

## THREE WAYS TO AVOID SURPRISES IN ADDITIONAL INSURED COVERAGE

**Too often, landlords rely on boilerplate language that simply obligates a tenant to cause its insurer to list the landlord as an additional insured on the insurance policies, a practice that has always been problematic for the landlord.** By failing to specify within the lease the particular coverage terms it wants in the additional insured endorsement, the landlord gives the insurer the opportunity to determine the coverage. Moreover, recent changes made by the Insurance Services Office (ISO) to important additional insured endorsements for commercial general liability (CGL) policies provide that whatever insurance coverage is specified in the lease or other underlying contract controls over conflicting, more favorable coverage terms in the CGL policy. To help ensure

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that the landlord has the insurance coverage it requires, the additional insured provision in the lease or contract needs to be carefully drafted to specify the scope of coverage.

To avoid any issues when it comes to additional insured coverage, landlords should follow three steps:

### 1. Identify the Desired Additional Insured Endorsements

In the lease or other underlying contracts, the landlord should identify by title the ISO additional insured endorsement or endorsements it wants. For example, to add the landlord and landlord's mortgagee as additional insureds for coverage related to ongoing operations, the lease might include such language as: "The previously identified insurance will be endorsed with an ISO CG 20 37 04 13, *Additional Insured—Owners, Lessees or Contractors—Completed Operations* endorsement listing each of Landlord and Mortgagee as an additional insured."

Guesswork about required coverage for the additional insured is then eliminated, with the landlord, not the insurer, setting the coverage terms as those terms are stated in the specified endorsement.

In addition to identifying by title the desired additional insured endorsements, the landlord should verify that the actual endorsement issued matches the endorsement specified in the lease or underlying contract.

### 2. Identify the Scope of Coverage

Changes made to additional insured endorsement forms, which took effect in April 2013, help limit an insurer's coverage obligations, particularly where there is a discrepancy between the lease and the policy. Now, the insurer is obligated to provide only the coverage that the tenant or other named insured is required, under the lease or other

controlling document, to provide for the landlord. For example, ISO Additional Insured Endorsement Form ISO CG 20 37 04 13 reads, "If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured," with "you" meaning the tenant or other named insured.

So that it is not short-changed on coverage, the landlord will need to make certain that the desired coverage is not only specified in the lease, but also that the coverage specified in the lease matches the coverage identified in the endorsement. Failure to do so could mean that the landlord is afforded less coverage than bargained for because the lease does not mirror the terms of the policy.

### 3. Identify the Policy Limit

The April 2013 changes also limit the coverage available to the additional insured. The insurer is now obligated to pay to the additional insured the lesser of the coverage amount specified in the lease or in the policy.

Unless a landlord verifies that the desired coverage is specified in the lease or other underlying contract, the landlord may have imposed upon it a policy limit that is lower than expected. If the lease specifies coverage of \$2 million, but the policy specifies coverage of \$1 million, the insurer will provide coverage of up to only \$1 million, the lesser of the two conflicting amounts specified.

Landlords cannot risk assuming that boilerplate lease provisions requiring additional insured coverage will grant them the insurance coverage they seek. Particularly as the use of the April 2013 ISO additional insured endorsements becomes more commonplace, landlords will need to verify that the lease or other underlying contract spells out the coverage they have bargained for with the tenant and that those same terms are incorporated into the endorsement. Any discrepancy between the lease and the policy needs to be corrected so that less favorable terms in the policy do not, by default, define the scope of a landlord's additional insured coverage. To avoid unexpected surprises, landlords will want to carefully draft and review the additional insured provisions in their leases. ■

**ABOUT THE AUTHOR:** *Diane Markert is a member of Ballard Spahr's Real Estate Finance and Capital Markets Group. She represents local and national retail developers; dining and gaming establishments; and hotels and resorts in acquisitions, leasing, lending, workouts and bankruptcy- and restructuring-related matters. Visit [www.ballardspahr.com](http://www.ballardspahr.com) for more information.*