] See infra notes 97-106 (right to be defended by the insurer) & notes 107-15 (right to receive advance notice of policy cancellation) and accompanying text.
  \item[22.] See infra notes 116-23 (duty to notify the insurer of a claim or accident) & notes 124-32 (duty to pay the premium on the default of the named insured) and accompanying text.
  \item[23.] "'A'n insurance contract . . . defines the risks which the underwriting insurance company agrees to assume and the persons or entities entitled to protection against such defined risks." National Hills Shopping Center, Inc. v. Liberty Mut. Ins. Co., 551 F.2d 655, 658 (5th Cir. 1977).
  \item[24.] "By 'interpretation of language' we determine what ideas that language induces in other persons. By 'construction of the contract,' . . . we determine its legal operation . . . ." 3 A. Corbin, Corbin on Contracts §534, at 9 (1951). Insurance cases invariably require the construction of at least one provision of the policy in question, 2 G. Couch, supra note 1, § 15:1, at 114, yet the courts do not look foward to this task, cf. Continental
the general principles of contract law, if the language of the policy is clear and unambiguous, the court is bound by its terms. When the contract language is ambiguous, however, the approach of the courts is not uniform. Some will attempt to determine the intent of the parties by examining extrinsic evidence, but others simply construe the policy


against the insurer without regard to the intent of the parties.\(^3\) In either

case, proper resolution of the unique issues presented in cases involving additional named insureds requires an understanding of the contractual structure of the relationship.

A. The Unique Contractual Structure of Policies Involving Additional Named Insureds

The additional named insured is not a party to the insurance contract. Yet, because the additional named insured is an insured under the policy, his right to enforce an insurance contract in his favor has never been disputed. The additional named insured must therefore be a type of third party beneficiary—more particularly, a creditor beneficiary.

A third party is a creditor beneficiary when the purpose of the promisee in conferring a benefit is to discharge an obligation which the promisee owes to the third party. If, by contrast, the purpose in obtaining


The additional named insured is neither a promisee nor a promisor because his intent is not addressed to the insurer, and the insurer's intent is not addressed to him. See Restatement (Second) of Contracts § 2, at 8-9 (1981). "The promisor and promisee are the 'parties' to a promise; a third person who will benefit from the performance is a 'beneficiary.'" Id. comment g, at 12.


32. It is clear that by specifically designating the additional named insured as an insured under the policy, the named insured and the insurer intend to benefit the additional named insured, and that party therefore has the right to enforce that portion of the contract in his favor. See Restatement (Second) Contracts § 302, at 439-447 (1981); id. § 304, at 448. See infra notes 39-40 and accompanying text.

Life insurance beneficiaries may sue on a policy, 4 A. Corbin, supra note 24, § 807, at 211, and in fire policies made payable to the mortgagor, the mortgagor may enforce the contract even though the policy was taken out by the mortgagor. Id. § 807, at 211.

33. Spates v. Spates, 267 Md. 72, 77, 296 A.2d 581, 584 (1972); Black & White Cabs v. Smith, 370 S.W.2d 669, 674 (Mo. Ct. App. 1963); Northern Nat'l Bank v. Northern Minnesota Nat'l Bank, 244 Minn. 202, 208-09, 70 N.W.2d 118, 123 (1955); see 2 S. Williston, supra note 29, § 347, at 792-95.

34. See infra note 35 and accompanying text. The Restatement Second has rejected the terms creditor and donee beneficiary in favor of incidental and intended beneficiary. Restatement (Second) Contracts Ch. 14 introductory note, at 439 (1981).

the promise is to confer on the third party a right neither due nor asserted to be due from the promisee, the party is a donee beneficiary. 36

Here, because the agreement to procure obligates the named insured to confer the benefit of insurance on the additional named insured, the additional named insured is a creditor third party beneficiary. In contrast, an additional insured is a donee beneficiary 37 because the named insured owes no performance to undefined parties that fall within the definition of insured under the policy. 38

The status of the additional named insured is unique, however, because of several significant differences between its situation and that of the standard third party beneficiary. For example, a classic issue is whether the third party has a right to enforce the contract against the promisor. 39 This depends on whether the promisee intended to benefit the third party. 40 In an additional named insured controversy, however, there is no question that the named insured (promisee) intends to benefit the additional named insured (third party beneficiary) by contracting with the insurer (promisor); the concern is solely with the construction of the contract itself. In addition, in the usual case there is no evidence of the promisee's intent regarding the rights of the beneficiary except for the contract between the promisor and the promisee. 41 An additional named insured, however, expressly bargains with the named insured for the benefit of coverage; the agreement to procure thus provides evidence of the named insured's intentions and purposes outside of the contract with the insurer. Finally, unlike situations involving a standard third party beneficiary, the special rules applicable to insurance contracts must be

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37. See 4 A. Corbin, supra note 24, § 807, at 219.

