

When is the golf course an additional insured on a maintenance company's liability policy?

In almost every contract for lawn care or snow removal services, there is a provision requiring the service provider to name the owner of the property as an additional insured, and to defend and indemnify the owner for any personal injury or property damage caused by those services. So, what has to happen for that the service provider's insurer to pick up these obligations? As with all things contractual, it's in the fine print.

The obvious way for an insured to meet its obligations is to ask their insurers to name each of their specific customers as additional insureds on their commercial general liability (CGL) policies. The problem, however, is that this may not be so easy to do because the service provider may be a national company with hundreds of customers, who might often change.

Another option is for an insured to purchase the "Additional Insured – Owners, Lessees or Contractors – Automatic Status when Required in Construction Agreement" endorsement. In order for this to trigger coverage, there must be: 1) a written agreement requiring the service provider to name the owner as an additional insured; 2) operations actually provided by the insured to the owner; and 3) bodily injury or property damage actually caused by the service provider or someone acting on its behalf. If those criteria are all met, the specific name of the customer does not need to be identified in the policy, but instead, is automatically included.

It should be noted that, although the above endorsement references only "Construction Agreements," Michigan courts and federal courts applying Michigan law, have held that the title of an endorsement is not controlling. See *Northland Ins Co v Geisel*, 1997 WL 33353531, *1; *Meridian Sec Ins Co v Church Mut Ins Co*, 2006 WL 1235091, *6 (ED Mich 2006). Moreover, lawn care and snow removal may qualify as "construction" under Michigan law. The Michigan Construction Act defines physical improvement to real property to mean "actual physical change in, or alteration of, real property as a result of labor provided, pursuant to a contract, by a contractor, subcontractor, or laborer which is readily visible and of a kind that would alert a person upon reasonable inspection of the existence of an improvement." MCL 570.1101 *et seq.*

If a lawn care, landscaping or snow removal company is servicing big commercial properties like golf courses, they should take the necessary steps to ensure coverage should there be damage arising from those services.

PRACTICE AREAS

- Insurance Coverage and Defense

ATTORNEYS

- Sarah J. Brutman