CERTIFICATES OF INSURANCE: FACTS AND FALLACIES

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Certificates of Insurance: Facts and Fallacies
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Introduction

In Act 5, Scene 5 of Shakespeare's *Macbeth*, the protagonist offers his pessimistic view of life when he says, "It is a tale, told by an idiot, full of sound and fury, signifying nothing." Some certificate of insurance (COI) requestors may view Association for Cooperative Operations Research and Development (ACORD)[1] COIs in the same way.

In *Bradley Real Estate Trust v. Plummer & Rowe Ins. Agency, Inc.*,[2] the court opined that, "In effect, the certificate is a worthless document…."

But is a COI, specifically an ACORD certificate or evidence of insurance form, truly a worthless document that signifies nothing?

That is the principal question this course seeks to answer.

Many of the business relationships into which parties enter involve risky activities where it is critical that the risk be shifted or shared, and that is often best effected by what is sometimes referred to as a "belt and suspenders" risk management approach involving insurance and contractual risk transfer.

COIs historically have been the means most often used to provide proof of insurance under construction and service contracts, loan documents, leases, and other business situations. These certification documents have benefits, but, due to the limited information they contain, they also have deficiencies.

Since most COIs are requested to confirm the existence of insurance required under various types of contracts, it is also important to gain a fundamental understanding of the basics of contractual risk transfer. In doing so, we must distinguish between indemnification and insurance and understand why risk is often transferred "downstream."

Because the issuance of COIs is, in itself, a risky endeavor, the vast majority of states now have specific laws, regulations, or regulatory directives governing COIs. Litigation involving certificates is quite extensive, so loss control for this activity requires an examination of the nature of errors and omissions claims and lawsuits, along with a number of business issues associated with the costs of this risk.

While there are many types of insurance certifications, this course focuses primarily on the use of industry-standard forms promulgated by ACORD and specifically on the evolution of and issues involving the ACORD 25—Certificate of Liability Insurance form. In addition, several other issues related to COIs, especially in the construction industry, will be explored.

With that introduction behind us, let's review the course objectives and then answer the questions what *is* a COI and what *isn't* a COI?

Course Objectives

Upon conclusion of this course, you should be able to

- recognize the role of COIs in contractual risk transfer;
- recognize the potential repercussions of failing to issue COIs that meet contractual requirements;
- identify ways to balance legal and business constraints in certifying insurance coverage;
- identify milestones in the history and evolution of COIs;
- recognize the importance of disclaimers found in ACORD certificate forms;
- recognize the issues involved in completing ACORD certificate forms, specifically the ACORD 25;
- identify agency procedures and quality control programs that reduce the professional liability of certificate providers while reasonably meeting the needs of certificate requestors.

The purpose of this course is to provide an in-depth examination of the purpose, value, and caveats of COIs. The course begins with a discussion of the need for proof of insurance that arises from contracts into which businesses enter and continues with a brief discussion of legal and business issues surrounding COIs. An overview of the history and types of certificates is included. The primary focus of this course is on ACORD certificates and evidences of insurance that dominate the marketplace, especially the ACORD 25—Certificate of Liability Insurance. A history of the important changes in the ACORD 25 is included for perspective, followed by an in-depth review of issues that often arise from contracts, insurance certification requests, and the issuance of certificates.

Chapter 1
Overview

Before we dig into specific certificate of insurance (COI) issues, it's important to understand, broadly, the purpose of a COI and why certificates are needed. Specifically, what *is* and what *isn't* a COI?

A "certificate of insurance" is a term that may be applied to many types of informational documents. For example, group life and health policies usually involve a master policy where benefits are summarized in a "certificate" issued to the individual members. "Certificates" may be issued on some builders risk or wrap-up projects to indicate some form of insured status or insurable interest. There are several liability "certificates" that may be required under state or federal motor carrier acts. Some policies are extended with renewal "certificates," and facultative reinsurance may be initially bound with reinsurance "certificates."

These are *not* the types of "certificates of insurance" addressed in this course.

A "certificate of insurance," as discussed here, refers to a noncontractual document providing evidence that certain general types of insurance coverages and limits have been purchased by the party required to furnish the certificate.

According to Allan D. Windt in *Insurance Claims & Disputes: Representation of Insurance Companies and Insureds*:[3]

> A certificate of insurance is a document issued by or on behalf of an insurance company to a third party who has not contracted with the insurer to purchase an insurance policy. The most common type of certificate is that provided for informational purposes to advise a third party of the existence and amount of insurance issued to the named insured.

The 2013 11th edition of *Black's Law Dictionary* defines a certificate of insurance to be

> A document acknowledging that an insurance policy has been written, and setting forth in general terms what the policy covers.

Saying that a certificate identifies policy terms on a very "general" basis is an understatement. In many instances, the greatest concern about COIs is not what they say but, rather, what they *don't* say. A COI usually serves as a reasonably good documentation that coverage exists but not the extent of that coverage and not what limitations or exclusions might apply.

COIs are most often issued in conjunction with a contractual relationship between a third party and the named insured where the contract requires particular types and amounts of insurance. These contractual relationships most often arise in the construction industry, are created by lease or loan documents, or are otherwise required of third-party service providers by businesses and government entities where significant legal liability exposures or property assets are at risk.

Important: *In this course, a "certificate of insurance" or an "evidence of insurance" may, for brevity's sake, be referred to as simply a "certificate" or by the acronym "COI."*

Chapter Objectives

Upon conclusion of this chapter, you should be able to

- identify the primary source of COI requests,
- recognize the overall purpose and value of COIs, and
- identify the general deficiencies and limitations of COIs.

What Is a Certificate?

A COI is a snapshot that indicates that an insurance policy exists at the time the certificate was issued with limits shown being those that existed when the policy was issued.

Certificates are issued for general informational purposes only and confer no rights on the holder; that secondary fact is usually expressed by disclaimers on the certificate and/or established by law in the form of statutes, regulations, or regulatory directives.

The certificate is subject to all the terms, exclusions, and conditions of the policy referenced on the certificate.

What Isn't a Certificate?

As established in *U.S. Pipe & Foundry Co. v. U.S. Fid. & Guar. Co.*[4] and *Lezak & Levy Wholesale Meats, Inc. v. Illinois Employers Ins. Co. of Wausau*[5] , a certificate is not a contract because it usually does not meet the requirements of a contract, most often the primary reason being that there is no consideration exchanged by the parties. The requestor typically pays nothing for a certificate, and the issuer warrants nothing in the form of coverage. If a certification or evidence document is desired with contractual teeth, the certificate holder should request a certified copy of the policy or, if the policy is not yet available, an Association for Cooperative Operations Research and Development (ACORD) 75 Insurance Binder, which has the contractual effect of the policy it represents.

A certificate does not represent compliance with any contracts entered into by the insured, and ACORD form disclaimers make that clear, as discussed later in this course. Compliance of a policy with the insurance requirements of a contract is best determined by the author of the contract.

A certificate does not amend, extend, or alter the coverage or terms afforded by an insurance policy, again, as ACORD form disclaimers make clear.

Likewise, as discussed later in this course, neither a certificate nor any supplemental certification document accompanying a certificate serves as a warranty of coverage by the issuing agent or insurer.

Summary

While COIs are the primary documents used to certify that insurance coverage exists and to what extent and terms, and they most often do contain reliable basic information about an entity's insurance program, they have inherent limitations that must be considered in determining whether the insurance program fully complies with contractual requirements.

Chapter 2
The Need for Proof of Insurance

Overview

Society recognizes the risks inherent in operating motor vehicles on public roads. As a result, state governments have universally mandated liability insurance or imposed comparable financial responsibility on the operators of motor vehicles. The same is true of private industry for other forms of liability often created by business relationships. In addition, when an entity has an insurable interest in property, it may mandate insurance coverage be provided by other parties with an interest in that property.

When significant liability exposures or property assets are at stake, the existence of insurance becomes a primary concern. Issues involving liability certificates probably most often arise in the construction industry. For asset protection, property certificates are a primary focus of lenders and landlords, with the latter also being especially concerned about their liability exposure.

This concern creates a need for proof of the existence of insurance, which has historically been the role of certificates of insurance (COIs). This chapter provides an overview of the insurance needs of contractors, lenders, landlords, and others and identifies the advantages and disadvantages of COIs. Included is an introduction to some of the potentially problematic requests made of agents and insurers. Some of these requests lead to resistance by the agent or insurer to issue a certificate, so it's important for all parties to understand the potential repercussions of refusal to comply with insurance or COI demands.

Chapter Objectives

Upon conclusion of this chapter, you should be able to

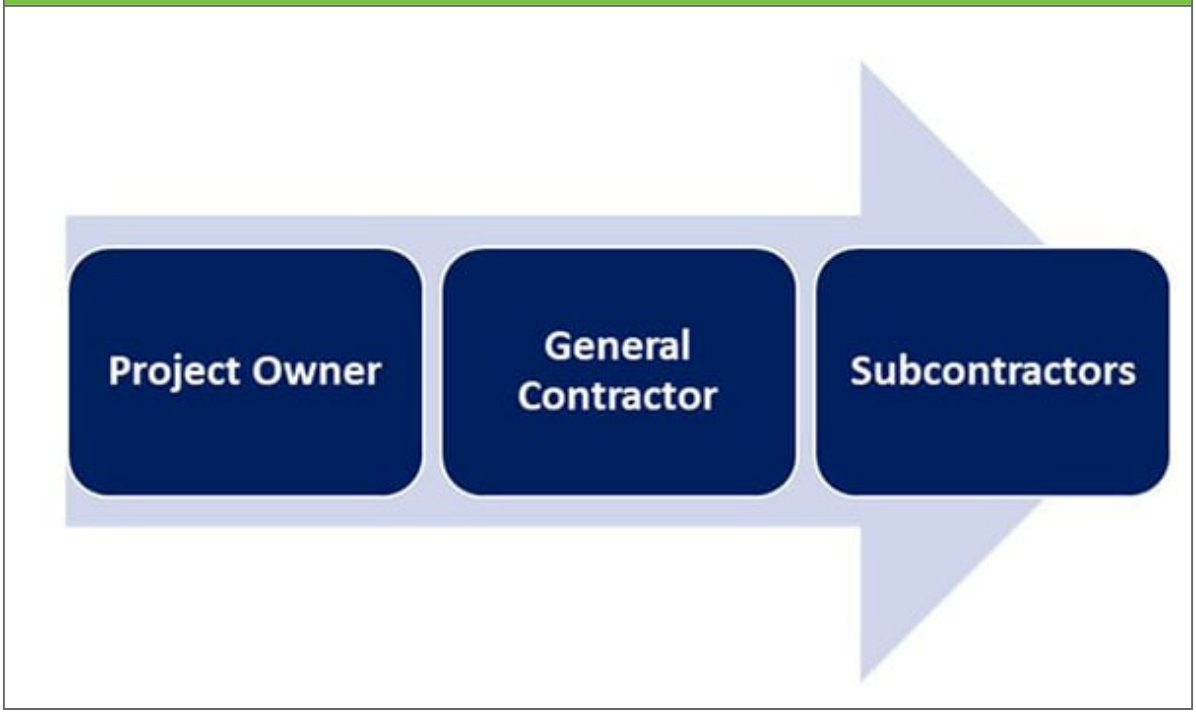
- identify certificate issues surrounding the construction, lending, and real estate industries;
- recognize the benefits provided by COIs;
- identify important deficiencies in COIs as a vehicle for affirming that insurance programs comply with contract requirements; and
- recognize the repercussions of failing to issue COIs exactly as requested.

Insuring the Independent Contractor Exposure

A construction project might involve a project owner, general contractor, and various subcontractors.

From a subcontractor's viewpoint, the general contractor and project owner are referred to as "upstream" parties, as illustrated in the following exhibit. From the project owner's perspective, the general contractor and subcontractors are all "downstream" parties. From the general contractor's position, the project owner is an "upstream" party, and a subcontractor is a "downstream" party. Upstream parties usually dictate insurance and indemnification requirements for downstream parties and want some reasonably dependable certification of compliance.

Upstream and Downstream Parties to a Construction Contract



If you hire independent contractors, you could be sued directly or for your vicarious liability for their actions. That's why you buy your own commercial general liability (CGL) coverage. In the case of workers compensation, you might be held liable for injuries to an independent contractor's employees if that contractor has no workers compensation insurance. The premium on your own policies is usually reduced if the independent contractors are insured. This is one reason why you want that downstream party to provide evidence of insurance, usually accomplished by the issuance of a COI.

Many businesses use independent contractors. While the "principal" hiring the contractor is at least theoretically not liable for the actions of a truly independent contractor, third parties can make claims or sue the principal on the basis that the work was inherently dangerous, the principal supplied defective tools or equipment, negligently hired or supervised the contractor, etc. In other words, an astute attorney will often find some premise for liability of the principal for the contractor. The plaintiff might not win a lawsuit, but defense costs alone could be substantial.