38. Although a named insured may be obligated by statute to carry insurance protection in favor of unidentified persons, such as permissive users of automobiles, see, e.g., Cal. Ins. Code § 11580.1(b)(4) (West Supp. 1984); N.J. Stat. Ann. § 39:6A-4 (West Supp. 1984-85); N.Y. Ins. Law § 167(2) (McKinney Supp. 1983-84), these parties are not creditor beneficiaries because they do not have a claim against the named insured. See 4 A. Corbin, supra note 24, § 787, at 96; id., § 807, at 219.


41. 4 A. Corbin, supra note 24, § 775, at 9.
The foregoing illustrates that an additional named insured is a unique type of third party beneficiary. An understanding of this unique contractual structure will enable the courts to apply a procedure that avoids the unfortunate results of the traditional analysis.

B. Judicial Treatment of Additional Named Insureds

1. The Traditional Approach

Because the courts have failed to appreciate the status of an additional named insured as a unique type of third party beneficiary, they traditionally have treated additional named insureds as either named insureds or additional insureds. This treatment has led to results contrary to the intents of the parties.

Initially, to treat the additional named insured as a named insured may lead to results unintended by the insurer. Under this approach, insurers either are forced to extend broader coverage to the additional named insured than they intended or are precluded from suing the additional named insured under a subrogation theory. Such treatment is

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42. See supra notes 23-30 and accompanying text.


45. The use of "intents" as opposed to "intent" reflects the fact that there are three parties to be considered, each of which may have a different intent.

46. See infra notes 47-49 and accompanying text.

47. See, e.g., Frank Briscoe Co. v. Georgia Sprinkler Co., 713 F.2d 1500, 1504 (11th Cir. 1983) (insurer may not subrogate against an additional named insured even assuming that the insureds intended that the additional named insured's own insurer would be liable for indemnification); Gulf Oil Corp. v. Mobile Drilling Barge or Vessel, 441 F. Supp. 1, 6 (E.D. La. 1975) (endorsement issued by insurer not considered), aff'd per curiam, 565 F.2d 958 (5th Cir. 1978); id. at 7 (rejecting insurer's argument that additional insured was not covered for liability arising solely out of its own negligence); Smith v. Ryan, 142 So. 2d 139, 141 (Fla. Dist. Ct. App. 1962) (insurer may not subrogate against that party which contracted to be added to the named insured's policy notwithstanding named insured's failure to request that insurer make the addition); E.C. Long, Inc. v. Brennan's, Inc., 148 Ga. App. 796, 803, 252 S.E.2d 642, 647 (1979) (no subrogation against an additional named insured, even if he causes the damage); Harvey's Wagon Wheel, Inc. v. MacSween, 96 Nev. 215, 217-19, 606 P.2d 1095, 1096-97 (1980) (same); New York Bd. of Fire Underwriters v. Trans Urban Constr. Co., 91 A.D.2d 115, 121-23,
ADDITIONAL NAMED INSURED also illogical because an additional named insured is not a party to the insurance contract and should not have the same rights and obligations as a named insured, who is a party to the contract. Moreover, the intentions of the named insured and additional named insured are often contravened when an additional named insured is treated as an additional insured. The courts' failure to examine the intents of the insureds leads them to grant to the additional named insured fewer rights than were intended by those parties.48 Finally, because an additional insured is never designated in the policy and is a creditor beneficiary, whereas an additional insured is a donee beneficiary, 49 an additional named insured's rights and duties should differ from those of an additional insured.50

The logical inconsistencies of traditional judicial treatment of an additional named insured as a named insured or an additional insured are thus apparent. By applying an analysis that recognizes the uniqueness of

48 N.Y.S.2d 216, 219-21 (no subrogation against an additional named insured even if he causes the damage; rejection of insurer's argument that additional named insured was not covered for liability arising out of its own negligence), aff'd mem., 60 N.Y.2d 912, 458 N.E.2d 1255, 470 N.Y.S.2d 578 (1983); cf. Harbor Ins. Co. v. Lewis, 562 F. Supp. 800, 803 (E.D. Pa. 1983) (recognizing that insurer intends to cover additional named insureds only for vicarious liability); Anaconda Co. v. General Accident Fire & Life Assurance Corp., 616 P.2d 363, 366 (Mont. 1980) (court should not burden an insurer with coverage for all liabilities of an additional named insured).

Treating an additional named insured as a named insured may even lead to a result contrary to the intent of the insureds. See Valentine v. Aetna Ins. Co., 564 F.2d 292, 295-96 (9th Cir. 1977) (unreasonable to assume that a named insured would agree to procure liability insurance for all of the named insured's operations).

