

Avoid Litigation in Multiple Forums - Check the Additional Insured Endorsement

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While lawyers often advise owner and contractor clients to obtain the additional insured endorsements, the certificate of insurance (COI) remains the most common form of proof provided on many construction projects. But the COI does not contain the language of the additional insured coverage, and it does not contain other commercial terms that may exist in the policy, such as a choice of dispute resolution.

So, what happens if an owner or contractor has a claim against its lower-tier contractor that also potentially triggers additional insured coverage – **and, the additional insured endorsement contains a completely different dispute resolution provision than the COI**, such as binding arbitration? The answer is increased cost and time to litigate in multiple forums.

A New York court recently enforced an arbitration provision within an additional insured endorsement against an additional insured on an insurance policy, thereby staying the pending litigation on the underlying dispute. In [*Greater New York Mutual Insurance Company v. Kinsale Insurance Company*](#) (*Greater New York*), plaintiff Greater New York Mutual Insurance Company (GNY), an additional insured under policies issued by Kinsale Insurance Company (Kinsale) sought to enforce various provisions of the policies. GNY initiated two separate actions in court, and Kinsale filed motions to dismiss, or in the alternative, stay the action pending arbitration. Kinsale's motions were denied and Kinsale appealed.

On appeal, the judge reversed, determining that both actions should have been stayed pending arbitration based on the clear language of [Kinsale's policies](#) requiring "[a]ll disputes over coverage...including whether an entity or person is...an additional insured...shall be submitted to binding arbitration[.]" The judge further ruled that the fact that Kinsale disclaimed coverage under the policies did not result in a waiver of its right to arbitrate.

In sum, the parties were held to arbitration as originally outlined in the policies, however, the court action resulted in litigation costs and a delay in resolving the dispute.

Include Dispute Resolution Process in Policies and Endorsements

To avoid the delay and costs experienced by the parties in *Greater New York*, we recommend ensuring that the policy and the additional insured endorsement are consistent and reflect your preferred method of dispute resolution. The best way to accomplish this is to require delivery of the additional insured endorsement. Without taking this step, you may be required to go to arbitration before pursuing litigation, which will delay overall resolution.

In addition, you may also require your lower tier contractor/policyholder to have the same dispute resolution methodology in the additional insured and insurance policies. In so doing, you will lay the framework for a breach against the policyholder in the event the dispute resolution methods are inconsistent, but you will still have the risk of resolving the additional insured coverage issues in a different forum if you do not confirm they are the same. By taking the above precautions, you can ensure a clear dispute resolution process and prevent unnecessary delays and costs.

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