A CGL policy protects the principal from suits based on direct or vicarious liability for the contractor's actions. A CGL insuring agreement typically says that coverage applies to the insured if they are "legally obligated" for a loss without regard to the cause of the loss. So, while an independent contractor may not be an "insured" under the principal's CGL policy, the principal is covered for the contractor's negligence. However, most businesses will still insist that contractors bear the responsibility of claims or suits for which they are responsible.

So, principals have at least four ways of protecting themselves for claims against them that arise out of an independent contractor's actions, and it is worthwhile to momentarily digress to discuss them.

1. Require a hold harmless or indemnification agreement
2. Rely on the principal's own CGL policy
3. Be named as an additional insured (AI) under the contractor's CGL
4. Require the contractor to furnish an owners and contractors protective (OCP) liability policy

Hold Harmless or Indemnification Agreements

While a hold harmless agreement in the form of an indemnification clause is a good idea, it isn't adequate by itself unless it is certain that the contractor has the financial resources to pay all claims against the owner for which the contractor is liable. In addition, the owner may have to file suit to enforce the agreement, and the third-party claimant isn't interested in that; they just want their money. As a result, sound risk management dictates the need for a "belt and suspenders" approach that includes both indemnification and insurance requirements. More on this in Chapter 3.

Principal's CGL

Sole reliance on the principal's own CGL, if the owner is using a significant number of contractors, could quickly result in a depletion of the aggregate limits, although it does give the owner greater control over their defense. A central tenet of our legal system is that tortfeasors should be responsible for their own actions. If you include the element of making business decisions, reliance on your own CGL for the negligence of others probably doesn't make good business sense, nor does the including loss experience from an outside party in your own CGL make sense.

AI Status

Complete reliance on coverage as an AI under someone else's policy is rarely a good risk management decision. While being an AI is generally better than *not* being one, it should not be the primary means of risk transfer. You depend on the other party to maintain the insurance in force and at adequate limits, and their aggregate limit could be diminished without the owner's knowledge. As an AI (and possibly one of *many* AIs), the owner must share limits with a potentially large group of insureds, so there might not be much insurance from the standpoint of limits to share. The owner will also want to make sure that the policy under which they are named as an AI will be primary coverage, with the owner's CGL being excess.

OCP Coverage

An owners and contractors protective (OCP) liability policy is an alternative to just naming the owner as an AI, though each method has its advantages and disadvantages. An OCP policy is usually purchased by the contractor, with the principal being the named insured.

The main financial downside of an OCP (from the contractor's standpoint) is that there is obviously an additional premium that they have to pay to benefit the owner as named insured. However, the premium is often quite affordable, and the named insured has a whole new set of limits on which to draw, and those limits are primary over any other coverage the owner has.

The coverage itself is similar to being an AI, though coverage under the OCP is not as broad as the CGL, and OCP coverage only applies if the named insured is held vicariously liable for loss arising out of the acts of the designated contractor.

The OCP does not include products-completed operations coverage; once the work ends, the insurance ends under an OCP. Also, the OCP doesn't include personal injury coverage, if that's an issue.

As an AI, the client usually is not entitled to notice of cancellation, but as the named insured on an OCP, they would be. That could be of critical importance.

The above discussion assumes "ISO standard" coverage forms from industry-standard advisory organization Insurance Services Office, Inc. (ISO).[6] Many insurance companies use their own versions of these forms and/or may manuscript them, particularly AI endorsements. Beware of some of these proprietary AI forms, especially if they include defense within limits and other limitations touched on later in this course.

Loan and Lease Requirements

Lenders have increasingly become more specific and broader in their insurance requirements, and they often use antiquated and inappropriate language, such as "all risks" coverage, in their requests. Coverage for 100 percent of replacement cost is typically required, and some lenders define what they mean by "replacement cost." Loan insurance requirements often address ordinance or law, earthquake, sinkhole

and flood coverage, or margin clauses, and they may limit or prohibit the use of coinsurance on property and/or business income coverage. Requests for AI status on CGL and auto policies are increasingly common. Astute agents have even caught requirements for AI status on workers compensation policies in some loan agreements.

In the case of leases, agents all too often only review the insurance requirements, overlooking related indemnification and damage and destruction clauses. Responsibility for tenants' improvements and betterments (TIBs) is often spelled out, and tenants may be responsible for build-outs not included in TIB coverage in their tenant property policies, requiring that they directly insure such exposures in those forms. Especially under triple-net leases, landlords typically want to be added as an AI on a form like ISO's Additional Insured—Building Owner (CP 12 19). Some landlords may insist on AI status under business income forms providing rental value coverage such as ISO's Business Income—Landlord as Additional Insured (Rental Value) (CP 15 03) endorsement.

Other Situations

COIs may also be required under various service contracts or co-ownership situations such as condominium associations. Under condo covenants, conditions, and restrictions, condo associations may request AI status, or, worse, individual unit lenders may want AI status on master policies, something few, if any, underwriters are willing to do.

Benefits of Certificates

COIs are not complete representations of policy coverages, nor are they conclusive evidence that the coverage provided meets contract specifications, but they are certainly not worthless, and they potentially provide benefits to all parties involved in the process. Benefits include the following.

- A COI confirms and summarizes the intent of the parties to provide certain coverages and limits.
- A certificate simplifies communication by providing basic information, especially if a claim occurs.
- A certificate identifies and evidences coverage for claims filed many years down the road.
- Evidence of a downstream party's insurance prevents an upstream party from being charged on its policy(ies) for the downstream party's exposure, especially workers compensation where laws make the upstream party responsible for compensating the employees of uninsured downstream parties.
- The failure to request a COI might be alleged to imply a waiving of insurance requirements or indemnity obligations under a contract. For example, in *Geier v. Hamer Enters., Inc.*[7], the contract provided that work was not to begin until COIs had been provided. The owner allowed the work to begin without COIs, and the court ruled that the owner had effectively waived the contractual obligation of the contractor to procure liability insurance.
- While disclaimers primarily protect the COI issuer, disclaimers may protect the COI holder from insurer attempts to limit coverage. For example, in *J.A. Jones Constr. Co. v. Hartford Fire Ins. Co.*[8], a disclaimer that the COI does not amend, extend, or alter coverage prohibited the insurer from attempting to limit an AI's coverage to vicarious liability only.
- Depending on the legal jurisdiction and the facts of the case, a certificate may benefit a certificate holder by serving as evidence that an agent failed to procure the proper coverage or otherwise made statements that the certificate holder relied on to their detriment. Even if the certificate holder cannot access the policies referenced on the certificate, the agent's errors and omissions (E&O) policy might serve as a source of recovery for otherwise uninsured losses.

Deficiencies of Certificates

Just as certificates serve a beneficial purpose, they also have deficiencies as a means of certifying insurance coverage, limits, and terms. More often than not, these deficiencies impact the certificate holder

more than the agent or insurer.

- ACORD certificate disclaimers have been extensively tested in many legal jurisdictions and, by and large, have been upheld as not affording any coverage or otherwise altering the terms of the referenced insurance policies.
- If coverage has been bound but not issued, a certificate may reference an insurance contract that ultimately is never issued or that is issued only to be canceled in short order because of underwriting decisions. This is one reason why a binder, lacking in disclaimers found on certificates, serves as the more appropriate and reliable initial indication of coverage than a certificate.
- A certificate is no guarantee that a referenced policy or necessary endorsements actually exist or that the coverage complies with the contract requiring certain forms or terms of insurance. If an absolute guarantee of coverage is necessary, the only way to verify it is to examine the actual insurance contract(s).
- Certificates usually only reference primary policy forms and not exclusionary or restrictive endorsements. For example, a company bidding on removing 19 trees from a residential property provided a COI that indicated that a current ISO CGL policy was in place. However, the COI did not mention the 42 endorsements attached, one of which excluded "ongoing operations" and "your work." At one time, the ACORD 25—Certificate of Liability Insurance form specified that the description of operations field could be used to list exclusionary endorsements, but that instruction was removed from the form, as discussed later in this course.
- Although the ACORD 25 has a field to indicate, via checkmark, that AI status has been provided, there is no guarantee that it actually has or that the AI status meets contractual requirements. An internal study by the city of Atlanta's risk management department found that 40 percent of COIs that indicated AI coverage did not actually have such coverage. A similar result was found in independent studies conducted in two insurance agencies. In addition, where AI coverage is provided by an "automatic" endorsement or policy provision, such coverage is usually triggered only by a requirement in a written contract, and work often begins without a written contract or before it is executed.
- As disclaimed on the ACORD 25, aggregate limits could have been impaired. The limits shown on an ACORD certificate are usually the limits shown on a policy's declarations page, and those aggregate limits could have been reduced or exhausted by claims, including those of which the issuing agent is not even aware.
- Deductibles and self-insured retentions (SIRs) are usually not included on the ACORD 25 for CGL or other coverages other than perhaps excess or umbrella liability coverages. In the 2013 case of *Multicare Health Sys. v. Lexington Ins. Co.*[9] , the court found that the absence of an ACORD 25 field or column for listing an SIR on a professional liability policy precluded a claim because of its absence. A staffing company with a professional liability policy had contracted with Multicare, but the COI provided to Multicare did not reveal that the policy included a $1 million SIR. The staffing company ultimately went bankrupt and was unable to pay a $785,000 malpractice judgment within the SIR. According to the court, it did not believe "… that the Washington Supreme Court would find a duty to disclose a self-insured retention amount on a certificate that summarizes insurance policies and does not contain a column for retention or deductible amounts. This is especially true in light of the fact that the hospital could have asked [the staffing company] for a copy of its insurance policy."
- ACORD certificates do not provide for any notification of cancellation, nonrenewal, reduction in coverage, or any other policy deficiency unless provided by the policy itself.
- Certificate fraud by insureds and sometimes agents happens. In one regulatory action, COIs were being sold to contractors for $10 each behind a Home Depot. In another case, an Alabama agent admitted to knowingly providing false information on a COI, yet the court refused to find coverage

under the COI because of the disclaimers. (That doesn't mean that the certificate holder and insurance regulator don't have recourse via fraud or other laws.)

Alternatives to Certificates

Although standardized COIs are not worthless, they obviously have potentially significant deficiencies. As a result, some entities prescribe, where permitted by law, their own proprietary certificates or memoranda of insurance, many without the court-tested disclaimers of ACORD forms. Other entities may insist on certificate supplements in the form of agent affidavits or warranties, as discussed later in this chapter and elsewhere in this course. The reality, though, is that the only reliable alternative to a COI is to obtain and read the policy(ies) required by the contract between business partners or, in the case of lenders, the loan agreement or deed of trust. Needless to say, this requires very specialized expertise and can entail significant costs.

Five Types of Potentially Problematic Certificate Requests

Agents are sometimes unnecessarily burdened by requests involving COIs. When those requests go beyond the norm, they may be faced with professional liability (E&O) lawsuits by certificate holders and/or AIs, subject to regulatory discipline, or worse. Over the past couple of decades, agents have been increasingly asked to assume risks, perform tasks for which they are sometimes unqualified, and provide uncompensated services whose benefits accrue largely to parties with which they have no direct business relationship. At the same time, agents have become increasingly hamstrung by legal and regulatory restrictions, many of them imposed at the request of agent trade associations to minimize agency E&O exposures.

As a result, agents are sometimes asked to do things for these third parties that are possibly "illegal" or otherwise inappropriate, impractical, or even impossible. The following is a list of examples of such requests. More specific illustrations are provided later in this course, along with suggestions on why such requests may be unreasonable and how the agent might respond.

- **"Illegal" requests.** Some certificate requests violate laws, regulations, or regulatory directives. For example, a request for coverage for an AI's sole negligence may violate or conflict with anti-indemnity statutes. In one such instance, a requestor said this requirement was "standard practice" in the industry, and if the agent wouldn't do it, he had a list of agents who would. The agent refused to comply because it was illegal in that state. In another case, that agent was required to include the following statement on the COI: "Insurance complies with contract indemnity agreement." No such policy existed in the marketplace. This statement would be a misrepresentation of the policy, and the state had a COI-specific law prohibiting misrepresentative statements on COIs or "agent opinion letters." A similar situation arose when an agent was asked to state that a policy insured "ANY contractual liabilities and indemnities assumed by Contractor." In both instances, the agents refused to comply because the statements would not be truthful.
- **Uninsurable requests.** A construction contract required a November 1985 edition of an ISO AI endorsement "without substitutions," but none of the insurers represented by the agent offered that edition of the ISO AI endorsement. In some regulatory jurisdictions, a withdrawn endorsement may no longer be approved for use. And some forms and coverages may be unavailable to the agent or in the marketplace in general. The lender on a property loan wanted to be an "additional NAMED insured" on the insured's property, business income, general liability, and auto policies, but no insurer represented by the agent was willing to do this.
- **Inappropriate requests.** Agents may be asked to provide warranties of coverage, issue "blank" or "sample" certificates, remove or revise disclaimer language, use proprietary COIs or modified ACORD forms, show contract rather than policy limits, or provide information that conflicts with the ACORD Forms Instruction Guide instructions for a particular field in a form. A Florida bank branch would not close a loan until the insurance agent provided a replacement cost valuation of the building. The bank admitted that it used to hire someone to do this but was sued twice for erroneous valuations, so apparently it preferred to transfer this potential liability to the agent. A

hotel attorney wanted the agent of an insured who was renting a hotel meeting room to show the CGL limit on a COI as "Enough." These are all arguably inappropriate requests.

