

Additional Insured Summary

Below is a summary of each additional insured endorsement available in the new ISO BOP program and their use.

BP 04 02-ADDITIONAL INSURED—MANAGERS OR LESSORS OF PREMISES

This endorsement adds as an additional insured the owner of premises from whom the named insured leases property or the owner's real estate manager. The coverage provided to such additional insured is limited to liability arising out of the ownership, maintenance, or use of that part of the premises leased to the named insured and specifically described in the endorsement.

No coverage applies on behalf of a manager or lessor of premises for occurrences that take place after the named insured ceases to be a tenant. Similarly, no coverage applies to the additional insured's liability arising from structural alterations, new construction, or demolition operations performed by or on behalf of the additional insured.

BP 04 06-ADDITIONAL INSURED—CONTROLLING INTEREST

This endorsement gives coverage to the specific person or organization as an insured listed on the endorsement schedule. However, such protection is limited to the additional insured's liability arising out of (1) the additional insured's financial control of the named insured or (2) premises the additional insured owns, maintains, or controls *while* the premises is leased or occupied by the named insured.

"Financial control" has been defined as greater than 50 percent financial ownership. Thus, this endorsement could be used to cover the liability of a parent corporation which arises from the subsidiary's operations, or the liability of a building owner because of the acts or omissions of a tenant.

Specifically precluded under this endorsement is coverage for liability arising from any structural alterations to the building, new construction, or demolition operations performed by or for the person or organization which has the controlling interest and is so named on the policy as an additional insured. The endorsement, therefore, applies only to liability that could be imputed to the person or entity simply because it owns or controls the property from which liability emanates. This endorsement can be added for no additional premium.

BP 04 07-ADDITIONAL INSURED—STATE OR POLITICAL SUBDIVISIONS—PERMITS RELATING TO PREMISES

This endorsement is designed to protect the state or political subdivision whenever the named insured is performing work in connection with its own premises and the

governmental entity requires proof of insurance. When this endorsement is attached, protection is limited to the liability imputed to the governmental entity because of the exposures, as listed in the endorsement, that arise in connection with premises owned, rented, or controlled by the named insured and for which insurance is provided to the named insured.

BP 04 09-ADDITIONAL INSURED—MORTGAGEE, ASSIGNEE, OR RECEIVER

The ISO common policy conditions provide that, in the event of the named insured's death, all rights and duties under the CGL are automatically transferred to the insured's legal representative. There may be instances when persons other than a legal representative desire protection against possible liability arising from the named insured's ownership, maintenance, or use of the premises. Within this category is the mortgagee, assignee, or receiver.

A *mortgagee* is one to whom property is mortgaged and who therefore has an insurable interest in the property. An assignee, on the other hand, is someone to whom the property has been assigned. An example is an administrator or executor of a will. This would be the same as a legal representative. A *receiver* generally is someone who is appointed by a court to manage the property of others involved in litigation, including bankruptcy proceedings.

When it is necessary to include any of these parties on the named insured's policy, it can be effected with the addition of this endorsement. As an additional insured, the mortgagee, assignee, or receiver obtains protection for its own liability, provided that liability arises from the ownership, maintenance, or use of the premises by the named insured and as designated in the endorsement. No coverage applies to liability arising from structural alterations, new construction, or demolition operations performed by or for such additional insured. When such activities arise, the mortgagee, assignee, or receiver must look to its own CGL policy for protection against liability arising out of these latter kinds of activities.

BP 04 10-ADDITIONAL INSURED - OWNER OR OTHER INTERESTS FROM WHOM LAND HAS BEEN LEASED

This endorsement adds the person or organization named in the endorsement schedule as an insured under the policy, with respect only to liability arising out of the ownership, maintenance, or use of land identified in the schedule and leased to the insured. This endorsement is equivalent to BP 04 02, Additional Insured—Manager or Lessors of Premises with one difference: BP 04 10 is designed for use when the subject is land, while BP 04 02 is designed for use when the subject is "premises."

BP 04 11-ADDITIONAL INSURED-CO-OWNER OF PREMISES

This endorsement is designed to protect an individual or entity whose sole interest in property is as a co-owner. A policy, for example, may be issued to cover a large number of properties, some of which are owned by more than one insured. In this case, the policy can be endorsed to designate the properties and the persons or entities that own such properties.

BP 04 13-ADDITIONAL INSURED—ENGINEERS, ARCHITECTS, OR SURVEYORS

It is a common practice for design professionals, such as those referred to in the title of this endorsement, to require that they be added as insureds to the general liability policies of their clients. This endorsement is designed to comply with such requirements. It affords additional insured status automatically (without the need to identify the design professional individually in the endorsement) to any architect, engineer, or surveyor "engaged by [the named insured]." The scope of this coverage is limited to liability for injury or damage caused at least partly by acts or omissions of the named insured or someone acting on the named insured's behalf. The act or omission must be in connection with the named insured's premises, or in the performance of the named insured's ongoing operations. Excluded from coverage under the endorsement is the additional insured's professional liability exposure—liability in connection with the preparation of blueprints or other plans, drawings, reports, etc., as well as the additional insured's activities in supervising or inspecting the work. Because the endorsement ties coverage specifically to "ongoing operations," no coverage is provided the additional insured with respect to the named insured's completed operations.

