



National Association of Home Builders

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Does Your Additional Insured Endorsement Cover You for Damages Related to Drywall, Gypsum Board or Similar Products?

Builders routinely require subcontractors to name the builder as an additional insured on the subcontractor's general liability policy. Prudent builders go even further to assure that they are actually covered as additional insureds for latent defect claims.

They specify the scope of coverage the builder must receive as an additional insured, and they verify that they have received the necessary coverage by checking the certificate of insurance provided by the subcontractor.

The builder who does not take these simple measures may be unpleasantly surprised by how little coverage he or she has as an additional insured. The forms of coverage for additional insureds vary widely, and the extent to which the subcontractor's policy actually covers the builder depends on the specific language of the additional insured endorsement and any exclusions that are added to the policy purchased by the subcontractor.

Here's an example: Largely due to problems with defective drywall manufactured in China, some excess and surplus carriers have been using more restrictive language that excludes coverage for drywall products containing sulfur or sulfur derivatives. Even though these exclusions seem to be more common in the excess and surplus lines markets, admitted carriers are also using this restrictive language via the "Designated Work Exclusion Endorsement."

The fact is that all drywall contains sulfur. Thus, a builder named as an additional insured on its drywall subcontractor's general liability policy containing such an exclusion may not have any coverage for drywall-related claims (of course, the builder should check his or her own CGL policy for this restrictive coverage as well).

The following language is illustrative:

Example of an Excess & Surplus Lines Exclusion

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

EXCLUSION – TOXIC DRYWALL

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** This insurance does not apply to any claim or liability arising out of, caused by, or attributable to, whether or whole or in part, the manufacture, sale, distribution, use, installation, repair, removal, disposal, or service of sheetrock, gypsum board, wallboard, or any similar product which:
1. was manufactured in or distributed from China; or
 2. emits Hydrogen Sulfide (H₂S), Sulfur Dioxide (SO₂), Strontium Sulfide (SrS) or Carbonyl Sulfide (COS).

We shall have no duty to defend or indemnify insured against any loss, claim, "suit" or of proceeding alleging damages to which exclusion applies.

All other terms and conditions of this policy remain unchanged.

Example of an Admitted Carrier Exclusion on an ISO Designated Work Endorsement

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – DESIGNATED WORK

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Description of your work:

All operations conducted using drywall products containing sulfur or sulfur derivatives, whether performed by you, on your behalf, or under your supervision or management.

As noted, all drywall contains sulfur, consequently, a builder has several options:

1. Knowingly accept the coverage with the drywall exclusion.
2. Have the subcontractor agree in the subcontract that he or she will provide to the builder a schedule of endorsements of the subcontractor's CGL policy, and further agree that the CGL policy will not have any drywall exclusions during the coverage period.
3. Prior to entering into the subcontract, provide the subcontractor with alternative language that the subcontractor can then take back to their insurance agent or the carrier.

Regarding the second option, in addition to specifying the mandatory scope of coverage for the builder as an additional insured, the builder should confirm that the required coverage is in place.

The subcontract should require the subcontractor to furnish a certificate of insurance that is sufficiently detailed to show that all the insurance requirements specified by the builder have been met. The certificate should show that the builder has been added as an additional insured on the subcontractor's CGL policy and should describe the terms of coverage provided to the additional insured. The text of the additional insured endorsement should be attached to the certificate, and the builder should receive a copy of the subcontractor's Schedule of Endorsements to verify there are no drywall or other construction-related exclusions on the policy.

Additionally, the builder should read the certificate closely and to follow up if the coverage does not meet the contract requirements or if the certificate is not sufficiently detailed to make that determination.

Regarding the third option, to address the concerns of insurers and those making and using gypsum, one suggestion is to ask the insurers to amend the endorsements to reference ASTM C1396 Section 4.7 on volatile sulfur compounds, which was specifically added for the 2014 edition.

That section provides as follows:

4.7 Volatile Sulfur Compounds:

4.7.1 Gypsum board shall contain not greater than 10 ppm of orthorhombic cyclooctasulfur (S₈), when tested in accordance with Test Methods C471M, that when exposed to heat, humidity, or both, emits volatile sulfur compounds in quantities that cause abnormal corrosion on electrical wiring, plumbing pipes, fuel gas lines, HVAC equipment, or any components of the foregoing.

This ASTM standard was developed in response to the [Drywall Safety Act of 2012](#), which directs the Consumer Product Safety Commission to promulgate a final rule pertaining to drywall manufactured or imported for use in the United States that limits sulfur content to a level *not associated with elevated rates of corrosion in the home*.

Following are some examples of actual Endorsements amended to reference ASTM C1396 Section 4.7 -

Based on Excess and Surplus Lines language

EXCLUSION – TOXIC DRYWALL

This insurance does not apply to any claim or liability arising out of, caused by, or attributable to, whether whole or in part, the manufacture, sale, distribution, use, installation, repair, removal, disposal, or service of any gypsum board that does not comply with the 2014a or later edition of Specification ASTM C1396 (ASTM C1396-14a or subsequent edition).

Based on ISO form CG 21 34 01 87

EXCLUSION – DESIGNATED WORK

Description of your work:

The installation, repair, removal, replacement or handling of gypsum board that does not comply with the 2014a or later edition of Specification ASTM C1396 (ASTM C1396-14a or subsequent edition).

Description of your work:

All operations conducted using gypsum board that does not comply with the 2014a or later edition of Specification ASTM C1396 (ASTM C1396-14a or subsequent edition).

The Bottom Line

The best way for builders to ensure that their insurance coverage is sufficient – including “additional insured” coverage provided by a subcontractor’s general liability policy – is to consult with their legal counsel or a knowledgeable insurance professional. .

DISCLAIMER

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