

## The Importance of the Additional Insured Provisions in Vendor Contracts

By David Samuels

### Question

Our club's standard vendor contract contains language about having the club added or named as an "Additional Insured" on the vendor's insurance policy. It seems that this is a hassle, and we rarely make sure that it is done. Is there really any benefit to having this done? Should we just do away with that language?

### Answers

The short and simple answers are "Absolutely there is benefit"; and "No, do not do away with that language." This issue arises quite often in the leisure and hospitality industries, so you are not alone in wondering about the importance of the Additional Insured or "AI" provisions in vendor contracts.

Nearly all vendor contracts these days will require that the vendor provide "proof of insurance," which is usually in the form of a certificate or declaration page that demonstrates that the vendor has the requisite worker's compensation and/or general liability coverage. Unfortunately, what usually happens is that, once the vendor has simply provided the club with "proof of insurance," the club does not take the time to go one-step further to make sure that it gets added to the vendor's policy as an Additional Insured. In this regard, there seems to be a common misunderstanding about the time and effort required to add the club as an Additional Insured, and there usually is a desire to get the vendor working as quickly as possible. Also, once the vendor has provided proof of insurance, there is a sense that the club is adequately protected because the vendor has demonstrated that it does, in fact, have insurance. However, adding the club to the vendor's insurance policy is not hard and not taking the extra step of adding the club to the vendor's insurance is almost always a mistake because of the benefits to be gained by the club as an Additional Insured on the vendor's policy.

In most cases, adding the club as an Additional Insured to the vendor's insurance policy can be done with a single phone call by the vendor to its insurance broker. This is a routine matter for insurance brokers and the process of adding the club should actually be very quick, easy and a normal part of the vendor's operations. If a vendor balks at adding the club as an additional insured, it should be viewed as a red flag.

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Importantly, in the event of an incident resulting in a claim or lawsuit by a member or guest that is in any way related to the vendor's services or products, the club will undoubtedly be on the receiving end of the claim and/or lawsuit. This is because the member or guest may have no information regarding the vendor, but they definitely know about the club. If the club has not taken steps to make sure that it has been named as an Additional Insured, then it must rely on its own insurance to handle that claim or lawsuit. As part of that process, the club's own insurer will attempt to shift responsibility for the claim or lawsuit to the vendor and the vendor's insurer. However, since the club is not an Additional Insured, this process often evolves into a dispute because the vendor's insurer usually does not want to accept that responsibility, and there is no obligation on the vendor's insurer to pick up the claim or lawsuit.

By contrast, if the club is actually an Additional Insured on the vendor's policy, it means that the club can turn the claim or lawsuit directly over to the vendor's insurer (instead of its own insurer) and the vendor's insurer is under a very high duty to accept the claim or lawsuit and/or defend it. This is because, as an Additional insured, the vendor's insurer is obligated to essentially treat the club as if it had purchased the insurance directly from the insurer, and this means that it is much harder and riskier for the vendor's insurer to reject the claim because it is actually coming from one of its own insured's.

"Why does this even matter?" you might ask. Well, one of the biggest reasons that it matters is insurance premiums. When the club is looking to renew its insurance policy or purchase a policy from a new carrier, part of the process that the insurer engages in (i.e., "underwriting") is analyzing the club's "claims history." Simply put, the more claims there are on the club's claims history, the higher the insurance premium will be because the insurer will view the club as a greater "risk." In other words, fewer claims can directly translate to a lower insurance premium. This means that there can be a real monetary benefit to making sure that the club is named as an Additional Insured on its vendor's insurance policies because it can mean fewer claims on the club's claims history, which can result in lower insurance premiums for the club in the long run.

Consequently, do not ignore the Additional Insured provisions of the vendor contracts because it is fairly quick and easy to have the club added to the vendor's policy and doing so will provide the club with great additional benefit and little or no extra cost.

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