- **Impractical requests.** An "impractical" request is one that is possible, but compliance or noncompliance requires a business decision due to the time and cost involved or a heightened liability exposure for the agent. Some agencies experience such requests on almost a daily basis, so the following are several examples to illustrate how extreme such requests can be.
  The mortgagee for a condo unit purchaser wanted to be named as an AI on the 800-unit association master policy. Imagine if all 800 unit mortgagees want the same status, especially given how often mortgages are sold and transferred between lending institutions. Making these changes would place an undue burden on agencies, especially if every sale of a mortgage required an adjustment in the identities of AIs.

A community developer, when learning that no cancellation notice would be provided to it as a certificate holder, issued the following demand of the insured: "Effective immediately, in order to process payment for your invoices, we must receive a certificate of insurance from your insurance broker by the 10th day of each month, stating and verifying that each of your policies are in full force and effect." The unreasonableness of this demand is obvious.
A project owner attempted to require the following: "Workers Compensation certificate must include a list of the names of each employee that will be working on this project. Employees will be checked daily for verification. Subcontractor's employees that show up for work that are not specifically identified by the work comp carrier will not be allowed to work without a new certificate listing them by name. A simple 'All employees are covered' is NOT acceptable on the certificate."

One Monday morning between 8:00 and 9:00 a.m., an agency customer service representative (CSR) had 13 requests for evidences of insurance from 13 different banks. Why? The banks were all being audited, and, as allegedly suggested by the auditors, it was easier for them to call the agency for COIs previously issued than locate them in their own files. Shortly after 9:00 a.m., a contractor stopped by to pick up a COI from the same CSR that he had picked up the previous week and hand delivered to a general contractor. Why? The contractor said they were setting up a new file and didn't want to make a copy of the COI, so they refused to pay him until he gave them another original certificate. These requests took the CSR out of commission for a half day, and an agency owner spent all morning playing phone tag with 13 banks explaining why their requests were impractical.

The following was an insurance requirement for a contractor.

- ISO "or equivalent" CGL policy with $1 million/$2 million Coverage A limits including products-completed operations coverage, $1 million Coverage B, $5,000 Coverage C, and $50,000 fire damage legal liability
- Blanket contractual coverage (including coverage for indemnity agreement)
- Products-completed operations coverage to be maintained 2 years following completion of work
- Deletion of employee and contractual exclusions from PI coverage
- Broad form property damage liability
- Independent contractor liability
- Waiver of subrogation using CG 24 04 11 85 "or equivalent"
- At least 30 days' notice of cancellation or material change
- Modification of "Other Insurance" clause of contractor's CGL policy to clarify that it is primary and noncontributory to any insurance carried by the requestor or its customers

- AI endorsement to be maintained for 2 years following completion of work identifying the following as AIs: "XYZ and its customers and all respective directors, officers, employees, agents, subsidiaries, divisions, affiliates and successors with respect to liability for bodily injury, property damage or personal and advertising injury caused in whole or in part by the acts or omissions of either you or the additional insureds." (Note: This requires that the sole negligence of the AI be covered.)

The problems with the above requests regarding the contractor's insurance program are self-evident as to insurability, legality, appropriateness, etc., but the "impractical" aspect is that the contracting job consisted of an individual who was being paid $80 to shovel snow on the sidewalk in front of a store.

- **Impossible requests.** A risk manager requested that the certificate state that the policy would "… cover contracts, without exception, that Subcontractor has signed with Contractor **or is going to sign**."

In another case, a subcontractor had applied for a loan or grant from the US Small Business Administration (SBA), which included a number of insurance requirements specified on 10 pages of the application, including the following.

- "Commercial General Liability (2002 or 2003 ISO Occurrence Form or its equivalent) is provided." There was no 2002 or 2003 countrywide ISO CGL form. The "ISO or equivalent" issue is discussed later in this course.
- "For those policies containing an aggregate, as soon as loss activity (paid or reserve) depletes the aggregate by 50% or more, written notice must be sent to the Contractor by certified mail."
- "Additional insured endorsements shall not contain any restrictions."

Liability insurance evidence was required to be included on an ACORD 27 (a property form) to verify coverage for CGL and workers compensation, also insisting that the SBA be named as an AI on the workers compensation policy. The agent refused to use the ACORD 27 to evidence liability coverage and advised that it was impossible to extend AI coverage to the SBA for workers compensation insurance. An SBA attorney claimed he knew of at least 50 agents who had done this. The agent refused, and the attorney backed off, accepting the ACORD 25 for the liability coverages.

Keep in mind that there are three kinds of certificate or insurance coverage requests: (1) wish lists, (2) fallback positions, and (3) deal breakers. Contract drafters sometimes include requests they know are unreasonable, but there is no downside to asking, and astute attorneys know that some agents will agree to almost anything on the premise that it is unlikely that an uncovered claim will occur, or, if it does, they have E&O coverage.

More often, the upstream party would like to transfer as much liability to the downstream party as possible, but they have a fallback position when they encounter an agent who pushes back and, because of the value of the services provided by the agent's customer, they are willing to continue to assume that risk under their own insurance programs.

However, there are some insurance requirements that are simply nonnegotiable, especially when there are other downstream parties willing and able to comply with such requirements. That's when an insured or its agent must make a business decision about assuming risk they'd prefer not to.

Repercussions of Refusal To Comply with Certificate Demands

If an agent cannot or will not comply with an insurance or service requirement in a contract into which their customer has entered, there are several potential outcomes.

- The insured may be denied a job.
- If the job is already underway, the insured may be accused of breach of contract with the corresponding penalties that may entail. In such cases, the insured may settle by passing along its right to sue its own agent to the upstream party, which then sues the agent, not as a certificate holder, but under the same cause of action as the subcontractor.
- The insured's payment may be withheld for a completed job, or the insured may be docked to the extent of the upstream party's cost of substitute coverage.
- Needless to say, if any of the above occur, a potential repercussion for the agent is the loss of an account.
- An insured might commit fraud; if the agent refuses to issue a certificate with certain verbiage, the insured might provide a fraudulent certificate to the upstream party.

As mentioned earlier in *Geiere v. Hamer Enters., Inc.*[10], in case of refusal to pay, the upstream party may have been deemed by some courts to have waived contract requirements if the downstream party was allowed to begin and/or complete work without a COI or without a COI that met contract requirements. As found in *JCM Constr. Co., Inc. v. Orleans Parish Sch. Bd.*[11], the same thing may happen following breach of contract claims arising from the failure to issue COIs.

Summary

The construction, lending, and real estate industries all have their unique requirements and considerations for the issuance of COIs. While COIs are generally reliable indicators of basic insurance coverages and terms, they have a number of deficiencies such that, if a guarantee of coverage that conforms to contractual requirements is necessary, examination of the policy forms themselves is likely necessary. Some contractual certificate and insurance requirements may be illegal or impossible for the agent to fulfill. Some requirements may be possible but could potentially impose significant professional liability exposures to agents. In that case, the agent may be compelled to make a business decision as to whether or not to comply and to what extent, as discussed in Chapter 4.

Chapter 3
Contractual Risk Transfer

Overview

Since the issuance of most certificates of insurance (COIs) begins with a contractual requirement, it is helpful to consider some of the fundamental aspects of contractual risk transfer. This begins by distinguishing between the typical indemnification and insurance requirements found in contracts, especially in the construction industry, and how each of them works together in a "belt and suspenders" approach to treating risk.[12] Also explored in this chapter are the overuse of antiquated insurance terms in contracts and the importance (and risks from the agent's perspective) in reviewing contracts for insureds.

Chapter Objectives

Upon conclusion of this chapter, you should be able to

- recognize the basic difference between indemnification and insurance,
- recognize why risk is transferred downstream,
- distinguish among the three types of indemnification,
- recognize reasons why outdated contract language should be avoided,
- recognize the value of a "belt and suspenders" approach to risk transfer, and
- recognize the pitfalls of reviewing contracts for insureds.

Indemnification versus Insurance

Most contracts have separate indemnification and insurance requirements, but, occasionally, a contract may combine the two. For example,

> To the fullest extent permitted by applicable law, Contractor shall **insure** and defend, indemnify, and hold harmless Owner and Agent and their respective officers, directors, members, employees, agents, shareholders, partners, joint venturers, affiliates, successors, and assigns from and against **any and all** liabilities, obligations, claims, demands, causes of action, losses, expenses, damages, fines, judgments, settlements, and penalties including, **without limitation** and **without regard to the cause or causes thereof**…. [**Emphasis** added.]

In addition, some certificate requestors may demand that statements be added to certificates or other documents stating that the insurance provided satisfies the indemnification provision(s) in the contract. The problem is, no insurance policy exists in the marketplace that, as the excerpt cited above calls for, insures "any and all" forms of liability "without limitation" and "without regard to the cause or causes thereof." To do so would require a policy with a virtually unlimited insuring agreement, no coverage limits, and no exclusions.

Why Risk Is Transferred Downstream

The COI journey most often begins when two or more parties enter into a contractual relationship. This might be a project owner and general contractor or the general contractor and subcontractors in the construction industry. In the real estate industry, the most common contract is a lease. In the banking industry, property purchases often involve loan agreements. In each case, in order to minimize their liability and/or the capital asset at stake, the upstream party (e.g., general contractor, landlord, bank) will want to transfer as much of their risk of loss as possible to the downstream party (e.g., subcontractor, tenant, borrower).

A consensus exists that risk should be transferred to the party best capable of controlling and/or financing it. That is most often the downstream party. Another reason is that the indemnitee, which is usually the upstream party, is most often in a superior bargaining position. An exception might be when a local landlord leases property to a large national corporation or a specialty subcontractor that has limited competition, which gives it a stronger point of negotiation.

Still another reason is that the agent/broker or insurer of the upstream party is only willing to provide a superior (in coverage and/or cost) insurance package if that entity is able to transfer risk downstream in order to minimize the impact of claims on its own insurance.

The contract between the parties will determine the nature and extent of this risk transfer. Again, an agreement to indemnify is usually included, usually without limit and without regard to cause, and there will almost always be at least minimal insurance requirements. There may be other contract provisions that govern the parties' responsibilities and liabilities, such as damage and destruction (D&D) clauses in leases.[13]

Let's review how transferring risk downstream can minimize liability for the upstream party.

Types of Indemnification

Indemnification provisions are usually classed in one of three categories.

- **Broad form.** An indemnitor (e.g., sub) assumes liability for an indemnitee's (e.g., general contractor's) sole negligence. The transfer of sole negligence may be prohibited or limited by anti-indemnity laws, and such restrictions may extend to the indemnitee's status as an additional insured (AI).
- **Intermediate form.** An indemnitor (e.g., sub) assumes liability for an indemnitee's (e.g., general contractor's) contributory negligence. For example, Insurance Services Office, Inc. (ISO), commercial general liability (CGL) AI endorsements are triggered only if the insured indemnitor has *some* liability. In addition, some non-ISO AI provisions only extend to the indemnitee's *vicarious liability* for the insured indemnitor, even though it is the rare contract that seeks AI status only for vicarious liability.
- **Limited form.** An indemnitor (e.g., sub) assumes liability only for its own negligence.

Courts and legislatures have generally rejected the notion of broad form indemnity agreements because they allow the upstream party to escape the consequences of its own negligence. The result is a proliferation of anti-indemnity statutes of varying degrees and qualifications and the use, at best, of intermediate indemnity agreements. As indicated above, similar restrictions are typically placed on AI status.

Agency personnel should be wary of requirements that insurance meet contract indemnity provisions since no insurance policy provides indemnification without limit or cause, as is often required in indemnity agreements.

Outdated Contract Language

Contract drafters too often lack the experience and understanding of the insurance industry that is necessary to draft the insurance requirements of contracts. They may rely on language from outdated contracts or legal databases. For example, the following types of insurance are still sometimes requested, despite not being available by those names for decades.

- Comprehensive general liability insurance
- Public liability insurance
- Manufacturers and contracts liability insurance
- Owners, landlords, and tenants liability insurance
- Broad form contractual liability insurance
- Broad form property damage (BFPD) endorsement
- Workers compensation "all states" endorsement
- Extended coverage endorsement[14]

Examples of these and other uninformed and/or unreasonable (or even illegal) requests are provided elsewhere in this course.

Determining an insured's contractual obligations for indemnification and insurance can be difficult for many agents who lack the training and experience to review the contracts into which their customers enter. Indemnity agreements are often uninsurable, and insurance for some exposures may be unavailable or unaffordable from the markets available to the agent. Contract terminology is sometimes too vague, general, or ambiguous for many agents to know if the insurance program truly complies with contractual insurance requirements. This is particularly true given that the agent is not the party who drafted the contract language, yet the agent is often expected to attest that the insurance program provided is in accordance with contract requirements. Even if the agent is confident that this is the case, they can often be second-guessed by the courts.

