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You Are Not Getting The Insurance Coverage You Expect When Named An Additional Insured Unless You Have A Contract That Specifies That The Additional Coverage Is Primary

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School districts often require third parties to name them as additional insureds on the third parties' insurance policies. This occurs when a school district awards a bid to a contractor, allows a community group to use its facilities or enters into an intergovernmental agreement with another governmental entity. School districts require third parties to name them as additional insureds so that in the event of an injury, they will not have to submit claims to their insurance companies and risk having their premiums increased or policies cancelled. According to a recent appellate court case, in most instances, school districts are not getting the insurance protection they expect when named as additional insureds.

In *River Village I, LLC v. Central Insurance Companies*, a contractor required a subcontractor to name it as an additional insured on the sub-contractor's insurance policy with Central Insurance. The sub-contractor's policy included language stating that the policy was an excess policy over any other insurance policy that covered an additional insured unless a contract required that the policy be the primary policy. This is a common clause in insurance policies and requires the additional named insured to exhaust the limits of its policy before it can submit a claim to the third party's insurer. A worker on the job site was injured and sued the contractor. The contractor submitted the claim to Central Insurance who denied the claim because the limits of the contractor's insurance policy had not been exceeded. The contractor sued Central Insurance and argued it should have been allowed to choose between its policy and the sub-contractor's policy.

The *River Village* court ruled in favor of Central Insurance because the insurance policy clearly stated that it was excess over any policy that covered the contractor and the contract between the contractor and sub-contractor did not require the subcontractor's policy to be the primary policy. Central Insurance did not have to pay anything on behalf of the contractor until the limits of the contractor's insurance policy were exceeded.

The lesson from *River Village* is that a school district should not assume that it can avoid submitting claims to its insurance carrier because it has been named as an additional insured on a third party's insurance policy. Always have a written contract with a third party that provides the school district with insurance coverage. Make sure that the bid documents and/or the contract specify that the policy to which the school district is named as an additional insured is the primary policy for the school district. In addition, closely read the insurance binder from the third party's insurance company to ensure that the school district is an additional insured and that the additional coverage is the primary coverage. If it is not clear from the binder that the coverage provided is primary, send it to the school district's insurance agent or advisor and have them confirm it. Better yet, get a copy of the third party's insurance policy and review it. As *River Village* demonstrates, you may be surprised at what you find. We are available to assist you in determining whether the school district has received the insurance coverage it expected.

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