BP 04 16-ADDITIONAL INSURED—LESSOR OF LEASED EQUIPMENT(will be a part of the new BOP Extensions Form so will need to be removed in the new ISO FL Project)

Whenever a person or organization leases equipment and is required to add the owner or lessor of the equipment as an additional insured on the liability policy of the lessee, this endorsement may be used to accomplish that purpose. The endorsement provides the additional insured lessor with coverage for injury or damage caused in whole or in part by the named insured lessee's maintenance, operation, or use of the leased equipment. There is no coverage in connection with an occurrence that takes place after the equipment lease expires.

An earlier edition of BP 04 16 contained an exclusion of injury or damage arising out of the additional insured lessor's sole negligence. That exclusion was removed from the 2004 edition of the endorsement, at the same time that the insuring agreement's reference to liability "arising out of" the named insured's use of the equipment was changed to injury or damage "caused on whole or in part by" such use.

Note that, according to the provisions of the endorsement, the named insured's use of the leased equipment does not have to be negligent in order to trigger coverage; all that is required is that it be a partial cause of injury or damage. Under the earlier edition of BP 04 16, the claim against the additional insured would clearly not be covered, because of the sole negligent exclusion. Under the 2004 edition, it could be maintained that the named insured's use of the crane was a *partial* cause of the injury, even if the additional insured's faulty maintenance was another cause and the *only* negligent cause.

BP 04 47-ADDITIONAL INSURED—VENDORS

Endorsement BP 04 47 gives insured status under a manufacturer's or distributor's BOP policy to certain named persons or organizations with respect to their

distribution or sale of the named insured's products. The product(s) for which the coverage applies must also be specifically identified in the endorsement. In other words, the vendors endorsement provides products liability coverage for certain vendors who distribute or sell the products in the regular course of their businesses. Attachment of the endorsement eliminates the vendors' need to purchase separate products liability coverage in connection with the scheduled products as long as the vendor does not conduct any of the excluded operations listed in the endorsement. More commonly, however, vendors will still have a need to purchase their own products-completed liability coverage to insure exposures arising from other products or operations. In cases where a vendor does carry a separate CGL or products liability policy, care should be taken that that policy will serve as excess insurance over the coverage provided to the vendor by the vendors endorsement.

The coverage provided for a vendor under the endorsement is subject to the following additional limitations.

1. Contractually assumed bodily injury or property damage is excluded, except for liability that the vendor would have even in the absence of the contract or agreement.
2. The vendor will not be covered with respect to any express warranty it makes that has not been authorized by the insured. This provision avoids the vendor's being covered under the manufacturer's or distributor's general liability policy for liability arising out of erroneous or misleading claims the vendor makes about the product.
3. There is no coverage for any intentional physical or chemical change the vendor makes in the product.
4. The endorsement's coverage does not apply with respect to repackaging, unless the purpose of the unpacking was inspection, demonstration, testing, or the substitution of parts under instruction from the manufacturer. Even then, in order for coverage to be effective, the product must be repackaged in the original container.
5. If the vendor has agreed to make inspections, adjustments, tests, or servicing, or if the vendor normally undertakes such tasks in connection with its distribution or sale of the product, there is no coverage for the vendor's failure to do so.
6. The vendor will have no coverage for demonstration, installation, servicing, or repair operations concerning the product away from the vendor's own premises. Unless these operations are performed in connection with the sale of the product, coverage will not apply even at the vendor's premises.
7. The vendor is not covered for products which, after distribution or sale by the named insured, have been labeled, relabeled, or used as a container, part, or ingredient of any other thing or substance by or for the vendor.
8. The endorsement contains an exclusion of injury or damage arising out of the sole negligence of the vendor, its employees, or others acting on the

vendor's behalf. This sole negligence exclusion, however, does not apply to three exposures for which exceptions are specifically made in the endorsement's other exclusions listed above. These exceptions, for which coverage remains despite the sole negligence exclusion, are: (1) repackaging in connection with inspection, demonstration, etc.; (2) demonstration, installation, or repair performed on the vendor's premises; and (3) inspections, adjustments, and tests performed by the vendor in connection with the sale or distribution of the named insured's products.

(This sole negligence exclusion was added as part of the same 2004 ISO revision that eliminated coverage of the additional insured's sole negligence. It is arguable, however, whether an exclusion of sole negligence in the vendors endorsement produced any substantive change in coverage. The insuring agreement of BP 04 47 was never interpreted by the courts as extending to the vendor's sole negligence in the first place—except for those enumerated activities for which an exception is made and coverage is retained.)

The endorsement also specifically does not include as an insured any organization from whom the insured acquires a product.