In addition, what an agent can legally do about COIs continues to evolve as states pass or modify legislation, implement regulations, or issue updated regulatory directives governing certificates. Agents are also bound by the discretion afforded to them by the insurers they represent as to their authority to issue certificates, as well as the verbiage they place on them. In addition, Association for Cooperative Operations Research and Development (ACORD) forms are copyrighted and used under license such that modification of any preprinted language on an ACORD form could raise issues of federal copyright law and/or violations under the licensing agreement.

To further complicate matters, agents are often asked to assume tasks for which they may not be qualified and are rarely compensated. They may be asked to complete "compliance" checklists, issue "affidavits," or otherwise warrant that certain coverages, conditions, or insured status are in place. These legal and business issues are explored in the next chapter.

It is critical that all parties involved in the certification process, from agent and insurer to insured(s) to certificate holders, improve their understanding of each other's needs and, just as important, limitations in fulfilling their legal and business needs. To great extent, this involves recognizing and acquiescing to what cannot or should not be done and negotiating the most effective means of accomplishing what can be done.

"Belt and Suspenders" Approach: Contractual Liability Coverage versus AI Status

An agency customer service representative (CSR) asks,

> I have had discussions with agents who believe that the wording in the ISO CGL policy pertaining to an "insured contract" covers the requirement to add AI status to a policy when required in the subcontract agreement. They attach a copy of that wording in place of the AI endorsement. I feel this is a real stretch.

Another agency CSR makes a similar inquiry.

> In the past, we have not been individually adding AI endorsements, relying on them being an indemnitee in the "insured contract" wording of the CGL or businessowners policies, which gives them AI status without endorsing that on the policy. Our state now has a law that says if we put AI status on the certificate, we *must* have an AI endorsement added to the policy. Is this correct, or can we still rely on "indemnitee in an insured contract" and not go to the trouble or expense of using AI endorsements?

Both of these examples illustrate that the inquirers (and apparently the entire agency in each case) do not understand the difference between indemnification and insurance.

ISO's CGL policy has an exclusion for liability assumed under contract. A notable exception is that coverage is provided for liability assumed under an "insured contract." This exception to the exclusion provides coverage if the insured's breach of an "insured contract" causes bodily injury or property damage. It does not make the other party to the contract an insured, nor does it give that party any right except as a claimant seeking indemnity under the terms of the insurance policy.

In the current ISO CGL policy, an "insured contract" is defined to include (1) leases, (2) sidetrack agreements, (3) easements, (4) municipal indemnity agreements, (5) elevator maintenance agreements, and (6) the following catch-all category.

> That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement....

So, the ISO CGL policy does provide some coverage for an indemnity agreement in a contract but only if it involves the assumption of tort liability to pay for bodily injury or property damage to a third party, and, of course, it's subject to the limits, exclusions, and other terms of the CGL policy.

One problem with relying solely on this contractual liability coverage provision involves defense costs. All *insureds* under the CGL have their defense costs covered on an unlimited basis outside policy limits. However, under this contractual liability provision, the beneficiary is only an indemnitee and not an insured. As outlined in the supplementary payments section of the ISO CGL policy, defense costs for the indemnitee are almost always included within the policy limit. Since at least the 1996 edition, the ISO CGL policy has confirmed this within the contractual liability exclusion language.

> Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured **are deemed to be damages** because of "bodily injury" or "property damage".... [**Emphasis** added.]

In other words, for indemnitees, the policy limits apply to both indemnification and defense. Contrast that with AI status where the policy limits apply only to indemnification, and the AI has unlimited defense limits just like any other insured.

When a contract requires AI status, reliance solely on the contractual indemnification coverage in the ISO CGL policy places the insured in a breach of contract position. The limited contractual liability coverage in the CGL is insufficient when AI status is needed.

On the other hand, one of the potential advantages of contractual liability coverage versus AI status is that, unless prohibited by law, an indemnitee is covered by the CGL for its sole negligence. ISO AI endorsements, as is the case for most AI forms in the marketplace, do not cover sole negligence of the AI.

Where possible, combining these two options can be referred to as a "belt and suspenders" approach.

Reviewing Contracts for Insureds

It is not unusual for insureds to ask agents to review the insurance requirements in contracts such as leases and construction agreements to advise what types of insurance and limits are needed to comply with these contractual requirements. According to industry coverage expert Mike Edwards, CPCU,

> The trend in risk management is to try to transfer all liability (or as much as legally possible), whether insurable or not to a downstream party, or at least transfer risk of loss to the party best able to manage it. It takes an astute, well-trained, experienced, and qualified individual to undertake the scavenger hunt often necessary to identify exposures in lengthy and complex contracts.

Construction and service contracts can be over 200 pages long. One wrap-up contract had 51 pages devoted just to various insurance requirements of the myriad entities involved in the project.

Unfortunately, many agencies lack the proper personnel to provide the value-added service of contract review, and undertaking that task without the necessary expertise may significantly enhance their professional liability (E&O) exposure. Still, some agencies accept that as a business risk, while others invest in the staff necessary to distinguish themselves from their competitors. From an E&O standpoint, the best recommendation is for the insured or prospect to have its own legal counsel proficient in contract law review these contracts and then inform the agent what exposures need addressing from an insurance standpoint.

The reality, though, is that few small businesses are going to engage attorneys to review loan agreements, leases, and construction or service contracts. The most common-sense approach, and one that is recommended by many E&O attorneys, is the middle ground: train your staff as best as possible and review the contracts but with ample caveats. Of primary importance is to state in writing that the agent is only reviewing the insurance requirements of the contract and is not providing any legal advice. For example, one agency's cover letter when issuing a COI following a contract review includes the statement, "This certificate of insurance represents coverage currently in effect and may or may not be in compliance with any written contract."

The following exhibit contains a sample disclaimer letter that could be used when reviewing contracts for insureds. This draft disclaimer is provided solely for illustrative purposes, and the agency's legal counsel should review any disclaimer actually used by an agency before use with an insured.

Sample Disclaimer Letter
Our Agency has, upon your request, reviewed the contract indicated above. Specifically, we reviewed only the insurance requirements contained in Section __, Page ___. The scope of our review was to determine if the current insurance program that you have placed through our Agency addresses the types and amounts of insurance coverage referenced by the contract. We have identified the significant insurance obligations and have attached a summary of the changes required in your current insurance program to meet the requirements of the contract. Upon your authorization, we will make the necessary changes in your insurance program. We will also be available to discuss any insurance requirements of the contract with your attorney, if desired. In performing this review, our Agency is not providing legal advice or a legal opinion concerning any portion of the contract. In addition, our Agency is not undertaking to identify all potential liabilities that may arise under this contract. This review is provided for your information and should not be relied upon by third parties. Any descriptions of the insurance coverages are subject to the terms, conditions, exclusions, and other provisions of the policies and any applicable regulations, rating rules, or plans.

As an example of how simply doing a favor for an insured by reading or reviewing a contract can quickly bring an agent to the verge of litigation, see a recent case.

The agent insured several large contractors and reviewed contracts for these insureds on a regular basis. In an unfortunate oversight, the agent failed to notice that a construction contract his insured had signed required CGL occurrence limits of $20 million. The insured carried $10 million limits, which had always been adequate to comply with any previous insurance requirement. Two weeks after the job started, the risk manager for the building owner called the contractor to notify him that the COI the agent had sent showed inadequate limits and that work must stop immediately until sufficient limits could be obtained and verified.

The contractor immediately called the agent, who was embarrassed by the mistake. Later that same day, the agent was able to obtain the additional $10 million excess quote for approximately $8,000 in premium. The contractor was then angry that the additional premium was essentially going to have to come out of his profit on the job, since he hadn't figured that additional cost into his bid. He told his agent that he should pay the additional premium, since it was the agent's error.

The agent was advised by an E&O attorney not to pay the additional premium no matter how embarrassed he was by the oversight. If the agent paid the $8,000 additional premium, the attorney advised that it might be construed as admitting fault, which violated one of the key provisions of his E&O policy. The following exhibit contains an excerpt from a representative E&O policy.

E&O Policy Excerpt

General Terms & Conditions

1. Reporting and Notice. Insured's duties in the event of a claim or any potential claim:
    A. The insured shall not, without our written consent, do any of the following:
        1. Admit liability;
        2. Participate in any settlement discussions nor enter into any settlement; or
        3. Incur any costs or expense.

Since the job had been underway for 2 weeks, with a $10 million gap in limits, the agent could theoretically be liable for the "missing" $10 million if an injury already had occurred. By paying the additional premium and thus possibly being construed as admitting fault, the agent might invalidate any otherwise applicable E&O coverage and be "bare" with no E&O coverage at all.

Summary

Most CGL policies provide, within the terms and conditions of the policy, indemnification for covered losses under "insured contracts." These policies may also extend coverage for the indemnitee as an AI. This is often referred to as a "belt and suspenders" approach where each may cover something the other doesn't. Some insurers will only extend AI status for the AI's limited vicarious liability for their insured, while others will cover the AI's direct liability but only if their insured also has some liability as well. Agents who review contracts for insureds should include in their analysis response a disclaimer and note any outdated insurance requirement language.

Chapter 4
Legal and Business Issues

Overview

A standard certificate of insurance (COI) includes several statements that serve as disclaimers. These statements make it clear that the certificate provides only information concerning coverage; the certificate does not provide, extend, or modify the provisions in the policy it lists. The disclaimers in a COI are generally effective in preventing the information contained in a certificate from having a binding impact on insurers.

To understand why certificates have so many disclaimers, one only must look at errors and omissions (E&O) statistics and the proliferation of statutes, regulations, and insurance department directives in response to professional liability claims and lawsuits. To understand why agents sometimes push back on what they feel are unreasonable certificate-related requests, one must understand the business risks and costs of the entire insurance certification ecosystem.

Chapter Objectives

Upon conclusion of this chapter, you should be able to

- recognize significant professional liability exposures involved in processing COIs;
- identify the types of COI claims litigated and their potential size;
- identify the types of laws, regulations, and regulatory directives that may govern COIs; and
- recognize the importance of balancing legal and business decisions involved in processing COIs.

E&O Statistics

Twenty years ago, most E&O insurers did not break out certificate-related issues as a separate E&O statistical category. That changed when, according to one major E&O insurer, about 1 in 10–15 of **all** commercial lines E&O claims began to involve COIs and/or additional insured (AI) issues. At its peak in some states, one-fourth to one-third of all commercial lines claims involved COIs and related issues.

At that point, the Independent Insurance Agents and Brokers (IIABA), the nation's largest trade association of independent insurance agents, initiated a comprehensive education program for its member

agencies. Its first national webinar on this subject was presented to about 7,000 participants, and subsequent educational programs continued to have audiences of several hundred for each presentation. The result of this effort was a measurable reduction in the frequency of certificate-related E&O claims, but many of these issues have resurfaced in recent years, according to anecdotal information.

By line of insurance in commercial lines, for E&O claims involving certificates and/or AIs, CGL policies account for about 60 percent of all claims, while workers compensation accounts for about 15 percent. Property lines account for about two-thirds of all remaining claims, followed by auto insurance.

By type of error, about 40 percent of certificate and/or AI-related claims involve the failure to provide AI or loss payee status or having the wrong entity identified for coverage. About 30 percent of claims allege misrepresentation, most regarding statements made on the COI. The remaining claims are attributed in large part to either a failure to procure coverage required by contract or inaccurate reporting of policy status. The inaccurate reporting of policy status most commonly involved, asserting that a policy was in force that had actually terminated; the incidence of this type of error appears to be directly proportional to the size of the agency.

If you examine the source of all E&O claims and not just those involving COI and/or AI issues, about 90 percent of claims come from the named insured. In the case of COI and/or AI claims, though, only about 60 percent come from the insured. An agent is almost twice as likely to be sued by an insurer for E&O claims involving COIs and/or AIs. But the big difference involves claims from third parties. For all types of E&O claims, only about 1 claim in 25 comes from third parties, but for COI and/or AI claims, that number is 1 in 3.

In a white paper published by the IIABA, four reasons were cited for why COI-related E&O claims became so problematic.

- Increased demand for COI issuance
- Increased complexity of these demands and the contracts on which they're based
- Inadequate staff qualifications and training of both COI requestors and agents
- Inadequate procedures and quality control vigilance

Agents can fall into a routine with policyholders that frequently require certificates. In these situations, the agent may become careless in checking to make sure that the coverage hasn't changed or that the limit continues to be adequate for all contracts in which the insured engages.

Certificate Litigation and Case Law

Due to the legal disclaimers on Association for Cooperative Operations Research and Development (ACORD) forms, litigation based on erroneous certificate information has been largely unsuccessful when the lawsuit has been based on the premise that the COI constituted a contract between the certificate holder and the insurer or agent of the insurer. The most oft-cited case supporting the premise that a COI with appropriate disclaimers does not constitute a contract is *U.S. Pipe & Foundry Co. v. U.S. Fid. & Guar. Co.*[15]). A principal basis for this noncontractual conclusion is that no valuable consideration has been provided by the certificate holder for the COI. Under English law, a promise made without consideration is generally not enforceable, though exceptions are sometimes made under the principle of promissory estoppel, as discussed below.