49 See, e.g., Gryar v. Odeco Inc., 719 F.2d 112, 115-16 (5th Cir. 1983) (per curiam) (policy covered additional named insured's liability for negligent acts committed as barge-owner and not for acts committed qua charterer); Tidewater Equip. Co. v. Reliance Ins. Co., 650 F.2d 503, 506 (4th Cir. 1981) (additional named insured's rights are limited by the terms and conditions of the policy between the named insured and the insurer); Price v. Zim Israel Navigation Co., 616 F.2d 422, 428 (9th Cir. 1980) (insurer's obligation governed by policy and not by contract between additional named insured and named insured); Wedlock v. Gulf Mississippi Marine Corp., 554 F.2d 240, 242 (5th Cir. 1977) (policy covered additional named insured's liability for negligent acts committed as barge-owner and not for acts as charterer); Oakland Stadium v. Underwriters at Lloyd's, 152 Cal. App. 2d 292, 299, 313 P.2d 602, 607 (1957) (act of insurer in adding an additional named insured to policy need not confer any benefit); Daly v. W.E. O'Neil Constr. Co., 133 Ill. App. 2d 655, 661, 273 N.E.2d 505, 508 (1971) (insurer's obligations determined by policy provisions alone, irrespective of insureds' intent unless informed of that intent); Swift & Co. v. Zurich Ins. Co., 511 S.W.2d 826, 830-31 (Mo. 1974) (additional named insured is not a named insured with respect to omnibus clause); Waller v. Rocky Mt. Fire & Casualty Co., 272 Or. 69, 89, 535 P.2d 530, 540 (1975) (en banc) (Tongue, J., dissenting) (no uninsured motorist coverage provided for additional named insured despite reasonable expectation of named insured); Holthe v. Iskowitz, 31 Wash. 2d 533, 543, 197 P.2d 999, 1005 (1948) (additional named insured is not a named insured with respect to omnibus clause).

49 See supra notes 35-37 and accompanying text.

50 For example, a party not designated in the policy has a longer period of time to notify the insurer of a claim. See infra notes 105-10 and accompanying text. Additionally, an insurer is not under an obligation to give advance notice of cancellation to a party not designated in the policy. See infra notes 106-14 and accompanying text.
an additional named insured, the courts would be more likely to reach results consistent with the intents of the parties.

2. Proposed Analysis

It is fundamental that a third party beneficiary's rights stem from the contract itself. Therefore, the insurance contract, which includes the endorsement adding the additional named insured to the policy, is the first evidence that must be examined.

If the insurance contract is clear and unambiguous regarding the additional named insured, the court must give effect to the contract language. If, however, the policy or endorsement is ambiguous regarding the additional named insured, the court should look to extrinsic evidence in order to determine the intent of the parties. In other words, until the intent of the parties has been determined, the rule that ambiguities are construed against the insurer should not come into play. The rationale behind construing ambiguous language against insurers is that insurance policies are contracts of adhesion in which the insurer supplies the terms. Additionally, public policy warrants providing injured parties with an adequate source of compensation.

This rule of construction is not applicable here. First, strict construction should not be applied to circumvent the purpose of the insurance agreement. Further, an additional named insured is not forced to “take the policy or leave it,” but rather is asking to be added to a pre-existing

52. See supra note 13 and accompanying text.
53. See supra notes 26-27 and accompanying text.
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policy. The policy, therefore, is not a contract of adhesion as regards the additional named insured. Finally, because an additional named insured will often have other insurance or have recourse against the named insured, the rationale of ensuring that the injured party will be fully compensated does not apply.

In order to clarify ambiguous language, the court must seek to discover the intentions of the insureds and the insurer when the additional named insured was added to the policy. The intent of the insureds is reflected by the language of, and the circumstances surrounding, the agreement to procure. Despite the fact that the additional named insured is not a party to the insurance contract, his intent is relevant to the construction of that contract because the intent of the named insured in requesting the added coverage is directly dependent on the bargain that the additional named insured made with the named insured. The insurer's intent is reflected by the language of both the policy and the endorsement and by the amount of premium charged for undertaking the additional risk. Finally, the overall circumstances surrounding, and purpose behind, the entire arrangement are also relevant to determining the intents of the parties. For example, one court has held that the

58. See Robin v. Blue Cross Hosp. Servs., 637 S.W.2d 695, 697 (Mo. 1982) (en banc); 2 G. Couch, supra note 1, § 15:78, at 387; cf. Cook v. Kozell, 176 Ohio St. 332, 336, 199 N.E.2d 566, 569 (1964) (plaintiff who is not a party to the contract cannot urge that the policy be construed strictly against the insurer); McBroome-Bennett Plumbing, Inc. v. Villa France, Inc., 515 S.W.2d 32, 37 (Tex. Civ. App. 1974) (third person not a party to the contract not entitled to strict construction in his favor in determining whether the contract was made for his benefit).