BP 04 48-ADDITIONAL INSURED—DESIGNATED PERSON OR ORGANIZATION

This endorsement is designed for use when the insured is an eligible trade contractor, to provide additional insured status to the person or organization identified in the endorsement schedule. There is an endorsement with the same title (CG 20 26— Additional Insured- Designated Person or Organization) in the commercial general liability forms portfolio. However, where BP 04 48 applies only with respect to the insured's "ongoing operations," CG 20 26 applies with respect to the insured's "operations." In other words, the CGL endorsement provides the additional insured with coverage in connection with the insured's completed operations, whereas the businessowners endorsement does not.

BP 04 49 ADDITIONAL INSURED—ENGINEERS, ARCHITECTS, OR SURVEYORS

It is a common practice for design professionals, such as those referred to in the title of this endorsement, to require that they be added as insureds to the general liability policies of their clients. This endorsement is designed to comply with such requirements. It affords additional insured status automatically (without the need to identify the design professional individually in the endorsement) to any architect, engineer, or surveyor "engaged by [the named insured]." The scope of this coverage is limited to liability for injury or damage caused at least partly by acts or omissions of the named insured or someone acting on the named insured's behalf. The act or omission must be in connection with the named insured's premises, or in the performance of the named insured's ongoing operations.

BP 04 50-ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS

This endorsement was added to the businessowners policy forms portfolio in 1997. It provides additional insured status to the person or organization named in the endorsement schedule, with respect only to liability arising out of ongoing operations performed by the named insured for the additional insured. It is designed for use in either of two situations: when an insured subcontractor must name a contractor as an additional insured with respect to operations being performed for the contractor by the subcontractor, or when an insured contractor must name the property owner or lessee as an additional insured with respect to operations being performed for the owner by the contractor. Note that, because coverage applies only with respect to the named insured's ongoing operations, the additional insured does not receive the benefit of the named insured's completed operations coverage, and coverage for the additional insured ends when the named insured's operations for the additional insured are complete.

BP 04 51-ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS— WITH ADDITIONAL INSURED REQUIREMENT IN CONSTRUCTION CONTRACT

Like BP 04 50, discussed above, this endorsement is designed for use in either of two situations: when an insured subcontractor must name a contractor as an additional insured with respect to operations being performed for the contractor by the subcontractor, or when an insured contractor must name the property owner or lessee as an additional insured with respect to operations being performed for the owner by the contractor.

Different from BP 04 50, however, BP 04 51 does not contain an endorsement schedule for listing the name of the person or organization being granted additional insured status. Instead, BP 04 51 provides additional insured status to anyone for whom the named insured contractor is performing operations, provided that the named insured contractor is obligated by the terms of a written contract to include that person or organization as an additional insured.

Coverage applies with respect only to liability arising out of ongoing operations performed by the named insured for the additional insured. Consequently, the additional insured does not benefit from the named insured's completed operations coverage because coverage for the additional insured ends when the named insured completes operations for the additional insured.

BP 04 52-ADDITIONAL INSURED—STATE OR POLITICAL SUBDIVISIONS— PERMITS

This endorsement, which was added to the businessowners policy forms portfolio in 1997, is designed for attachment to an insured contractor's businessowners policy when a state or political subdivision requires additional insured status under the contractor's policy as a condition of issuing a permit to the contractor. The

endorsement adds as an additional insured the state or political subdivision named in the endorsement schedule, only with respect to operations performed by or on behalf of the named insured contractor for which the state or political subdivision has issued a permit. (There is another businessowners program endorsement, BP 04 07, that is designed for attachment to the businessowners policy of the premises owner or lessee, when a state or political subdivision requires additional insured status under the owner's or lessee's policy.)

No coverage applies to liability arising out of operations performed for the state or political entity. The endorsement addresses only situations in which the insured contractor must obtain a permit from a governmental entity to do work for someone else. Also, no coverage applies to liability arising out of the products-completed operations hazard. In other words, the additional insured does not receive the benefit of the named insured's completed operations coverage, and coverage under the endorsement ends when the named insured completes operations addressed in the permit.

BBOP 99.217—ADDITIONAL INSURED—GRANTOR OF FRANCHISE

A franchise can be a license or a privilege that is granted or sold to another for the duration and purpose as mandated by contract. A department store, for example, may grant a retailer a franchise to sell its wares under the department store's name. A manufacturer likewise may give a retailer the right under franchise to use the manufacturer's name for purposes of selling a product or service.

Both the department store and the manufacturer, as grantors of franchises, may wish to obtain some liability insurance protection at the expense of the grantee. One way would be to amend the grantee's BOP policy with this endorsement. However, the grantee's BOP policy may not necessarily apply as primary protection, unless the liability policy of the grantor is amended to apply on an excess basis whenever other insurance is to apply.

Another caveat to keep in mind is that the BOP policy may not necessarily encompass all of the protection necessary under a franchise agreement. The BOP policy, in other words, is limited to liability that results in "bodily injury," "property damage," and "personal and advertising injury."