

## Who Is An Additional Insured – Are You Covered?

By [Michael Stover](#)

The case of *Gilbane Building Co./TDX Constr. Corp. v. St. Paul Fire & Marine Ins. Co.*, (N.Y. March 27, 2018), points out how important it is to read the additional insured endorsement of a policy. Most construction contracts require the general contractor to obtain various types of insurance and to make various other parties additional insureds on those policies. Typically, a certificate of insurance will be provided showing the additional insureds listed. But, what does the actual insurance policy and its endorsements say with respect to additional insureds?

The contractor's policy had a typical endorsement titled "Additional Insured – By Written Contract" which provided in relevant part: "WHO IS AN INSURED (SECTION II) is amended to include as an insured any person or organization with whom you have agreed to add as an additional insured by written contract but only with respect to liability arising out of your operations or premises owned by or rented to you." During performance of the work, the owner alleged that the contractor negligently damaged the excavation shoring system which damaged a neighboring building. The owner sued the contractor and the project architect and Gilbane was subsequently added to the suit as a third party. Gilbane sought coverage as an additional insured under the contractor's policy. The insurer denied coverage to Gilbane contending that Gilbane was not an additional insured under the language of the endorsement because Gilbane did not have a written contract with the contractor.

The Court agreed that Gilbane was not an additional insured and that the denial of coverage was proper. In this case, the contractor only entered into a written contract with the owner and Gilbane, as the project manager, was not in direct contract with the contractor. Thus, the Court concluded that Gilbane was not an additional insured under the terms of the endorsement.

There are several key points to take away from this decision: (1) certificates of insurance do not provide coverage, just because you are identified as an additional insured does not mean you are covered under the terms of the policy; (2) to ensure that a party is properly included in an insurance policy as an additional insured, one must read the policy and any applicable endorsements relating to the issue; (3) the review of the policy terms must be thorough because as the Court noted in *Gilbane* if just the word "with" in the endorsement had been removed the outcome would have been different and (4) insureds charged with adding additional insureds should work with their insurance agents to ensure the proper endorsement form is used.



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## Legislation is Cracking Down on Employers Hiding from Accountability for Harassment

By [Don Walsh](#)

In addition to changes Congress made to the Federal Tax Code prohibiting the deductibility of expenses related to confidential sexual harassment settlements, the Maryland General Assembly passed the Disclosing Sexual Harassment in the Workplace Act of 2018, which was signed into law by the Governor on May 15, 2018 and goes into effect on October 1, 2018. Continuing to attempt to force such situations into a more public light, this Maryland law prohibits employers from asking employees to waive any substantive or procedural rights in an employment agreement stemming from sexual harassment or retaliation claims that arise during their employment. Employers are further prohibited from

taking any adverse action against an employee who refuses to sign an agreement that contains any of the above limitations on their rights and remedies for sexual harassment claims. Among other things, penalties include payment of the employee's attorney's fees and costs.

More importantly, the law requires reporting by certain employers to the Maryland Commission on Civil Rights of an employer's history of sexual harassment claims. Specifically, employers with 50 employees or more must report:

- The number of settlements the employer has made after an allegation of sexual harassment by an employee;
- The number of times the employer has paid a settlement to resolve a sexual harassment allegation against the same employee over the past 10 years of employment; and
- The number of settlements made after an allegation of sexual harassment that included a provision requiring the parties to keep the terms of the settlement confidential.

Unknown at this point is whether the Supreme Court's recent affirmance of arbitration agreements with employees of such claims will be permitted under the law. Employers need to use this opportunity now to begin updating policies, modifying employment agreements and taking more proactive measures to eliminate sexual harassment.

## Succession of Your Family Business' Success

As a recent survey noted, family-owned businesses continue to dominate our economy but they also struggle with issues of succession more often than others. SCORE completed a survey to assess the role of family-owned businesses on our national economy and published an infographic with the results. According to [the survey](#):

Family-owned businesses are the single biggest job creator in our economy employing **60% of the U.S. workforce** and are responsible for **78% of all new jobs** created in the United States.

- Family-owned businesses include such megacompanies as Walmart, Ford Motor Company and Cargill. On the other end of the spectrum, of the 28.8 million small businesses in the United States, only 19% are family-owned.
- Only 30% of family-owned businesses successfully pass from the first generation to the second.
- Only 12% of family-owned businesses successfully pass from the second generation to the third generation.
- Overwhelmingly, family-owned businesses do not set themselves up for success in transitioning to the next generation with 47% of current family business owners expecting to retire in the next 5 years but have no succession plan in place.

At WC&S, we have successfully represented many family owned businesses across multiple generations. If you would like to join our **Family Business Roundtable** which focuses on issues and discussions unique to such businesses, please contact [jhyatt@wcslaw.com](mailto:jhyatt@wcslaw.com).

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