60. See infra note 85 and accompanying text.


62. See supra note 31 and accompanying text.


65. Zelinsky v. Associated Aviation Underwriters, 478 F.2d 832, 834 (7th Cir. 1973); Danielson v. Insurance Co. of N. Am., 309 F. Supp. 26, 29 (N.D. Ga. 1969); Underwrit-
custom and practice in the insurance industry of insuring additional named insureds only for vicarious liability is probative of the intents of the parties. Another has stated that it would be absurd to believe that a subcontractor would agree to procure liability insurance covering all of the operations of the additional named insured general contractor.

When the intent of the insurer is in accordance with that of the insureds, the court's construction of the policy should effectuate that intent, and the general rule of construing ambiguous language against the insurer should not be applied so as to circumvent that intent. To apply blindly the general rule before analyzing the relationship and intents of the parties would subvert the principal goal of construing insurance policies: to give effect to the intent of the parties. Conversely, when the intent of the insurer is not in accordance with that of the insureds, the general rule that ambiguities are to be construed against the insurer should be applied. The result is that when the intents diverge, the intent of the insureds will be given effect. This conclusion comports with the view that the expectations of the insured should be given great weight and recognizes that an insurer may avoid the rule of strict construction through the use of clear and unambiguous language. It is not unreasonable to require an insurer to express its intent clearly and unambiguously and to give effect to the intent of the insureds.

68. See supra note 25 and accompanying text.
69. See supra notes 23-25 and accompanying text.
70. See infra notes 71-73 and accompanying text. The mere assertion by the insureds that they intended broad rights, however, should not be sufficient for a finding of divergent intents. The court must ascertain the objective intent of the insureds by examining the agreement to procure.
72. See supra note 27 and accompanying text.
II. APPLICATION OF THE PRINCIPLES OF CONSTRUCTION TO DETERMINING THE RIGHTS AND DUTIES OF ADDITIONAL NAMED INSUREDS

The procedure outlined in Part I provides the courts with a consistent method for determining both the extent of coverage afforded an additional named insured and its other rights and duties. Such an analysis can be facilitated by an examination of the following hypothetical.74 Owner seeks to make improvements on his property and hires Contractor to do the work. As part of the arrangement, Contractor agrees in writing to provide insurance covering Owner for liability that may arise due to the acts of Contractor. Contractor then negotiates with Insurer, who issues to Contractor an endorsement adding Owner as an insured to Contractor's pre-existing liability policy. The endorsement states that Owner shall be covered "as his interest may appear."75 Insurer charges little or no additional premium for the added risk.76

During the course of the property improvement, Owner negligently allows a piece of lumber to injure severely an employee of a subcontractor. The injured worker sues Owner for negligence. Owner, as an additional named insured, promptly notifies Insurer of the claim, believing that he is covered under Contractor's liability policy. Insurer flatly rejects the claim that Owner was covered for liability arising out of his own negligence.77

74. The facts in the hypothetical are similar to those in Anaconda Co. v. General Accident Fire & Life Assurance Corp., 616 P.2d 363 (Mont. 1980). In that case, Anaconda, the owner of a smelter operation, hired a contractor to make improvements on its property. Id. at 364. Pursuant to their agreement, Anaconda was added to the contractor's pre-existing liability policy. Id. An employee of Anaconda negligently injured a subcontractor's employee, and the insurer refused to insure and defend. Id. Because the endorsement stated that Anaconda was an insured in accordance with the contract between the insureds, id. at 368, the court unwittingly applied the proper analysis and attempted to determine the type of risks the additional named insured and the named insured intended to cover under the insurance provisions of their contract. Id. at 366. The dissent, however, failed to appreciate the status of Anaconda as a unique type of third-party beneficiary and simply treated Anaconda as a named insured. Id. at 367-68 (Sheehy, J., dissenting). The majority remanded for a determination of whether the work being performed by the Anaconda employee at the time of the accident was undertaken pursuant to the contract between Anaconda and the contractor. Id. at 366-67.