Recovery has been more common under fraud laws (e.g., *Binyan Shel Chessed, Inc. v. Goldberger Ins. Brokerage, Inc.*,[16] and *Handley v. Providence Mut. Fire Ins. Co.*[17]), though some courts have found for certificate holders under the principle of promissory estoppel (detrimental reliance), especially where disclaimers are nonexistent, lacking, or have been altered. Promissory estoppel has been expressed as follows. "One who, in the course of his business, profession or employment, or in any transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care of competence in obtaining or communicating the information." That being said, most courts are believed to have interpreted ACORD disclaimers to also

preclude recovery on the basis of detrimental reliance.

In addition to claim frequency issues, the severity of COI claims can be significant, often being six figures and sometimes 7–8 figures or more. Consider the following examples.

- **$180,000 missing AI endorsement claim.** Several anecdotal studies were cited earlier that found that about 40 percent of certificates on file that showed AI status were incorrect and no such coverage was actually provided. A common mistake made by agency customer service representatives (CSRs) is to issue a certificate indicating AI status but then fail to order the AI endorsement. In this claim, the CSR put "Certificate Holder is hereby added as an AI as per contract" on the COI but forgot to order the endorsement from the insurer. There are also potential problems with making a statement like this on a COI, as discussed elsewhere in this course.
- **$445,000 blanket AI endorsement claim.** Most "blanket" or "automatic" AI endorsements or policy provisions are triggered when the insured enters into a *written* contract that requires AI status. In this case, there was no written contract in place at the time of the occurrence. As a side note, while some proprietary AI forms refer to "blanket" coverage, Insurance Services Office, Inc. (ISO), AI endorsements do not include the word "blanket" because it can be confused with the use of that common insurance term in other ways. ISO's CG 20 38, CG 20 39, and CG 20 40 endorsements use the word "automatic" rather than "blanket."
- **$10,290,000 nonexistent insurance policy claim.** An employee leasing firm leased employees to 4,000 businesses while providing workers compensation coverage for the leased workers. The workers comp policy nonrenewed, and the leasing firm's agent could not find another market. The leasing firm found an insurer rated C– by A.M. Best, but the insurer wouldn't issue certificates, and the agency wouldn't do business with any insurer rated less than B+. The leasing firm placed business directly with insurer; the agent, as a favor to his former customer, issued 4,000 certificates, not knowing that the deal fell through and coverage was never placed. Catastrophic injuries ensued, leading to a $20 million lawsuit and an E&O claim against the agent in excess of $10 million.
- **$150 million flood claim?** Following a catastrophic flood, an agency was sued for $150 million because that amount of flood coverage was shown on the COI despite the fact that substantially less coverage was available in a National Flood Insurance Program Special Flood Hazard Area, which was where the damage occurred. The claim is believed to have been settled out of court for an unknown amount.

As one can see, the potential E&O claim size of certificate-related claims can be substantial.

State Laws, Regulations, and Directives

Beginning shortly after the turn of the 21st century, largely through the local lobbying efforts of the Independent Insurance Agents and Brokers of America trade association's state affiliates, many states began to legislate certificate-specific laws. Other states chose to address certificate issues via regulation or the issuance of insurance department directives. Currently, the only US jurisdictions that have not specifically addressed COI issues by one of these methods are Alaska, Maine, South Carolina, Vermont, and the District of Columbia.

One of the earliest states to regulate COIs was Alabama. A new regulation required that all COIs include a statement that certificates cannot alter policy coverages. The law also mandated that non-ACORD and non-ISO certificates must be filed with the insurance department and that "Agent's Opinion Letters" were not permitted if they could be construed as a misrepresentation of policy terms. A potential penalty of up to a $10,000 fine and 1 year of imprisonment was introduced for *each* violation of the law.

Although Georgia codified its regulatory position later, it clarified the position by issuing an insurance department directive to all industry parties concerning what a COI could and could not do. Other states at this time legislated a solution statutorily, such as a Kansas law that mandated the filing and prior approval of COIs.

It should be noted that, while the vast majority of all states now specifically address COI issues by statute, regulation, or regulatory directive, other more general laws may also apply to COI issues, such as fraud and unfair trade practices laws and possibly the Uniform Commercial Code (UCC). For example, the National Association of Insurance Commissioners model fraud law includes in the definition of "fraudulent insurance act" the "issuance of written evidence of insurance," and these laws have been cited in COI litigation.

Use of ACORD forms is provided under license. ACORD forms are designed to be completed, not altered. Copyright law[18] provides for statutory penalties ranging from $200 to $150,000 per violation. Agents may be asked to issue ACORD forms that strike preprinted disclaimer or other language; that may possibly be a violation of federal copyright law, the ACORD licensing agreement, the agency/company agreement, and/or state statutes, regulations, or regulatory directives.

Some states require non-ACORD COIs to be filed. Many of these proprietary forms are essentially modified ACORD forms. According to ACORD, with regard to states that require COIs to be filed, "In these states, the text of ACORD's certificates cannot be modified, unless the modified form is filed for approval by the respective state Departments of Insurance." In addition to that regulatory issue, as mentioned earlier, ACORD forms are copyrighted, and any modified use may be subject to federal copyright law.

All non-ACORD forms should be referred to the insurer for at least three reasons. **First**, these forms typically refer to the "issuing company" or "issuing insurer." As the agent of an insurer, unilaterally issuing these forms could result in an E&O claim by the insurer against the agency for overstepping its authority under agency law. **Second**, nonpermissive issuance of such certificates likely violates the agency/company agreement or supporting underwriting requirements. **Third**, the agency exposes itself to a heightened E&O exposure to claims from insureds or third parties.

Agents may not have permission to issue all types of ACORD forms. For example, one insurer's agency/company agreement states,

> Your Business Authority and Commission Schedule from XYZ Insurance Company gives you the authority to issue standard and unaltered ACORD Certificates of Insurance for your business customers. Only standard and unaltered ACORD Forms 24 and 25 may be issued.

Later in the agency/company agreement, ACORD Forms 27 and 28 are expressly prohibited from being issued without insurer permission. It is essential that all agency staff members understand their discretion under each agency/company agreement, and this information should be kept up to date and communicated to all personnel.[19]

In the case of excess and surplus markets, retail agents may not have the authority to issue COIs. In such cases, the agent must request the COI from the insurer, managing general agent, or surplus lines broker. The agent's authority should be confirmed in writing.

Business Issues

Perhaps 100 million certificates are issued annually in the United States with processing costs possibly exceeding $1 billion for issuing agencies. This number does not include the costs incurred on the upstream side or monitoring and claims processing costs and litigation. One estimate is that the average multiline agency issues 30,000 to 40,000 certificates annually, the processing cost comprising at least 3–5 percent of agency commercial lines revenue. It is not unusual for a single contracting account to require 3,000 to 4,000 certificates annually.

One industry consultant has estimated that the average automated ACORD 25 certificate costs $7 to issue. One agency's internal study indicated that the cost to issue an ACORD 25 without addendums was $6.71. More complex requests, especially those that include supplemental questionnaires, may cost 25 times as much. This does not include time spent reviewing contracts for insureds, communications between the parties, or the cost to reissue certificates. Needless to say, the costs associated with COIs specifically and contract compliance generally are significant.

Unlike insurers that may increase premiums when expenses rise, agents have no way of passing along

these costs to their customers. As a result, some states permit agents, with consent and full disclosure to the insured, to charge fees for services not contemplated in the commission received on the account, just as a lender might charge for various processing fees. Or the agent might (attempt to) charge a third party for services such as a certificate requestor. Most agents do not charge a fee for issuing certificates, but some may have a sliding scale based on premium size where "X" number of COIs per year are issued free of charge for the insured, and then a per-certificate fee is charged.

Completion of even the simplest ACORD certificate has a cost associated with it. Multiply that cost by hundreds or thousands of certificates, and it's easy to see how this process can eat up the agency's commission. For more complex forms like the ACORD 28 or for agencies willing to provide more detailed coverage information upon request, a processing fee may be in order.

Lenders, in particular, are used to charging processing fees. The origination fee on a real property loan may be $2,000 or more. Closing a mortgage may require an appraisal, title search, inspections, recording fees, credit checks, etc., all fees lenders are used to paying third parties and passing along to mortgagers. Ongoing servicing fees may apply to loan advances, account statements, escrow payments for property taxes or insurance, and so forth.

In other words, again, lenders are used to paying and charging for processing fees, so certificate fees may be charged by agencies if permitted by law. Agencies that don't charge fees where otherwise permissible likely choose that route because certificate volumes are relatively small, customers are profitable, or competitive pressures suggest otherwise.

A related but unresolved issue has to do with whether charging a fee for a certificate constitutes consideration, thus giving credence to the premise that the certificate constitutes a contract. As discussed earlier, one of the reasons a COI is not considered a contract is because the requestor pays no specific consideration for the document. Paying a fee raises the question of whether this might make the COI a contract.

If a fee is not possible or appropriate, in some situations, the agency may elect to discontinue serving as the agent for a customer. One agency that cost-accounted a contractor that generated almost a fourth of the agency's premium volume "fired" the customer because the costs associated with the certificate process exceeded the commission income generated by the account. Although the customer reportedly offered to pay a fee to remain with the agency, state insurance regulations did not allow for such compensation.

As another example, a North Carolina agent serviced an account generating about $1,500 in annual commission income but requiring the issuing (and, all too often, the arguing of COI language with requestors) of about 400 certificates a year. They let the account go because the servicing costs exceeded the commission by a factor of at least 2–3:1.

Summary

The COI coverages and terms create a major E&O professional liability exposure for insurance agents. Over two-thirds of all such claims involve the failure to provide requested AI or loss payee status or claims of misrepresentation on COIs. An agent is about eight times as likely to be sued by someone other than an insured or insurer in certificate-related claims than other E&O claims. The vast majority of states impose legal constraints on all parties involved in the certificate process in addition to any contractual constraints under an agency/company agreement. However, if there are no legal constraints, whether and how a COI is processed is largely a business decision for an agency with substantial E&O limits.

Chapter 5
A Brief History of Nonstandard Certificates of Insurance

Overview

No one seems to know for sure when the first formal certificates of insurance (COIs) were issued, though there is documentation that certificates were used as early as the mid-1800s to evidence open cargo marine policies.

Chapter Objectives

Upon conclusion of this chapter, you should be able to

- identify the types of variations in COIs that occurred before industry-standard forms were introduced;
- identify the role of Association for Cooperative Operations Research and Development (ACORD) in standardizing COIs; and
- recognize the difference between ACORD and Insurance Services Office, Inc. (ISO), as standards organizations.

Before 1970

Certificate forms were largely proprietary to each insurer until the 1970s. Samples of such proprietary certificates include the following.

Sample Proprietary Certificates

1922—Employers Liability Insurance Company

This "Insurance Certificate" was issued on October 7, 1922, for "Workmen's Compensation Insurance" and a "Public Liability Policy," the latter policy being an early and much more limited version of what we refer to today as a commercial general liability (CGL) policy. The indicated bodily injury limits on the Public Liability Policy were $5,000/$10,000 per person/accident. The certificate stated that written notice of policy "cancellation or change" would be provided to the certificate holder without specifying the amount of notice to be provided. The certificate contained no disclaimers of any kind.

1930—United States Fidelity and Guaranty Company

This "Certificate of Insurance" was issued on August 23, 1930, for "Workmen's Compensation and Employer's Liability" and "Public Liability." The latter policy had limits of $5,000/$10,000 per person/accident. According to the certificate, "In the event of any material change in or cancellation of" the policies, the insurer "will make every effort to notify" the certificate holder, but the insurer "undertakes no responsibility by reason of any failure to do so." The amount of notice was not specified (nor was it required to be in writing), but note that this form did include a disclaimer with regard to the failure to notify.

1953—Indemnity Insurance Company of North America

This "Certificate of Insurance" was issued on January 1, 1953, for "Blanket Liability" involving a sidewalk elevator,[20] including contractual liability, with bodily injury limits of $200,000/$500,000 per person/accident and a property damage limit of $250,000 per accident. The certificate included 5 days' written notice of cancellation without a disclaimer for failure to notify within that time frame. But it did include a disclaimer that "Nothing herein contained shall vary, alter or extend any provision or condition of the policy *other than as above stated*." The "other than as above stated" reference could, for example, refer to all policy terms governing rights and obligations *except that* the rights of notice of cancellation are granted by the certificate even if not provided by the referenced policy. (More on the "other than as above stated" reference in the discussion to follow in Chapter 6.)

1969—United States Fire Insurance Company

This "Certificate of Insurance" was issued on June 13, 1969, for "Workmen's Compensation and Employer's Liability" and "*Comprehensive* General Liability Insurance," with the latter policy likely being an industry-standard precursor to the current CGL policy of ISO. The general liability policy provided bodily injury limits of $100,000/$300,000 per person/occurrence (note that "occurrence" had replaced "accident" and no aggregate bodily injury limit was included) and property damage limits of $50,000 per occurrence and $100,000 aggregate. According to the certificate, the insurer "will endeavor to give written notice" to the certificate holder, "but failure to give such notice shall impose no obligation or liability of any kind" on the insurer. The certificate itself required the agent to send the insurer a copy of the certificate for each policy listed. This issue will be discussed later.

