

Presented:
18th Annual Insurance Law Institute

November 7-8, 2013
Houston, Texas

What's In a Name:
***Making Sure You Have Insurance for the
Right Entities and Individuals
and What to Do If You Don't***

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I. Introduction

“Name is a fence and within it you are nameless.” ~Samuli Paronen

Names in the context of insurance are very important. A number of recent decisions have reemphasized the need for policyholders and their agents to focus carefully on getting the names right and making sure those names line up with the insurable interests sought to be protected. The remedies for failing to do so reside in the marvelous land of equity, which provides for an interesting and often uncharted adventure. Many of the recent decisions regarding insurer liability for successor companies are harsh and appear to make little practical or public policy sense. Changes in the statutorily recognized role for agents has added to the complexity. One thing about it, after reading this paper, you will want to check your client’s policies and perhaps your own for the accuracy of the names insured.

II. The Liability Policy Language Regarding Who Is Insured

A. Insured—General Liability

1. Basic Definition

The named insured is designated in either the declarations or on a special endorsement, which may list multiple named insureds. The policy states that “the words ‘you’ and ‘your’ refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under” the policy.

2. Broad Form Named Insured Endorsements

These endorsements come in at least two varieties. They appear to be used for both primary and excess policies. The basic Broad Form provides: “The Named Insured includes all subsidiaries, affiliated, associated, controlled or allied companies, corporations, or firms as now or hereafter constituted, for which the Named Insured **has responsibility for placing insurance** and for which similar coverage is not otherwise more specifically provided.”

The Broad Form Named Insured Endorsement LN 99 05 07 05 is more detailed and has a number of additional requirements in order for coverage to exist. Under this endorsement, the First Named Insured must own, ***directly or indirectly, more than*** a fifty percent interest in the subject company. Other named insureds get coverage under section (b) for entities they have a more than 50% interest in during the policy period.

The coverage is then further limited to exclude “bodily injury” or “property damage” occurring prior to the ownership by the named insured, and as to “personal or advertising injury” offenses or a series of related offenses prior to the ownership.

CAVEAT FOR EXCESS POLICIES:

Some carriers wrongly attempt to urge that an additional named insured on an underlying policy is not covered on an excess policy unless specifically listed as an insured. The excess policies typically include a follow form provision like the following: “[Insured includes] any person or organization other than the named insured [on the excess policy] included as an **additional insured** under Scheduled Underlying Insurance” (From 80517 (10/04).)

This excess form also includes coverage for companies (a) formed or (b) acquired and in which “you” [defined as the named insured] have a more than 50% interest and as to which more specific insurance **does not apply** so long as the new entity was a “named insured” in the Scheduled Underlying Insurance and the damages sought did not occur prior to formation or acquisition or after cessation of interest, **and** notice is given of the formation or acquisition. Otherwise, a newly formed or acquired entity must be added to the excess policy by endorsement. In

In *St. Paul Fire & Marine Ins. Co. v. American International Specialty Lines Ins. Co.*, 365 F.3d 263, 278 (4th Cir. 2004), the court rejected AISLIC’s arguments that a “named insured” from the underlying insurance was *not an additional insured* under the scheduled underlying insurance. Thus, the court held that an additionally listed named insured was an “additional insured” for purposes of invoking the above-referenced excess “insured” definition.

3. After-Acquired Companies or Entities Other Than Partnerships, Joint Ventures or Limited Liability Companies

The term “insured” includes:

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain **ownership or majority interest**, will qualify as a Named Insured if there is no other similar insurance available to the organization.

(Emphasis added.) The provision expressly limits the coverage provided in numerous respects:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

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First appeared as part of the conference materials for the
18th Annual Insurance Law Institute session

"What's In a Name: Making Sure You Have Insurance for the Right Entities and Individuals and What to Do If You Don't"