75. See infra notes 90-91 and accompanying text.

76. See supra note 12 and accompanying text.

A. The Extent of Liability Coverage Afforded an Additional Named Insured

In resolving the dispute posed in the hypothetical, the endorsement adding Owner as an additional named insured is the primary evidence of the extent of coverage afforded to him. If the endorsement is clear and unambiguous, the court is bound by its terms. Thus, with the use of clear and unambiguous language in the endorsement, Insurer could have limited the scope of coverage afforded to Owner. Courts have recognized that the parties to an insurance contract must be bound to the terms of the agreement, and they will not strain to create ambiguities in order to find broad coverage. Insurers have the right to negotiate the risks they are covering under the insurance agreement, and the rights of an additional named insured, as a third party beneficiary, must stem from the terms of the policy.

N.Y.S.2d 216, 219, aff'd mem., 60 N.Y.2d 912, 458 N.E.2d 1255, 470 N.Y.S.2d 578 (1983); cf. United Nuclear Corp. v. Mission Ins. Co., 97 N.M. 647, 656, 642 P.2d 1106, 1115 (Ct. App. 1982) (insurer asserted that additional named insured under builders risk policy is covered only for damage to own property on job site and not for damage to other's property caused by the additional named insured's negligence).

Endorsements are part of the policy, and when the terms of the endorsement conflict with those in the policy proper, those in the endorsement control. See supra note 13 and accompanying text.

Insurers have effectively limited the coverage afforded the additional named insured in other cases as well. See, e.g., Landry v. Oceanic Contractors, Inc., 731 F.2d 299, 304 (5th Cir. 1984); Home Indem. Co. v. Wilson, 107 Ariz. 434, 436, 489 P.2d 244, 247 (1971); Caduceus Self Ins. Fund v. South Florida Emergency Physicians, 436 So. 2d 1034, 1035 (Fla. Dist. Ct. App. 1983); cf. Consolidation Coal Co. v. Liberty Mut. Ins. Co., 406 F. Supp. 1292, 1295 (W.D. Pa. 1976) (although endorsement's language was found ambiguous, it had the effect of restricting coverage for liability arising out of only the named insured's negligence).

Insurers have the right to negotiate the risks they are covering under the insurance agreement, and the rights of an additional named insured, as a third party beneficiary, must stem from the terms of the policy.

See supra note 27 and accompanying text.

82. See supra note 27 and accompanying text.

from the insurance agreement itself.\textsuperscript{84} Such a construction does not leave an additional named insured without a remedy. If the contract of insurance did not cover Owner to the extent for which he bargained with Contractor, Owner can sue Contractor for breaching their agreement to procure.\textsuperscript{85} In addition, if Owner is aware of the language in the endorsement, he can seek to modify its terms.\textsuperscript{86}

When the endorsement indicates no distinction between the named insured and the additional named insured, there are no ambiguities,\textsuperscript{87} and the courts have treated the additional named insured exactly as a named insured in determining the extent of coverage.\textsuperscript{88} The additional named insured is also, however, subject to the exclusions and limitations contained in the policy.\textsuperscript{89}

\textsuperscript{84} See supra note 57 and accompanying text.


In many endorsements adding additional named insureds to pre-existing liability policies the language employed shows an intent to distinguish the coverage afforded the additional named insured from that afforded the named insured, but the degree to which coverage is to differ is not clearly expressed. In the hypothetical, for example, the endorsement stated that Owner was covered for liability "as his interest may appear." This language has repeatedly been held to be ambiguous. In construing such an endorsement, a court should attempt to determine the intents of the parties by examining the extrinsic evidence available.

If Owner and Contractor, as well as Insurer, all intended that a particular type of liability be covered, it seems clear that Owner should be provided with such coverage. If, on the other hand, the insureds and

O'Neil Constr. Co., 133 Ill. App. 2d 655, 659, 273 N.E.2d 505, 508 (1971) (insurers obligations to the additional named insured determined by an examination of the policy provisions); 12 G. Couch, supra note 1, § 45:307, at 641 (additional insured's rights are limited by the terms and conditions contained in the policy). The rationale behind this rule is that it would be unlikely that the parties could have intended to provide the additional named insured with greater coverage than that provided the named insured. See Allegheny Airlines, Inc. v. Forth Corp., 663 F.2d 751, 759 (7th Cir. 1981) (parties intended additional named insured to have same coverage as named insured); Rig Tenders, Inc. v. Santa Fe Drilling Co., 585 P.2d 505, 509 (Alaska 1978) (insurer could not have intended to assume unlimited liability as to the additional named insured when it was unwilling to accept such liability for the named insured); Oakland Stadium v. Underwriters at Lloyd's, 152 Cal. App. 2d 292, 297, 313 P.2d 602, 605 (1957) (to hold otherwise would place the additional named insured in a better position than the named insured); District-Realty Title Ins. Co. v. Jack Spicer Real Estate, Inc., 280 Md. 422, 426, 373 A.2d 952, 955 (1977) (parties intended additional named insured to be subject to the same conditions as the named insured). Further, the rights of the additional named insured as a third party beneficiary must stem from the contract itself. See supra note 51 and accompanying text.


