

SPECIAL REPORT

MISSING OR INACCURATELY LISTED ENTITY NAMES ON PROPERTY AND LIABILITY INSURANCE POLICIES – AN EPIDEMIC IN THE INSURANCE INDUSTRY

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In our weekly audit of commercial insurance programs for all kinds of businesses insured through many agencies, we often find that many entity names are improperly listed on such policies or not listed at all. This applies to many types of business insurance policies including property, general liability, workers' compensation, umbrella, business automobile, directors and officers, employment practices, and other policies.

This problem appears to be at epidemic proportions with the relative ease of the formation of limited liability companies, which now exceed corporations in number in Michigan, and with many joint ventures in the global economy.

Many insurance agents will not ask about all entity names and will rely upon what the company's main name is. This is a mistake that could lead to disaster.

One of the first things we look for in reviewing an insurance program for a business is how the named insureds are listed among the various policies. A "grid" analysis usually shows major gaps between names covered by various policies.

Here are some tips for attorneys advising their clients or insureds reviewing their own insurance program:

1. Many insurance agents do not think to add building owner names, such as LLCs, to business auto policies, leaving such entities with major assets fully uncovered.

Some exposures in this area include an employee driving to a real estate closing or a parking lot accident where a janitor drives into a tenant who is leaving the building. Motor vehicle leases and titles should be examined to ascertain what the correct entity name is as we often find inconsistencies in this area.

2. Where the building owner requires the tenant to insure the building, we often do not see the landlord entity listed at all, and where we do, many times the listing is improper.

If the landlord is listed as a loss payee, this is unacceptable as the landlord would have no independent rights to coverage. In short, if the tenant commits arson, the landlord, as a loss payee, has no coverage. A major exposure is third party landlord entities that are unrelated to the tenant, and the failure to comply with the terms of an outside landlord lease leads to significant liability exposure because it is unlikely that the insurance carrier will reform the policy to bring the policy in line with the lease requirements after the fact. However, even where there is common ownership between the landlord entity and the tenant entity, the insurer may not pay a building loss if the correct landlord entity has not been listed.

Request our other *Special Reports* for additional information on why it is generally a bad idea to allow the tenant to insure the landlord's building.

3. Assumed names create major issues.

Where a company files an assumed name and the named insured is listed as "ABC Corporation DBA: Joe's Consulting," for example, note that only Joe's Consulting would be covered and other acts of the corporation not doing business as that name may be uncovered. It is best to list the corporation entity name and then also separately list the DBAs.

4. Insist that entity names are fully listed.

For example, if the name of the company is ABC Manufacturing, Inc., be certain that the “Inc.” is listed. The same applies to limited liability companies, partnership and joint ventures. The reason for this is that many insurance policies extend ancillary coverages for shareholders, members, partners, etc. depending upon the type of named insured listed.

5. Non-employing entities might still be listed on workers' compensation policies given the issue of uninsured independent contractors.

For example, where your landlord client hires a contractor to do repairs at your client's building, an injury to the contractor's employee could result in a workers' compensation claim against your client that would otherwise not be covered if the applicable entity is not listed on the policy.

6. 401(k) plan entity names are often left off the general liability policy as a named insured. Most insurers will add such entity names for no charge. Of course, separate fiduciary liability coverage should also be maintained for ERISA claims.

7. Although it is possible to have many entities listed as named insureds, which is the broadest protection for an entity, the entity listed first is the “captain” of all the insureds and is the only one who can make coverage changes, effectuate cancellations, and bears the sole responsibility for paying the premiums. Be cautious who that entity is.

8. We find many vehicles owned or leased in the company name that are insured in the personal name of the officer. This leaves the company potentially open to uncovered liability. If a vehicle is leased by the corporation, for example, and not insured on the business automobile policy but instead on the personal auto policy without the corporation being added as an additional insured, this could create a coverage problem. Moreover, the liability limits are an issue because many personal umbrellas will not extend coverage to a business entity even if listed on the primary automobile policy

and this could ultimately expose the business entity to major underinsurance. The general rule that should be followed is that every entity should insure its own exposures even if the business is owned by the same person that is the named insured on a personal auto policy.

9. Leases often specify that the landlord is to be listed as an additional insured. If you represent the landlord, automatic landlord additional insured language found on most general liability insurance policies may not provide as broad of protection as you might think. For example, most policies that provide automatic additional insured coverage to landlords also exclude coverage for renovations and there are also other limitations that apply. Landlords should also always maintain their own independent general liability insurance policy and umbrella policy which list the landlord entity as a named insured.
10. Past partnerships and joint ventures are not automatically covered under general liability policies. In fact, you should assume that your client has no coverage for any name not listed as a named insured.

Sloppiness appears to be the norm rather than the exception among many insurance agents in how names are listed and whether such names are consistently listed between policies. A simple named insured grid can easily expose gaps that might be addressed before a claim occurs. A sample follows:

NAMED INSURED SCHEDULE

		PROPERTY LIABILITY	AUTO	WORKERS' COMP.	UMBRELLA	EMPLOYMENT PRACTICES	DIRECTORS & OFFICERS	POLLUTION LIABILITY
1.	Corporation 1 (main company)							
2.	Limited Liability Company 2 (holding company)							
3.	Limited Liability Company 3 (division)							
4.	Limited Liability Company 4 (owns software)							
5.	Limited Liability Company 5 (owns building)							
6.	Corporation 1 Profit Sharing Plan, Inc.							
7.	ABC – XYZ Joint Venture							

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