After 1970: ACORD Standardization

In 1970, in an attempt to standardize various proprietary insurance processing forms, the Independent Insurance Agents and Brokers of America (IIABA),[21] the country's largest trade association of independent insurance agencies, along with a consortium of insurance companies, established a nonprofit organization called "ACORD." This acronym originally referred to the organization's initial name, Agent Company Operations Research and Development. But later, when ACORD became an independent organization, the name was changed to Association for Cooperative Operations Research and Development, retaining the "ACORD" acronym. Over time, ACORD also began developing electronic standards for forms and processes, including XML data standards. Among its many document standards are several "certification" forms, first introduced beginning in 1976, that are the subject of this course and discussed later.

ACORD versus ISO

Both ACORD and ISO draft advisory insurance industry forms. In fact, ISO has its own line of COIs, first introduced in 2003, though they reportedly rarely appear in the marketplace. The market for standardized *processing* forms such as COIs is dominated by ACORD.

On the other hand, ISO dominates the marketplace for industry-standard *policy* coverage forms, especially in commercial lines. ISO's main competitor is the American Association of Insurance Services (AAIS), especially when it comes to inland marine policy forms. The National Council on Compensation Insurance (NCCI) publishes standard workers compensation and employers liability policy forms. Aside from a discussion of some AI issues when dealing with COIs, the focus of this course is largely on ACORD *processing* forms and ISO *policy* forms.

For admitted insurers, policy forms usually must be at least filed with, if not approved before or after use by, state insurance regulators. The same is not always true for COIs, though many states now require the filing of certificates. It's important to note that the fact that a COI is filed does not mean that it is equivalent to a policy form; filing does not make it a policy form because the COI does not modify the policy in any way. This premise is supported by disclaimers in standardized COIs; by state statutes, regulations, and department of insurance directives; and usually by language in the policy forms themselves. These topics are also discussed later in this course.

Summary

Certificates, as addressed in this course, have been around for probably well over 100 years. Until 1970, there was no uniform standard, and the terms of proprietary COIs issued by insurers varied greatly. With the formation of ACORD and the introduction of industry-standard forms in the 1970s, certificate issuance became more efficient and consistent. By the end of the 1970s, ACORD was the dominant provider of standardized certificates and other *processing* forms, while ISO became the dominant standard setter for *policy* forms, though ISO does offer its own brand of certificate forms.

Chapter 6
Types of Certificates

Overview

While standard Association for Cooperative Operations Research and Development (ACORD) forms are the most widely used certificates of insurance (COIs) in the industry, nonstandard forms are also available. The general classifications of these forms are listed in this chapter. Specific issues with some of them are addressed in more detail elsewhere in this course.

Chapter Objectives

Upon conclusion of this chapter, you should be able to

- recognize the four types of COIs,
- identify the basic differences between a COI and a memorandum of insurance, and
- identify potential problems with various online certification systems.

Industry Standard Certificates

ACORD forms are generally recognized as the industry standard for "certifying" insurance coverages, both property and casualty and personal and commercial lines. ACORD forms include several disclaimers making it clear that the referenced policy forms are not modified in any way by the COI or the information on it. Courts have generally upheld these disclaimers, with some exceptions. ACORD forms, like many prior proprietary COIs, used to specify that the insurer would "endeavor to" provide notice of cancellation to the certificate holder, but that is no longer the case. A certificate holder is notified of cancellation, nonrenewal, coverage changes, etc., only if such notice is afforded by the referenced policy forms.

Modified Standard Certificates

A business partner may insist that an agent issue a certificate that appears to be an ACORD form but has been modified in some way. For example, the 1953 COI discussed in Chapter 5 included a disclaimer that "Nothing herein contained shall vary, alter or extend any provision or condition of the policy *other than*

as above stated." While, as is the case with current industry-standard ACORD forms, this COI appeared to assert that it did not modify the referenced policy, it implies that language on the certificate, preprinted or added by the completer, *could* modify the policy. The problem with this language on a COI is that it quite likely conflicts with policy language to the contrary and violates statutory or regulatory policy form filing requirements in most states. There are COIs in the marketplace that appear in every way (wording, type style and size, etc.) to be an ACORD form but may add 3–4 words that serve to make exceptions to the disclaimers in the ACORD form. A case in point on this issue is *Mountain Fuel Supply v. Reliance Ins. Co.*[22]

Proprietary Certificates

Some entities use their own COIs that are largely based on ACORD forms but may have different (or no) disclaimers; require notice of cancellation, nonrenewal, coverage changes, etc.; or have other verbiage that may be problematic. Aside from potential copyright issues with ACORD, such certificates may not comply with various state laws or regulations governing certificates of insurance. Agent errors and omissions (E&O) experts usually caution against completing any proprietary or modified ACORD forms when possible and to be wary of any mandated language that is being required on the COI or a supporting document. Completion of non-ACORD forms may be prohibited by agency/company agreements or insurer underwriting guidelines.

Manuscript Certificates

A manuscript certificate is basically a proprietary form created or modified for a particular entity. These certificates, like manuscripted *policy* forms, can potentially conflict with state laws or regulations. They also require considerable experience and drafting skill, something that may be lacking in the person drafting the form. Needless to say, the terms on a manuscripted certificate are more likely to benefit the parties involved in the drafting of the document than the insured, the agent, or the insurer.

Memoranda of Insurance

A memorandum, as opposed to a certificate, of insurance might be more akin to an auto insurance ID card or an Occupational Safety and Health Administration bulletin board notice than a traditional COI. Information is usually very limited, nonnegotiable, not personalized with information about the certificate holder, additional insureds, etc., and with no options for notice of changes such as cancellation and nonrenewal. A notable advantage of a memorandum of insurance is that it is usually available online 24/7 and can be updated immediately when warranted.

Online Certification Systems

Some entities, like government agencies, airport authorities, lenders, etc., that deal with hundreds or thousands of vendors and other parties, usually under contracts of various types, may elect to outsource certificate production, verification, and tracking. Because of the complexities of such systems and the E&O exposures they present to agents and insurers, they are discussed in greater detail in Chapter 10.

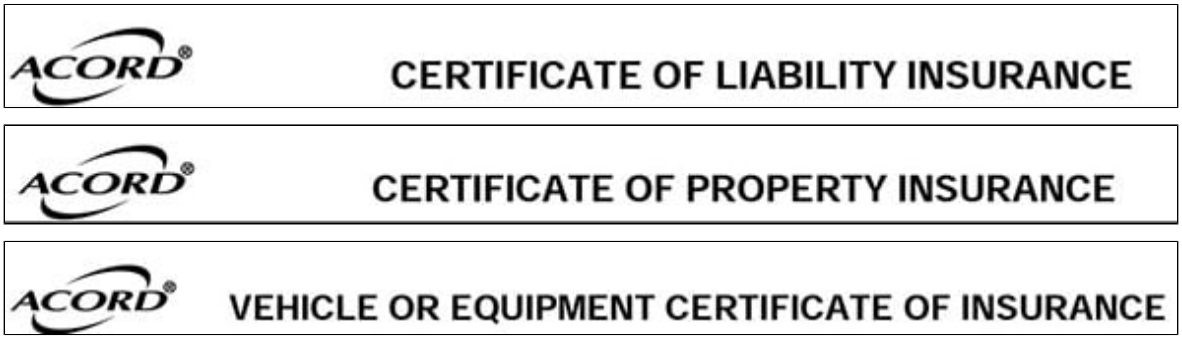
Most standard ACORD forms are electronically produced from policy details maintained in agency management systems. While far more efficient than the paper forms of the past, there are still significant costs and liabilities associated with the entire process that are explored elsewhere in this course. Also, be aware that new technologies such as blockchain are being explored as potentially providing far more efficient and reliable means of verifying insurance coverages.

Summary

COIs may be industry standard forms such as those from ACORD or Insurance Services Office, Inc., modified versions of those forms, proprietary forms drafted by certificate requestors, or manuscript forms negotiated for each contract. An alternative to a COI that may be acceptable to many parties is a memorandum of insurance. The greatest flexibility (and potentially danger) is often found in online certification systems that are discussed in Chapter 10.

Chapter 7
Types of ACORD Certificates

Overview



The current Association for Cooperative Operations Research and Development (ACORD) Forms Index includes the following "certificate" forms, all of which have an edition date of March 2016, except for the ACORD 26 (January 2002), which is rarely used today.

- ACORD 20   Certificate of Aviation Liability Insurance
- ACORD 21   Certificate of Aircraft Insurance
- ACORD 22   Intermodal Interchange Certificate of Insurance
- **ACORD 23   Vehicle or Equipment Certificate of Insurance**
- **ACORD 24   Certificate of Property Insurance**
- **ACORD 25   Certificate of Liability Insurance**
- ACORD 26   Policy Certification Log
- **ACORD 27   Evidence of Property Insurance**
- **ACORD 28   Evidence of Commercial Property Insurance**
- ACORD 29   Evidence of Flood Insurance
- ACORD 30   Certificate of Garage Insurance
- ACORD 31   Certificate of Marine/Energy Insurance

This chapter briefly discusses what are arguably the five most issued ACORD forms. The Appendix to this course includes copies of these five forms. Two things found in common among all of these forms are the use of disclaimers and the absence of policy termination notice.

Chapter Objectives

Upon conclusion of this chapter, you should be able to

- recognize the importance of certificate disclaimers,
- identify the different uses of the five most common ACORD certificate forms, and

- recognize the disclaimer language common to all ACORD certificates.

ACORD Form Disclaimers

Disclaimers are generally effective in preventing the information contained in a certificate from having a binding impact on insurers. For example, in *Taylor v. Kinsella*[23], the Second Circuit noted that, "[a]s a general rule, where a certificate or endorsement states expressly that it is subject to the terms and conditions of the policy, the language of the policy controls."

This rule, the court explained, derived from the principle that "the intent to incorporate additional papers into an insurance policy must be plainly manifest." If the certificate contains disclaimers, then what is "manifest" is an intent that the additional terms in the certificate should not be incorporated into the policy. Likewise, in *American Country Ins. Co. v. Kraemer Bros., Inc.*[24], the court stated,

> The presence or absence of ... a disclaimer on the certificate of insurance determines whether an insured may rest its coverage case on representations made in the certificate. If the certificate does not include a disclaimer, the insured may rely on representations made in the certificate.... If the certificate includes a disclaimer, the insured may not rely on representations made in the certificate but must look to the policy itself to determine the scope of coverage.

There are exceptions to this general consensus. Many of them arise from modifications of the preprinted certificate information or from statements added by the agent on the certificate that are deemed, under fundamental contract law, to supersede preprinted boilerplate language. In some cases, especially where disclaimers are missing or modified, the principle of promissory estoppel or detrimental reliance, as previously discussed, may apply.

So, while disclaimers are usually upheld by the courts, the use of modified or proprietary forms or the inclusion of misleading or misrepresenting verbiage by the agent may result in liability for the agent and/or insurer beyond the terms of the referenced policy forms, as found in *Bucon, Inc. v. Pennsylvania Mfg. Ass'n Ins. Co.*[25].

Another argument that a certificate holder may rely on a certificate of insurance (COI) is that the Uniform Commercial Code (UCC), often applicable in certain transactions such as the lease of equipment, may be relevant when assessing the reasonableness of a certificate holder's reliance on certificates issued in connection with transactions governed by the UCC. For example, UCC § 1,307 requires that "a … certificate of insurance … shall be prima facie evidence … of the facts stated in the document."

The best argument, though, that a certificate *cannot* modify the terms of a referenced insurance policy is the likely language in the policy itself or state statutes and regulations governing the filing of policy forms. If a certificate purports to amend, extend, or alter policy terms, it is essentially an endorsement. If it's an endorsement, then it must be filed with the state insurance department as a policy form if issued on behalf of an admitted insurer.

In addition, many policy forms themselves assert that documents not made a part of the insurance contract are, in fact, not part of the policy. For example, the Insurance Services Office, Inc., commercial package policy's IL 00 17—Common Policy Conditions form says,

> This policy contains all the agreements between you and us concerning the insurance afforded…. This policy's terms can be amended or waived only by endorsement by us and made a part of the policy.

In other words, only the insurer has the authority to amend policy coverages, not the agent and certainly not the agent via issuance of a COI. The agent is not a party to the insurance contract and has no such authority to modify the policy. Policy forms of admitted insurers usually must be filed with state insurance regulators. While certificates must be filed in some states before use, that does not make them part of the insurance contract.

ACORD 23—Vehicle or Equipment COI

When leasing or financing autos or mobile equipment, the lessor or finance company will usually require

documentation of coverage for physical damage and/or liability coverage to the vehicle or equipment. This form is intended for use only when the insurance policy(ies) covering the subject vehicle or equipment grant, by endorsement or policy condition, these additional interests notice of policy termination.

