

Mass. Ruling Shows Value Of Additional Insured Specifics

By **Thomas Dunn and Sheya Rivard** (October 3, 2023)

The takeaway of this article is for you to consider updating your clients' insurance requirements to require a specific additional insured endorsement.

This endorsement requires a lower-tier contractor or policyholder to identify your client's company by name in the additional insured endorsement to protect your client from having to travel to a remote forum, not of your client's choosing, to enforce the additional insured obligation.

The use of specific additional insured endorsement forms, such as ISO Forms CG 20 10 11 85 or CG 20 10 04 13, should better establish the required personal jurisdiction link between the insurer's actions — i.e., issuance of additional insured coverage — and the residence of the additional insured, if such jurisdictional information is provided on the endorsement.

In *D.F. Pray Inc. v. Wesco Insurance Co.*, the Massachusetts Appeals Court in September dismissed a general contractor's complaint against its subcontractor's insurer for lack of personal jurisdiction.

The insurer had issued a blanket additional insured policy to the subcontractor, which provided additional insured coverage to parties that the subcontractor agreed to provide such coverage by contract.

In *D.F. Pray*, the subcontractor had agreed by contract to provide such additional insured coverage to the general contractor.

Still, the court held that that act alone was insufficient to make the insurer subject to the jurisdiction of the general contractor's principal place of business, Massachusetts. Something more was needed than the issuance of a blanket additional insured endorsement to a New York subcontractor, who only performs work in New York, to demonstrate that the insurer purposefully availed itself to be sued in the commonwealth of Massachusetts.

The outcome may have been different if the general contractor required the subcontractor by contract to provide a specific, not blanket, additional insured endorsement that specifically named the general contractor and its residence, such as below:



Thomas Dunn



Sheya Rivard

ISO Form CG 20 10 11 85	ISO Form CG 20 10 04 13				
<p>POLICY NUMBER: COMMERCIAL GENERAL LIABILITY</p> <p>THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.</p> <p>ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS (FORM B)</p> <p>This endorsement modifies insurance provided under the following: COMMERCIAL GENERAL LIABILITY COVERAGE PART. SCHEDULE</p> <p>Name of Person or Organization: <i>D.F. Pray, Inc., a Rhode Island Corporation with a Principal Place of Business in Massachusetts</i></p> <p>(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)</p> <p>WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.</p>	<p>POLICY NUMBER: XXXXXXXXXXXX COMMERCIAL GENERAL LIABILITY CG 20 10 04 13</p> <p>THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.</p> <p>ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION</p> <p>This endorsement modifies insurance provided under the following: COMMERCIAL GENERAL LIABILITY COVERAGE PART SCHEDULE</p> <table border="1" data-bbox="800 562 1331 695"> <thead> <tr> <th data-bbox="800 562 1073 590">Name Of Additional Insured Person(s) Or Organization(s)</th> <th data-bbox="1078 562 1331 590">Location(s) Of Covered Operations</th> </tr> </thead> <tbody> <tr> <td data-bbox="800 596 1073 680"><i>D.F. Pray, Inc., a Rhode Island Corporation with a Principal Place of Business in Massachusetts</i></td> <td data-bbox="1078 596 1331 680"><i>New York and jurisdiction of the Named Insured and Additional Insured</i></td> </tr> </tbody> </table> <p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>	Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations	<i>D.F. Pray, Inc., a Rhode Island Corporation with a Principal Place of Business in Massachusetts</i>	<i>New York and jurisdiction of the Named Insured and Additional Insured</i>
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D.F. Pray Action — The Facts, Additional Insured Coverage, and Lawsuit

D.F. Pray is a Rhode Island corporation with a principal place of business in Massachusetts. Pray was an additional insured on a commercial general liability policy that Wesco, a Delaware corporation with principal administrative offices in New York, issued to one of Pray's subcontractors, Xtreme Drywall & Acoustics Inc., a New York corporation, covering Xtreme's work on Pray's office renovation project in New York.

Among other things, "[t]he subcontract required Xtreme to indemnify Pray for any losses caused by Xtreme's negligence." It also required "Xtreme to maintain a commercial general liability policy on which Pray would be an additional insured."

Xtreme's additional insured endorsement covering Pray was a blanket endorsement. Xtreme's application for commercial general liability coverage from Wesco "stated that Xtreme did all of its business in New York ... [and] sought various 'blanket additional insured' coverages, without referring specifically to Pray or any other person or entity."