92. See supra notes 53-73 and accompanying text.
Insurer did not intend to cover the additional named insured for the liability arising in the controversy, it is equally clear that no coverage should be found. Finally, if the intents of Insurer and the insureds diverge, the rule that ambiguous language is to be construed against the insurer should be applied. 93

In the hypothetical, the language of the agreement to procure between Owner and Contractor clearly evidences an intent that Owner be provided with coverage only for liability arising out of the acts of Contractor. In addition, the fact that Insurer, following the custom of the insurance industry, charged little or no additional premium 94 for the added risk reveals the same intent. The intents of the parties thus are in accord, and Insurer should therefore not be held to cover Owner for liability arising out of Owner's own negligence. Had the agreement to procure and its surrounding circumstances reflected an intent on the part of the insureds that Owner be covered for liability arising out of his own negligence, the intents of the parties would have been in conflict. In such a case, under the analysis of Part I, the rule of construing ambiguous language against the insurer should be applied and coverage found. 95

The effect of this analysis is to provide the coverage intended by the insureds unless the language of the insurance contract is clearly to the contrary. This approach also recognizes the special rules applicable to insurance contracts by requiring the insurer to use clear and unambiguous language. In any event, the additional named insured will have recourse against the named insured if the policy does not provide the coverage for which he bargained. 96

B. Other Rights And Duties Of An Additional Named Insured

The analysis and procedure described in Part I can also be applied to determine other rights and duties of an additional named insured.

1. Right To Be Defended

Most liability insurance policies grant the insurer exclusive control over all litigation against its insured that may lead to liability covered under the policy. 97 The insurer's purpose in seeking such a right is to

93. See supra notes 70-73 and accompanying text.
95. See supra notes 53-73 and accompanying text.
96. See supra note 85 and accompanying text.
ensure a vigorous defense in all cases in which a judgment rendered against its insured will eventually be paid by the insurer. This control is balanced by a requirement that the insurer defend its insured if the potential exists for indemnity liability under the policy. Because an additional named insured is designated as an insured under the insurance contract, his right to be defended is unquestioned, but the breadth of the insurer's duty to defend an additional named insured is less clear.


98. Duty to Defend, supra note 97, at 748.


100. The duty to defend is dependent on the extent of coverage, and the extent of coverage afforded an additional named insured is unclear. See supra notes 98-99 and accompanying text. The breadth of the duty to defend, therefore, is not settled. Further,
An insurer's duty to defend should apply as broadly to an additional named insured as it does to a named insured. The courts have held that all additional, but unnamed, insureds have the right to be defended for all claims potentially within coverage. It is clear that an additional named insured—a creditor beneficiary bargaining for coverage under the policy—is entitled to at least as broad a right to be defended as is an additional insured who, as a donee beneficiary, is a stranger to the contract. When a potential for coverage exists, an insurer has no less an interest in providing a vigorous defense for a claim brought against an additional named insured than it has for a claim brought against a named insured. The insurer's corollary duty to defend, therefore, should apply equally to additional named insureds and named insureds.

The courts have interpreted the duty to defend additional named insureds in a broad manner, striving to find a potential for coverage. Insurers wishing to reduce their duty to defend additional named insureds can do so by limiting the coverage with the use of proper language in the endorsement. Thus, in the hypothetical, when Owner is sued for his negligence, Insurer will not have the duty to defend because Owner was not covered under the endorsement for liability arising out of his own negligence. Had the injured worker alleged that Owner was vicariously liable for Contractor's negligence, for example, then the insurer

because the additional named insured is a third party beneficiary, it is possible that its rights under the insurance contract may differ from those of the named insured.


102. See supra notes 31-42 and accompanying text.

103. See supra notes 31-42 and accompanying text.

104. See, e.g., St. Paul Fire & Marine Ins. Co. v. Sears, Roebeck & Co., 603 F.2d 780, 786 (9th Cir. 1979) (duty to defend additional named insured found even though majority of liability was not covered under the policy); First Ins. Co. v. State, 665 P.2d 648, 653 (Hawaii 1983) (duty to defend found although no ultimate duty to indemnify under the endorsement because complaint raised possibility of covered liability); Weeks v. County of Oneida, 91 A.D.2d 1165, 1165, 459 N.Y.S.2d 334, 335-36(1983) (mem.) (duty to defend additional named insured on cross-claims). A possibility of a conflict between the two insureds does not relieve the insurer of its duty to defend the additional named insured. See Priester v. Vigilant Ins. Co., 268 F. Supp. 156, 160 n.2 (S.D. Iowa 1967); St. Paul School Dist. v. Columbia Transit Corp., 321 N.W.2d 41, 47 (Minn. 1982).