The additional interest may be an additional insured (AI), lender's loss payee, or loss payee. While the use of this form is based on the additional interest being entitled to notice of policy termination, such notice is not granted by the certificate but only by the policy itself, as this provision on the form indicates,

> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

This referral of the certificate holder to the policy form(s) for cancellation notice is found in all ACORD certificate and evidence forms.

The ACORD 23 is intended for use only to report coverages provided to a single specific vehicle or piece of equipment. If a policy extends *liability* coverage to multiple vehicles or equipment, the ACORD 25 form should be used to certify liability coverage.

This form includes two primary disclaimers.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

THIS IS TO CERTIFY THAT THE POLICY(IES) OF INSURANCE LISTED BELOW HAS/HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD(S) INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICY(IES) DESCRIBED HEREIN IS/ARE SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICY(IES).

These disclaimers appear virtually verbatim in all ACORD certificate and evidence forms. Together they essentially say the following.

- This certificate is informational only.
- It confers no rights, contractual or otherwise, upon the certificate holder.
- It does not modify the referenced policy form(s) in any way nor extend coverage beyond that which is provided by the policy form(s).
- The insurance afforded by the referenced policy(ies) is not subject to any contractual or other requirements, terms, or conditions of any document(s) other than the policy(ies).

In other words, the issuance of this certificate should not impose any obligations or liabilities on the issuer, insurer, or insured beyond that specified by the referenced insurance policy(ies).

ACORD 24—Certificate of Property Insurance

This form is issued to an entity that wants to verify that property coverage exists, but the entity has no direct interest in the property itself. Examples include evidence required by condominium association documents and lease agreements.

If the requestor has a verifiable insurable interest in the policy (e.g., a mortgagee, lienholder, or other lender), an “Evidence of Insurance” form should be used rather than this certificate. In that case, the appropriate forms to be issued, according to ACORD, are either the ACORD 27 for personal lines and small commercial policies or the ACORD 28 for commercial lines policies if the requestor requires more detailed information.

Which form is issued may be governed by an agency/company agreement or related underwriting guidelines. Some insurers, for example, allow agents to issue ACORD 24 and 25 forms but require them to refer ACORD 27 and 28 forms to the underwriter. Such restrictions likely date back to the day when the ACORD 27 and 28 included cancellation notice provisions and other verbiage that arguably made them more legally actionable than is the case today.

If the requestor of auto or equipment physical damage coverage information is the owner of a leased motor vehicle or a lender on the subject vehicle and information is required for both liability and physical damage coverages, the ACORD 23 should be used.

Like the ACORD 23, this form includes two primary disclaimers and a cancellation notice almost identical to the ACORD 23.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAS/HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

These disclaimers together essentially say the following.

- This certificate is informational only.
- It confers no rights, contractual or otherwise, upon the certificate holder.
- It does not modify the referenced policy forms in any way nor extend coverage beyond that which is provided by the policy forms.
- The insurance afforded by the referenced policies is not subject to any contractual or other requirements, terms, or conditions of any document(s) other than the policies.
- The limits shown on the certificate are essentially those shown on the policy declarations page and may have been reduced by paid claims.

In other words, the issuance of this certificate should not impose any obligations or liabilities on the issuer, insurer, or insured beyond that specified by the referenced insurance policies.

ACORD 25—Certificate of Liability Insurance

The ACORD 25 is perhaps the certificate most subject to controversy and litigation. The purpose of the form is to provide information to the requestor regarding liability insurance that is in force at the time of certificate issuance. As the content of the certificate implies, the ACORD 25 is used predominantly in commercial lines, especially in the construction industry and lessor/lessee situations.

ACORD has no true certificate of liability insurance for personal lines. At one time, a personal lines version of the ACORD 25 was considered by an ACORD working group, but no consensus could be reached on form or content. Given the complexities and costs of administering certificates in commercial lines, especially the expertise required to review the contracts that often initiate the requests for insurance coverage information, the consensus was that the use of a personal lines certificate was impractical, enhanced the potential legal liability of agents, and was economically unfeasible given the narrow commission margins in personal lines.

Similar to the ACORD 24, if the requestor of auto or equipment liability coverage information is the owner of a leased motor vehicle or a lender on the subject vehicle and information is required for both liability and physical damage coverages, the ACORD 23 should be used.

The ACORD 25 form includes the following disclaimers identical to those in the ACORD 24 certificate.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAS/HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

In addition to the statements above, the ACORD 25 includes the following cautions about AI status and waivers of subrogation.

> IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

These disclaimers together essentially say the following.

- This certificate is informational only.
- It confers no rights, contractual or otherwise, upon the certificate holder.
- It does not modify the referenced policy forms in any way nor extend coverage beyond that which is provided by the policy forms.
- The insurance afforded by the referenced policies is not subject to any contractual or other requirements, terms, or conditions of any document(s) other than the policies.
- The limits shown on the certificate are essentially those shown on the policy declarations page and may have been reduced by paid claims.
- AI status and waivers of subrogation are afforded only by the specific terms and conditions of the policy forms, not by this certificate.

In other words, the issuance of this certificate should not impose any obligations or liabilities on the issuer, insurer, or insured beyond that specified by the referenced insurance policies.

Because the ACORD 25 is believed by many to be the most misunderstood and litigated ACORD form, it will be discussed in much greater depth later in this course.

ACORD 27—Evidence of Property Insurance

In contrast to the ACORD 24, which is issued to an entity that wants to verify that property coverage exists but has no direct insurable interest in the property itself, the ACORD 27, introduced in 1993, is used to respond to requests from mortgagees and loss payees who are financing purchases of residential property, personal property, or small commercial properties and identified as such in the property insurance policies. These entities want to ensure that the real or personal property securing loans is adequately insured so that the property can be repaired or replaced if destroyed.

These entities are referred to as “additional interests” rather than “certificate holders” because they have an insurable interest in the property. The rights and obligations of these parties are specified in the policy forms under mortgage clauses, loss payee endorsements, AI provisions, etc.

The ACORD 27 may also be used as evidence of physical damage coverage for loss payees under a personal auto loan. However, if the requestor of auto or equipment physical damage coverage information is the owner of a leased motor vehicle or a lender on the subject vehicle and information is required for both liability and physical damage coverages, the ACORD 23 is recommended.

The ACORD 28 serves a similar purpose for larger or more complex commercial properties where greater coverage detail is required. The ACORD 27, unlike the ACORD 28, contains very few specific preprinted information fields regarding the coverage provided by the policy forms, even less than the ACORD 24 COI. Two main fields, “COVERAGE INFORMATION” and “REMARKS,” allow as little or as much information to be included as reasonably needed to satisfy the additional interest. This provides for great flexibility, but it also affords an opportunity for the issuer to enter information that could be construed as misrepresentative of the policy terms or worse. For this reason, agents completing this form must be very careful in what they say and how they say it.

This form includes the following disclaimers, which serve the same purpose as the disclaimers in the ACORD 24.

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

Prior to July 2006, both the ACORD 27 and ACORD 28, unlike the ACORD 24 and ACORD 25, were believed by some to convey certain rights to the holder, including notice of cancellation, according to many lending institutions and organizations. However, the insurance industry largely argued that these forms conveyed no additional rights under prior edition dates beyond those granted by the referenced policy form(s), and the purpose of the 2006 ACORD revisions was to clarify this. For example, the prior ACORD 27 disclaimer said,

THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY.

According to the insurance industry, even under earlier form editions, the ACORD 27 was clear that it only extended rights and privileges "afforded under the policy." Since July 2006, by explicit disclaimer language, none of these forms convey any rights to the holder not provided by the referenced policy form(s).

The current disclaimers together essentially say the following.

- This evidence of insurance form is informational only.
- It confers no rights, contractual or otherwise, upon the additional interest identified on the form.
- It does not modify the referenced policy forms in any way nor extend coverage beyond that which is provided by the policy forms.
- The insurance afforded by the referenced policies is not subject to any contractual or other requirements, terms, or conditions of any document(s) other than the policies.
- The limits shown on the evidence form are essentially those shown on the policy declarations page and may have been reduced by paid claims.

In other words, the issuance of this evidence form should not impose any obligations or liabilities on the issuer, insurer, or insured beyond that specified by the referenced insurance policies.

ACORD 28—Evidence of Commercial Property Insurance

In contrast to the ACORD 24, which is issued to an entity that wants to verify that property coverage exists but has no direct interest in the property itself, the ACORD 28 is used to respond to requests from mortgagees and loss payees who are financing purchases of larger commercial properties, both real and business personal property. The ACORD 28 was introduced in 2004 after consultation with the Mortgage Bankers Association, Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), and other interested parties,

As with the ACORD 27, these entities are referred to as "additional interests" rather than "certificate holders" because they have an insurable interest in the property. The rights and obligations of these parties are specified in the policy forms under mortgage clauses, loss payee endorsements, AI provisions, etc.

The ACORD 27 serves a similar purpose for residential and smaller commercial properties, but the ACORD 28, unlike the ACORD 27, contains extensive and very specific information fields regarding the coverage provided by the policy forms.

This form includes the following disclaimers, which serve the same purpose as the disclaimers in the ACORD 24.

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

These disclaimers together essentially say the following.

- This evidence of insurance form is informational only.
- It confers no rights, contractual or otherwise, upon the additional interest identified on the form.
- It does not modify the referenced policy forms in any way nor extend coverage beyond that which is provided by the policy forms.
- The insurance afforded by the referenced policies is not subject to any contractual or other requirements, terms, or conditions of any document(s) other than the policies.
- The limits shown on the evidence form are essentially those shown on the policy declarations page and may have been reduced by paid claims.

In other words, the issuance of this evidence form should not impose any obligations or liabilities on the issuer, insurer, or insured beyond that specified by the referenced insurance policies.

Keep in mind that, just as the ACORD 25 should only include information on *liability* coverages, the ACORD 24, 27, and 28 should only include information on *property* coverages. For example, an agency customer service representative issued an ACORD 27 that included information about the insurance on the building, equipment breakdown, a fidelity bond, directors and officers, commercial general liability (CGL), auto, workers compensation, and umbrella coverage. This might imply in the mind of a certificate holder that these policy forms include first-party property coverage.

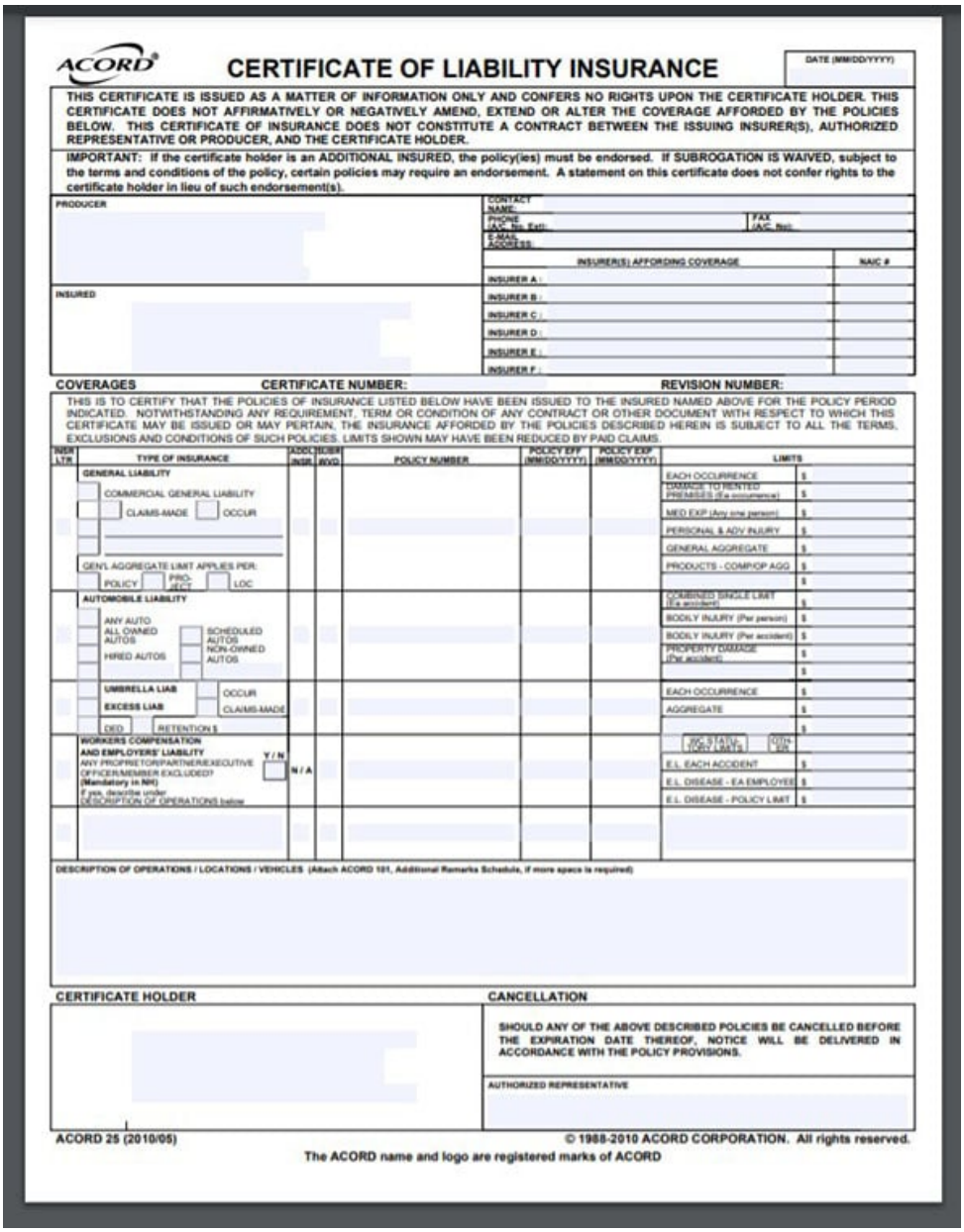
Summary

ACORD offers about a dozen certificate forms, of which perhaps five are the most commonly used. When sued for alleged misinformation on an ACORD COI, agents prevail most of the time because (1) the certificate is not a contract, and (2) courts usually uphold the disclaimer language on ACORD forms. In cases where the plaintiff prevails, it is most likely on the basis of fraud or, sometimes, promissory estoppel (detrimental reliance), and, of course, the agent may be subject to regulatory penalties under the law, including fines and incarceration.

