STATEMENT BY STUART S. ZISHOLTZ

General Contractors often ask the subcontractors, and indeed, demand that the subcontractors list them as additional insureds under their liability policy. This clause could be tricky and could result in disclaimers by the insurance company. You have to read the policy, check the definition of "additional insured" and consult with your insurance broker or agent. Here are some of the issues that may arise.

First, "additional insured" does not cover independent acts or omissions of the General Contractor. A subcontractor usually names the General Contractor as an additional insured. However, if the accident or the claim occurred out of the General Contractors own negligence, then the "additional insured" provision of subcontractor's policy may not cover the General Contractor. In other words, the subcontractor's insurance company may not cover the General Contractor's own negligence.

A second issue is if the subcontractor is negligent and a claim is made against the General Contractor. Here, again, the subcontractor's insurance company may not cover the General Contractor's defenses for the subcontractor's negligence. There has to be some connection between the General Contractor's negligence and the subcontractor's negligence. This is common under Labor Law 240 claims where an employee sues everybody.

A third way the insurance company could disclaim is if the General Contractor is not "vicariously" liable. This refers to the General Contractor controlling how, when, where and under what circumstances the subcontractor performs its work. It could create what they call a "vicarious" sense of liability. And the answer to that would be – if you lend your car to somebody, you as the owner of the car, effectively are vouching for the ability of your friend who borrowed the car that he will drive safely. You are vicariously liable for the negligence of the driver who has your permission to drive your car.

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