



COVERAGE INSIGHTS

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Understanding Primary and Noncontributory Endorsements

Contracts, especially in the construction industry, often require a business to carry insurance that is primary and noncontributory for another party. Many business owners agree to this requirement without fully understanding what changes it entails. These two words address which policy pays first when a claim involves an additional insured, and whether the insurer providing that additional insured coverage can seek a contribution from the additional insured's own insurer. Understanding the distinction helps a business know what it's agreeing to when a contract includes this language.

What Primary Means

"Primary" establishes the order in which policies respond when a claim is made against an additional insured. For a covered claim, the policy providing additional insured coverage generally responds first, before the additional insured's own insurance. This matters most when two parties, such as a general contractor and a subcontractor, each carry liability insurance that could apply to the same project.

What Noncontributory Means

"Noncontributory," however, addresses a different issue. When two insurers both cover the same loss, one can normally seek contribution from the other. Noncontributory wording means the insurer providing additional insured coverage agrees not to seek that contribution from the additional insured's own insurer. Contracts often request primary and noncontributory coverage together, but the two terms address separate issues, and a business can have one without the other.

Why the Endorsement Is Commonly Required

This language appears frequently in construction contracts and vendor or lease agreements. As such, an owner or general contractor typically wants a subcontractor's or vendor's insurance to respond first, without seeking contribution from its own coverage for a covered claim. This protects the upper-tier party's coverage and claims history. Consequently, businesses that carry this obligation should understand what they're taking on, since it can shift responsibility for a covered claim toward their own policy.

A Common Point of Confusion

Many standard commercial general liability forms already make an additional insured's own policy excess over the policy covering it as an additional insured. While that can establish the order the contract wants, it doesn't necessarily satisfy a contractual requirement for noncontributory coverage. A separate endorsement is often needed to confirm the coverage meets the contract's terms.

A waiver of subrogation is also frequently confused with primary and noncontributory coverage. These are separate provisions doing separate jobs. A waiver of subrogation prevents an insurer from pursuing recovery against another party after paying a claim. It doesn't establish the order in which policies pay, and it doesn't eliminate an insurer's right to seek contribution. As such, businesses should not assume that having one provision in place means they have the other.

What to Ask a Broker

A broker can confirm whether a business' current



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policy already provides coverage on a primary and noncontributory basis, or whether a specific endorsement is needed to meet a contract's requirement. The broker can also check whether the other party actually qualifies as an additional insured for the work and claim at issue, since none of this matters if that status was never established in the first place.

It's also worth asking what the requirement is meant to address in a given contract, since this language is sometimes included without either party fully understanding its purpose. Businesses should raise these questions before signing a contract, not after a claim arises.

Key Takeaways

Primary and noncontributory language addresses two things: which policy responds first to a covered claim against an additional insured and whether that insurer can seek contribution from the additional insured's own insurer. Many standard policies already make an additional insured's coverage excess in this situation, but that alone doesn't meet a noncontributory requirement. A waiver of subrogation is a different provision and doesn't substitute for either part of this requirement. Businesses should confirm with their broker whether their coverage actually meets the contract's requirements.

Contact us today for additional coverage guidance.