would have had a duty to defend Owner even if the claim were baseless.\footnote{106}

2. Right To Receive Advance Notice of Cancellation

Cancellation refers to the termination of the policy prior to the expiration date by the act of one of the parties to the agreement.\footnote{107} Cancellation is a significant act, often leaving the insured with no insurance protection.\footnote{108} As a result, statutes commonly require that advance notice be sent to an insured as a condition precedent to an effective cancellation.\footnote{109} The purpose of such a requirement is to enable the insured to obtain insurance elsewhere before being subjected to unprotected risks.\footnote{110}

\footnote{106. See \textit{supra} note 99 and accompanying text.}


\footnote{108. 2 R. Long, supra note 2, § 15.13, at 15-48.}


It is not clear whether, for purposes of receiving advance cancellation notice, an additional named insured is to be treated as a named insured. Although there is no direct authority on this issue, cases not involving additional named insureds reveal that the courts are reluctant to allow parties to be left without coverage in the absence of advance notice of cancellation. The status of an additional named insured as a third party beneficiary indicates that its reliance on the protection afforded under the insurance contract is not unreasonable, and therefore the promisor should not be able to extinguish the rights of the beneficiary merely by notifying the promisee. Moreover, failure to notify an additional named insured in advance of cancellation would deprive that party of both the protection for which he bargained and the opportunity to procure protection for himself. The additional named insured, therefore, should be treated as a named insured for the purpose of receiving advance notice of cancellation.

3. Duty To Notify The Insurer Of a Claim Or Accident

Liability insurance policies often require that notice of an accident be given to the insurer as soon as practicable. The purpose of such a

111. The court in Price v. Zim Israel Navigation Co., 616 F.2d 422 (9th Cir. 1980), stated in dictum that the insurer could have cancelled the policy by giving notice to the named insured notwithstanding the existence of the additional named insured. Id. at 427. The court found, however, that no effective cancellation had occurred. Id. at 427-28.


113. See supra notes 31-42 and accompanying text.

114. "Whether or not the promisee or the contracting parties have power to rescind . . . it is certain that the promisor acting alone can not extinguish the rights of the beneficiary merely by notifying the promisee that he has repudiated the contract." 4 A. Corbin, supra note 24, § 819, at 278.

115. If the policy states that the "insured" is entitled to notice, or if a statute requires all known persons shown by the policy to have an interest in any loss to be notified, see La. Rev. Stat. Ann. § 22:636(A)(2) (West 1978), it seems clear that an additional named insured is entitled to such notice as is required.

116. See, e.g., Employers' Liab. Assurance Corp. v. Travelers Ins. Co., 411 F.2d 862,
provision is to afford the insurer the opportunity to investigate the claim adequately before he is obligated to pay.\textsuperscript{117} An additional named insured

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should be required to comply with the notice provisions of the policy in which he is named, unless the insurer has been notified adequately by another party.\textsuperscript{118} It has been held that the requirement of notice binds an additional insured in the same manner as a named insured\textsuperscript{119} but courts hold an additional named insured to a lesser standard of timeliness.\textsuperscript{120} Because an additional named insured should be aware of the existence, if not the extent, of coverage in his favor, he should not be held to a lower standard of notice compliance than a named insured.\textsuperscript{121} Moreover, the rationale behind notification—giving the insurer time to investigate fully\textsuperscript{122}—applies equally to both types of insureds. Finally, a third party beneficiary takes subject to the due performance of all conditions in the contract that affect the promise in which he is interested.\textsuperscript{123} Thus, in the hypothetical, in order to invoke coverage under the insurer.

409, 415-16 (Iowa 1970). This view recognizes the rationale behind giving notice and that it is often impossible for an insurer to show prejudice because all the facts are known to the insured. \textit{See} 8 J. Appleman, supra note 1, § 4732, at 26-30.


\textsuperscript{120} While a named insured must notify "as soon as practicable," an additional insured sufficiently complies with the notice provision if notice is made within a reasonable time after the discovery of coverage under the policy. Hawthorne v. Liberty Mut. Ins. Co., 322 F. Supp. 1096, 1099 (E.D. Pa. 1971) (additional insured must use due diligence to determine what, if any, coverage exists); \textit{see} National Sur. Corp. v. Wells, 287 F.2d 102, 107 (5th Cir. 1961) (omnibus additional insured); Allstate Ins. Co. v. Darter, 361 S.W.2d 254, 255 (Tex. Civ. App. 1962) (same); \textit{cf.} INA Ins. Co. v. City of Chicago, 62 Ill. App. 3d 80, 83, 379 N.E.2d 34, 36 (1978) (no coverage when delay in notice was caused by City's lack of diligence in ascertaining whether coverage still existed).

