

“ADDITIONAL INSURED” COVERAGE MAY NOT ADD UP

By Linda J. Karpel

Can “additional insured” insurance coverage ever be useless? It can, when the self-insured retention (“SIR”) of the insurance policy cannot be satisfied. In a California state court decision rendered earlier this year, a housing developer found out the hard way that, in requiring its subcontractors to name it as an “additional insured,” it should have specified language to be used in the policies’ SIR endorsements, in order to ensure that the developer would be permitted to pay the retention. See *Forecast Homes, Inc. v. Steadfast Ins. Co.*, 105 Cal. Rptr.3d 200 (Cal. Ct. App. 2010).

Forecast Homes, the housing developer, used a form contract with its subcontractors, pursuant to which the subcontractors were required to maintain liability insurance naming Forecast Homes as an “additional insured.” After Forecast Homes tendered certain underlying lawsuits for coverage, one insurer, Steadfast, disclaimed coverage. While Steadfast did not deny that Forecast Homes was an additional insured under several of its policies, Steadfast argued that only the “named insured” could satisfy the SIR for those policies. After examining the two SIR endorsements at issue, the California appellate court agreed.

One of those endorsements required that “*you* shall be responsible for payment of all damages and defense costs . . . until *you* have paid self-insured retention amounts and defense costs equal to the [p]er [o]ccurrence amount shown in the Schedule” (emphasis added). The endorsement stated that “*you*” referred to “the [n]amed [i]nsured” According to the court, this endorsement required that only the named insured was permitted to pay the SIR, even though the endorsement also defined “self-insured retention” as “the amount . . . which *you, or any insured* . . . must pay for all compensatory damages which *you or any insured* . . . shall become legally obligated to pay.” (emphasis added).

An additional endorsement contained similar language, but added, “Payments by others, including but not limited to additional insureds . . . do not serve to satisfy the self-insured retention” The court likewise held this provision precluded Forecast Homes from paying the SIR retention.

The *Forecast Homes* case reminds us that, in the final analysis, “additional insured” coverage is only as good as the insurance policy to which it applies. Achieving “additional insured” status may be important, but in order to ensure that coverage will be there when needed, it is necessary to examine and understand the governing insurance policy.

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