According to the court's ruling, "Wesco issued the policy, which included three 'additional insured' form endorsements," none of which "expressly named Pray as an additional insured."

Instead,

two of the endorsements, in the space provided for the names of additional insureds, stated, "[b]lanket as required by written contract." The third endorsement amended the policy definition of the term "[w]ho [i]s [a]n [i]nsured" to include "any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy."

Several months into the project, Pray encountered problems with Xtreme's work on a 12-story mechanical shaft, requiring Pray to demolish other portions of the building adjacent to the shaft wall to gain access to and repair the work.

Pray asked Wesco to indemnify it for property damage caused by Xtreme's negligence, and

Wesco, "not disputing that Pray was an additional insured, denied the claim, asserting ... that Pray sought indemnification merely for an economic loss, not 'property damage' caused by an 'occurrence,' as the policy defined those terms."

Pray subsequently filed an action in Massachusetts against Wesco for breach of the insurance contract, declaratory relief and unfair settlement practices under Massachusetts law.

Wesco moved to dismiss Pray's complaint for lack of personal jurisdiction.

Blanket Additional Insured Endorsement Meets Personal Jurisdiction

Because Wesco is a Delaware corporation with its principal place of business in New York, Pray had the burden of demonstrating that Massachusetts had personal jurisdiction over nonresident Wesco.

The court found that Wesco had certain minimum contacts with Massachusetts, as Wesco had sold insurance policies in Massachusetts for at least 12 years prior to 2016, "had more than one hundred licensed agents in Massachusetts and, in 2015, generated approximately \$30 million in direct insurance premiums in" Massachusetts.

However, the difficulty for Pray was that its claims under the policy did not arise out of or relate to Wesco's activities in Massachusetts.

While Wesco was "generally in the business of selling insurance policies in Massachusetts and elsewhere ... the particular policy that Wesco sold to Xtreme, by which Wesco contracted to insure Pray" as an additional insured, "and which gave rise to Pray's claims, was not sold in Massachusetts, not sold to a Massachusetts resident, not related to a Massachusetts project, and not otherwise related to Wesco's contacts with" Massachusetts.

Importantly, while "Wesco contracted with Xtreme to cover additional insureds such as Pray," this transaction did "not create a sufficient relationship ... [with] the Commonwealth, for two reasons."

First, for personal jurisdiction, the defendant's relationship must result from purposeful actions by the defendant that create a connection with the forum state.

Here, because the additional insured endorsement was a blanket endorsement that did not name Pray expressly or identify Pray's principal place of business in Massachusetts, there was "no evidence that Wesco, when contracting with Xtreme, knew of Xtreme's contract with Massachusetts-based Pray."

In other words, because the additional insured endorsement was a blanket endorsement, not naming Pray or its connection with Massachusetts, Wesco did not choose to extend such coverage to Pray, knowing of Pray's connection to Massachusetts.

Accordingly, the court held that a blanket additional insured endorsement did not establish any meaningful suit-related contacts with Massachusetts such that Wesco should have reasonably anticipated being hailed to court in Massachusetts.

While it might have been foreseeable that Xtreme could add a Massachusetts entity like Pray as a blanket additional insured and Pray might later sue Wesco, foreseeability alone is not a sufficient benchmark for personal jurisdiction.

Therefore, the court held that "Wesco's contacts with Massachusetts [were] unrelated to claims in this case," and insuring Xtreme, and indirectly Pray via the blanket additional insured endorsement, did not create a sufficient connection with Massachusetts to satisfy personal jurisdiction.

Therefore, the court dismissed Pray's complaint for lack of personal jurisdiction.

The Takeaway

As the general contractor in D.F. Pray found out, blanket additional insured endorsements can create issues with personal jurisdiction because the insurance company has no way of knowing who is covered or where the insurance company may reasonably be brought to court by an additional insured.

To avoid this outcome, those named as additional insureds should consider requiring their lower-tier contractors to use the specific additional insured endorsements, expressly naming the additional insured's business, state of incorporation and principal place of business to ensure that the insurance company knows that it may be hailed to court in the jurisdiction where the additional insured is located.

This will prevent your clients from having to travel to the forum of the lower-tier insurers to enforce the additional insured coverage.

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