\textsuperscript{121} \textit{See} INA Ins. Co. v. City of Chicago, 62 Ill. App. 3d 80, 83, 379 N.E.2d 34, 36 (1978) (policy taken out in favor of City was renewed without City's knowledge, but its failure to ascertain whether the policy was still in effect caused unreasonable delay in notification; no coverage found). \textit{But see} supra note 117 and accompanying text.

\textsuperscript{122} 2 S. Williston, supra note 29, § 364A, at 875; \textit{see} New Britain Lumber Co. v. American Sur. Co., 113 Conn. 1, 6, 154 A. 147, 149 (1931) (beneficiary of bond must comply with statutory requirements); Davis v. Dunn, 121 Mo. App. 490, 494, 97 S.W. 226, 227 (1906) (beneficiary's right is entirely subordinate to terms of contract); Western Union Tel. Co. v. Scarborough, 68 S.W.2d 1027, 1029 (Tex. App. 1934) (sendee of telegram is third party beneficiary but cannot claim benefits of the contract while repudiating one of its principal terms).
unce contract, Owner would have to satisfy the same standard of prompt notification as would Contractor.

4. Duty To Pay Premiums

The premium is the consideration paid an insurer for undertaking to indemnify the insured against enumerated perils and is the very essence of the insurance agreement. The general rule is that the insured is primarily liable to the insurer for the payment of premiums. Most often the insurer will cancel the policy upon default, but the termination of the risk does not affect the pre-existing liability of the insured for premiums corresponding to antecedent periods of coverage.

In the absence of an express or implied promise, an additional named insured is not liable for the payment of premiums upon the named insured's default. Further obligating the additional named insured beyond his agreement with the named insured would bind him to a performance he never chose to undertake. The additional named insured is a third party beneficiary under the insurance contract, but because he is not a party to that contract he should not be obligated to pay the premiums. The additional named insured receives the benefit of coverage under the named insured's policy in exchange for his performance under the original contract with the named insured. The benefit of that performance flows to the named insured, and the additional named insured therefore should not be obligated to both the named insured and the insurer.

This result provides little comfort to the insurer who has covered additional risk without the benefit of receiving additional consideration. If


127. See New York Life Ins. Co. v. Statham, 93 U.S. 24, 30 (1876); 6 G. Couch, supra note 1, § 32:65, at 286; Davis, supra note 2, at 42.

128. 6 G. Couch, supra note 1, § 31:138, at 145.


130. See supra notes 31-42 and accompanying text.

131. See supra note 31 and accompanying text.
the insurer wishes to protect its interests when the additional risk it assumes is substantial, it can require the additional named insured to agree expressly to become liable for the premiums upon the default of the named insured. In the hypothetical, had Contractor defaulted on the payment of premiums under the insurance contract, Owner would not have been liable for their payment unless Owner had expressly agreed to undertake that burden.

CONCLUSION

An additional named insured should be treated as a distinct type of "insured." Classifying additional named insureds as either named insureds or additional insureds has often led to results contrary to the intents of the parties involved. Unless the endorsement adding the additional named insured can be construed in only one manner, a court should treat an additional named insured as a unique type of third party beneficiary whose intent is sometimes relevant in the construction of the insurance contract to which he is not a party. When determining the extent of coverage afforded an additional named insured, the endorsement adding him to the policy must be examined first. If no intent to distinguish between the named insured and the additional named insured is apparent, then both parties must be covered to the same extent. If the language of the endorsement clearly limits the scope of coverage, that language must be given effect. If, however, the endorsement is ambiguous, the intent of the parties would control. Only when the insurer's intent differs from that of the insureds must the policy be construed against the insurer.

Additional named insureds have a broad right to be defended by the insurer and must be notified in advance of policy cancellation. They have the same duty as the named insured to notify the insurer of a claim, but generally are not liable for the payment of premiums.

Application of the analysis proposed in this Note will enable the courts to avoid the unfortunate results occasioned by the placing of additional named insureds into preconceived and often ill-fitting categories. By recognizing the unique contractual structure presented by cases involving additional named insureds, the courts will reach results more consistent with the intents of the parties and the overall purposes of the arrangement.

Mark Pomerantz

132. Assuming that all of the elements of a valid contract are present, liability may be imposed on a third party who has expressly agreed to pay premiums. 6 G. Couch, supra note 1, § 31:146, at 154; see American Mut. Liab. Ins. Co. v. Bollinger Corp., 402 F. Supp. 1179, 1182 (W.D. Pa. 1975).