



NAMED INSURED VS INTERESTED PARTY.

What difference does it make if someone is 'named' on your policy? What about as an 'interested party'? What does it all mean and when should you agree to it?

It is common in commercial contracts and leases for one party (the principal) to require another party (the service provider) to have the principal insured under the service provider's public liability policies.

Usually the principal will ask:

- + To be a 'named insured' – or an 'additional insured', 'joint insured' or 'co-insured';
- + To be an 'interested party'; or
- + Have their 'interests' noted on your policy – sometimes this is expressed as noting their 'respective rights and interests'.

It depends on the nature of the principal's interest in the property or the risk – as to which option is appropriate.

Sometimes the principal will ask to have their liability as a principal insured under the policy or a 'principal's

liability' extension.

WHAT IS A 'NAMED INSURED' AND WHEN IS IT APPROPRIATE?

A 'named insured' is a party to the insurance contract and can make a claim and enforce the policy directly against the insurer.

EXAMPLE: If a head contractor is a 'named insured' on a subcontractor's policy but only the head contractor is negligent, the head contractor may be able to claim on the subcontractor's policy to meet that liability (even though the subcontractor was not negligent).

In practice, it is often difficult to obtain cover for someone else as a 'named insured' on your public

liability policy. Insurers will not usually agree particularly if the person's interests conflict in some way with your interests.

If an insurer is willing to include a principal as a 'named insured' they may want the following:

- + Additional underwriting information about the principal; and
- + Additional premium in exchange for accepting the risk of insuring the principal under your policy.

Insurers are more likely to agree to include subcontractors or agents engaged by you to work on a project or in your business if that person works in concert with you or under your direction. Sometimes this is a good idea and other times it is not (see below).

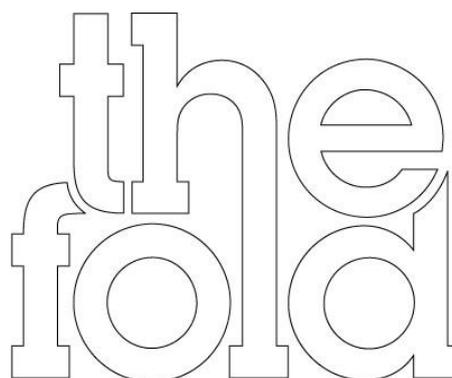
IS THERE A BETTER ALTERNATIVE?

'Naming' a principal on your public liability policy poses a risk because the principal can often make claims under your policy – and this may have nothing to do with you, the goods supplied or the work or services you performed. In essence, you are paying for the principal's insurance.

A better alternative is to change the contract requirement to 'principal's liability'.

Principal's Liability provides cover for a principal's legal liability arising from your performance of work under a contract (e.g. its vicarious liability).

It does not provide cover for:



- + Liability that arises independently of your work (e.g. the principal's own negligence).
- + Contractual liabilities you assume under a contract with the principal. For contractual liability cover, your broker needs to ask the insurer to 'designate' or note the contract on your policy. (This is not always available).

Usually 'principal's liability' cover is already in the policy or the insurer is willing to provide it at no extra cost to you.

Even though many Australian Standard Contracts ask for 'named insured' status – 'principal's liability' is a better

option because:

- + It doesn't 'open up' your public liability policy to claims by the principal which are unrelated to your work; and
- + It more precisely covers the principal's exposure to vicarious liability for your acts or omissions.

EXAMPLE: A subcontractor on a mining or construction project that is required to have the principal insured as 'co-insured', 'joint insured' or 'additional insured' should ask for the contract to be changed to 'principal's liability' because they are performing the works for the principal.

Principal's liability will cover the principal's vicarious liability for property damage or personal injury caused by the subcontractor when performing that work.

WHAT IS AN 'INTERESTED PARTY' AND WHEN IS IT APPROPRIATE?

An 'interested party' is not a party to the insurance contract and does not receive any insurance notices.

It can make a claim and enforce the policy terms directly against the insurer but only if they are:

- + Listed or named as a beneficiary in the policy; or
- + Referred to in the policy as someone to whom the benefit of the policy extends.

EXAMPLE: A mortgagee or financier will often be listed specifically on the policy as an 'interested party' along with a clause or endorsement explaining the basis of their rights and entitlements to make a claim.

'Interested parties' is sometimes used where the policy protects property owned by you which is financed. It is also useful in landlord and tenant situations (see below). 'Interested parties' are only protected for damage to insured property when:

- + The interested party will suffer a pecuniary or financial loss if the property is damaged;
- + The insurer does not notify you before the cover was placed that it will not insure the interested party's interest;
- + Following a claim, the policy sum insured is not exhausted in paying your claim;
- + Your conduct does not prejudice a claim (e.g. non disclosure or misrepresentation); and
- + The interested party makes a claim against the insurer within 3 months of the date of the loss.

IS THERE A BETTER ALTERNATIVE?

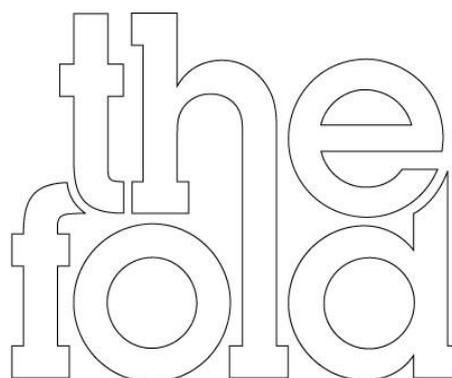
If you are performing work or supplying goods and services under a contract, the better alternative is 'principal's liability'. 'Principal's liability' is not appropriate for a landlord/tenant relationship but it is suitable for many other commercial contracts.

'Interested party' is useful where a landlord wants protection under a public

liability policy – but only if the policy is properly endorsed to give the landlord cover for its vicarious liability arising from the use and occupation of the premises by the tenant.

'Interested party' notations are only useful in landlord and tenant situations.

Landlords who ask to be 'named' on your public liability policy may run into difficulties in getting a claim paid because your policy is written in respect of your business and the landlord's liability as a property owner may not come within the description of your business on your policy



schedule. This is another reason why it is better to change the lease terms to 'interested party'.

WHAT IS NOTING SOMEONE'S 'RIGHTS, INTERESTS AND LIABILITIES' AND WHEN IS IT APPROPRIATE?

Having someone's interest 'noted' on a policy does not make them a party to the insurance contract, nor does it entitle them to make a claim under the policy.

'Noting an interest', simply puts the insurer on notice that someone else has an insurable interest. This can assist the principal to have the claim proceeds paid to them but it doesn't always provide cover for their own losses.

It is common to 'note an interest' where a contract requires property to be insured against loss or damage and the other person has a beneficial or insurable interest in the property.

EXAMPLE: In a hire purchase contract, the financier often requires the borrower to insure the equipment against loss or damage until the final instalment is paid. The financier usually asks to have their interest 'noted on the policy'. This is appropriate because the financier has a beneficial/insurable interest in the property which is insured.

However:

- + 'Noting an interest' doesn't mean the insurer will cover any liability or indemnity claim.

- + Unless the policy is properly endorsed or extended, neither party will be properly 'protected' by the insurance.

IS THERE A BETTER ALTERNATIVE?

Unless the principal is a financier that owns property and you are a borrower, it is more appropriate to use 'principal's liability'. If you are supplying goods or services or constructing works for a principal it is pointless to ask the insurer to 'note' the principal's interests.

IS IT OK TO INCLUDE AGENTS AND SUBCONTRACTORS ON YOUR POLICIES?

Sometimes, a contract will require you to have your agents and subcontractors included as insured persons under your policy. This is possible but it is important to weigh up the pros and cons of doing this.

For those contractors that work with you regularly it may be more convenient to have them insured under your policy, but this could interfere with their treatment at law as a 'contractor'.

If you expect subcontractors to hold their own insurance, ensure that you ask them for certificates of currency every so often to make sure they have the insurance. Ask your broker for assistance with this.

CAN WE HELP YOU.

The Fold helps insurance brokers and their clients understand and manage contractual risk to maximise the effectiveness of their insurance policies.

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