Needless to say, agents should never issue an ACORD form where the disclaimers have been modified or removed, and all non-ACORD forms should be referred to the insurance company.

Chapter 8
History of the ACORD 25

Overview



ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A :	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE $
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) $
	CLAIMS-MADE OCCUR						MED EXP (Any one person) $
							PERSONAL & ADV INJURY $
							GENERAL AGGREGATE $
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG $
	POLICY PRO-JECT LOC						$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) $
	ANY AUTO						BODILY INJURY (Per person) $
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident) $
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident) $
							$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE $
	EXCESS LIAB CLAIMS-MADE						AGGREGATE $
	DED RETENTION $						$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						WC STATU-TORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N / A						E.L. EACH ACCIDENT $
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE $
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2010/05)

The Association for Cooperative Operations Research and Development (ACORD) 25 is likely the most often issued certificate form and probably the most litigated. The ACORD 25 was researched and developed in 1976 and introduced with a publication date of November 1977. To date, the ACORD 25 edition dates are as follows.

- November 1977
- January 1979
- February 1984
- August 1984
- November 1985
- March 1988
- November 1989
- July 1990
- March 1993
- January 1995
- July 1997
- August 2001
- January 2009
- September 2009
- May 2010
- January 2014
- March 2016

The following details the most significant changes in this form since its introduction almost a half century ago.

Chapter Objectives

Upon conclusion of this chapter, you should be able to recognize how the following components of the ACORD 25 form evolved.

- Disclaimers and certifications
- Description of operations field
- Cancellation field

Milestone Changes in the ACORD 25—Disclaimers

In the original November 1977 ACORD 25, the only disclaimer regarding coverages said,

> THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES LISTED BELOW.

The language of this disclaimer has continued almost verbatim on all subsequent editions of the ACORD 25. In addition, the 1977 form had a disclaimer regarding the cancellation provision discussed below.

In July 1997, a second page was added to the ACORD 25 that included a statement about additional insureds (AIs) and specifically asserting that the certificate of insurance (COI) does not constitute a contract between any of the parties. The disclaimer read,

> The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

In September 2009, the second page of the ACORD 25 was removed, and the contract, AI, and subrogation disclaimers were moved to the top of the first page. The first revised and expanded disclaimer says,

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S) AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

The second disclaimer says,

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s). If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Milestone Changes in the ACORD 25—Certification

The original November 1977 ACORD 25 included a “certification” that said,

This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time.

In January 1979, a disclaimer was added to the prior “certification” wording as follows.

This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

In February 1984, to make the disclaimer more prominent, the language was printed in all caps.

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE AND ARE IN FORCE AT THIS TIME. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

In March 1988, cautionary wording was added to the end of the above disclaimer to recognize that limits may have been reduced from the declared limits shown on the COI. The newly worded language became

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE AND ARE IN FORCE AT THIS TIME. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

In July 1997, the “THIS IS TO CERTIFY THAT” language was removed, and the reduction of limits by paid claims language was revised to refer specifically to aggregate limits. The new language in its entirety said,

POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE AND ARE IN FORCE AT THIS TIME. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

In September 2009, the changes made in July 1997 were all removed, and the language of this disclaimer reverted back to the language that existed from March 1988 until July 1997.

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE AND ARE IN FORCE AT THIS TIME. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Milestone Changes in the ACORD 25—Types of Insurance

The original November 1977 ACORD 25 included fields for general liability, auto liability, excess liability, workers compensation and employers' liability, and "other" types of liability insurance. Within the general liability category, coverage could be further delineated by whether the comprehensive form was used, only premises/operations, products/completed operations, broad form property damage, and other sublines available at that time.

In November 1985, following Insurance Services Office, Inc. (ISO)'s "Simplification" project, which completely overhauled its commercial lines forms, rules, and rating methodologies, the information under the general liability and auto liability categories was revised to reflect changes such as the name of the ISO CGL policy from "Comprehensive General Liability" to "Commercial General Liability" and the introduction of a claims-made CGL policy.

In March 1993, checkboxes were added to indicate whether sole proprietors, partners, or executive officers were included or excluded under the workers compensation policy.

In July 1997, checkboxes were added to indicate aggregate limits for the entire policy or per project or location. Boxes were added in the excess liability section to indicate occurrence versus claims-made forms and the existence of a deductible or self-insured retention limit. The checkboxes for workers compensation inclusion/exclusion for proprietors, partners, and executive officers were (perhaps inadvertently) removed.

In August 2001, the question of whether a proprietor, partner, or executive officer was covered for workers compensation was reinstated with directions to reply in the SPECIAL PROVISIONS section of the "Description of Operations" field.

In September 2009, columns were added to indicate AI and subrogation waivers for each relevant type of insurance listed.

Milestone Changes in the ACORD 25—Description of Operations

The original November 1977 ACORD 25 included a relatively small area on the form for "DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES."

In February 1984, the prior description of this field was expanded to say, "DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS." This was to allow additional explanatory information that might be requested.

In November 1985, the word "RESTRICTIONS" was added to update the title of this field to "DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS."

In November 1989, the "RESTRICTIONS" wording was removed, reverting the title of this field back to its name in 1984.

In July 1997, the prior "RESTRICTIONS" language was effectively restored by allowing for the indication of exclusionary endorsements: "DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS."

In September 2009, references to exclusionary endorsements and special provisions were removed so that the field title reverted to the original November 1977 form language, though an allowance was made to

attach an ACORD 101 form to provide any additional requested information agreed to by the parties. This field was retitled “DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (Attach ACORD 1010, Additional Remarks Schedule, if more space is required)”.

Milestone Changes in the ACORD 25—Notice of Cancellation

The original November 1977 ACORD 25 provided for notice of cancellation by stating,

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail _____ days written notice to the below named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

As we saw in a prior discussion, as early as 1922, certificates indicated that cancellation notice would be provided. But, as the sheer number of requests for coverage certification exploded in the 1980s, the ability to provide such notice became an activity insurers no longer wanted to assume. As a matter of ethics, if not practicality, the reality was that increasingly few insurers "endeavored to" provide notice of cancellation, and it was felt that this language was inappropriate and possibly misrepresentative.

This language was slightly revised in February 1984 for cosmetic changes in the form (e.g., referring to the certificate holder on the "left" rather than "below") and the disclaimer was extended to agents and representatives of the insurance company. In addition, to make the disclaimer more prominent, it was printed in all caps.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

In September 2009, the cancellation provision on the ACORD 25 was effectively removed, and the certificate holder was referred to the policy forms for its rights, if any, regarding notice of policy termination. The new statement said (and continues to say),

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

The industry argument for this practice, beyond the issue of practicality, was that cancellation involves the dissolution of a contract, and only parties that have a contractual right of cancellation notice, such as named insureds (first named insureds in the case of many commercial policy forms), mortgagees, and loss payees should be afforded this contractual privilege.

A related issue was that, in the absence of insurers providing cancellation notice to certificate holders, many agents would voluntarily undertake this responsibility despite the COI's statement that "the issuing company" (not the agent) would endeavor to provide notice. Errors and omissions (E&O) insurance providers universally recommended that agents not provide notice of cancellation since that is a contractual right between the parties to the contract, the insured and insurer, not the agent.

Finally, for decades, it was a common practice for agents to provide copies of all issued COIs to the referenced insurer(s). Once the notice of cancellation provision on ACORD certificates was removed, leaving only a reference to cancellation rights under the referenced policy(ies), many insurers felt there was no longer a need to receive copies of COIs. However, E&O insurers still recommend that this practice be continued by agents, and the rationale for this is discussed later in this course.

Milestone Changes in the ACORD 25—Page 2 Added and Deleted

In July 1997, a box was added above the certificate holder field to indicate AI status. A second page was added to the ACORD 25 that included an "IMPORTANT" statement regarding AI status, as well as waivers of subrogation.

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s). If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

In September 2009, the AI box on the first page of the ACORD 25 was deleted, and the second page was also removed and the information on that page incorporated into various sections of the first page of the form, as outlined above. The reason for this was alleged to be that the second page of the form was often omitted in error, resulting in a lack of important disclaimer language.

Summary

Between 1977 and 2009, ACORD 25 disclaimers were broadened to assert that the certificate was not a contract and that AI status and subrogation waiver were not extended by issuance of the COI alone and might require endorsement. Similarly, the "certification" statement was expanded to reiterate that the information on the form was subject to the terms, exclusions, and conditions of the referenced policies and that aggregate limits could have been reduced by paid claims. During that time, various information changes were made regarding the types of insurance provided. In the cancellation field, the most important change was made in 2009, when any notice of cancellation was subject to that provided by the policy, not the certificate.

Chapter 9
ACORD 25 Issues

Overview

Given that probably more questions arise from the Association for Cooperative Operations Research and Development (ACORD) 25 than any other ACORD form, the following is a discussion of issues involving the major sections of the form. In many cases, routine questions about what should be entered in a particular field can be answered by consulting the ACORD Forms Instruction Guide (FIG) for that ACORD form. Therefore, this section leads off with a discussion of the FIG and then addresses specific issues that often arise regarding various fields on the ACORD 25. In the subsequent section, more general certificate issues will be covered.

Chapter Objectives

Upon conclusion of this chapter, you should be able to

- recognize the importance and value of the ACORD FIG;
- identify potential problems with the information provided regarding additional insured (AI) status;
- recognize that waivers of subrogation may require an endorsement;
- recognize the importance of showing policy limits on the certificate, even if greater than any minimum limits provided by a contract between the insured and certificate holder or others;
- recognize, in a broad sense, what verbiage should or should not be included in the Description of Operations field and why; and
- recognize that notice of cancellation is a right that can only be granted by the insurance contract, not a certificate of insurance (COI).

ACORD FIG

At one time, ACORD published a very large document that included instructions for every ACORD form. Referred to as the "FIG" (Forms Instruction Guide), its biggest deficiency was that, any time a single ACORD form was modified, the entire FIG had to be revised. As a result, ACORD began to publish a separate FIG for each ACORD form. These FIGs are available, along with sample forms, free of charge

from ACORD, though one must be a subscriber to access them.

Many agent errors and omissions (E&O) experts recommend that ACORD's FIGs be included in the agency's written procedures manual, if only by reference, to improve consistency in the issuance of ACORD forms. Another value is that, if a certificate requestor asks an agent to place certain information in a particular field, the agent can point to the FIG and the agency's procedures manual as the basis for declining such requests if the agency deems it inappropriate.

As noted earlier and below, ACORD certificates include several disclaimers. That is also true of ACORD's FIGs. An example follows.

> Agents or brokers should not change any provision on this form without prior consent of the issuing company. The ACORD Certificate should be issued only in compliance with company instructions. ACORD recommends that the Certificate NOT be used in the following situations:
>
> - To waive rights
> - To quote wording from a contract (some state laws prohibit as well)
> - To attach to an endorsement (but sending an endorsement is OK)
> - To quote any wording which amends a policy unless the policy itself has been amended

These instructions apply to both admitted and nonadmitted insurers. Agents often have far less, if any, authority to issue certificates on behalf of a surplus lines insurer or its excess and surplus broker.

Often, certificate requestors will provide a sample ACORD 25 form that indicates how they want the form to be completed. It is recommended that the sample form be reviewed very carefully so that it follows, as closely as possible, the FIG for this form and that the potential liability caveats discussed in this course are carefully considered.

With these caveats in mind, specific ACORD 25 entry fields are addressed in the following discussion.

Types of Insurance

Once again, the ACORD 25 is used to certify liability coverages only, not property, inland marine, etc. It is not unusual to see an ACORD 25 issued on behalf of a contractor that includes a builders risk installation floater and an inland marine equipment policy, implying that these provide liability coverage. It's clearly less work to place all contractually required insurance on one certificate, but that's not what these standardized forms are designed to do.

Types of Insurance—Automobile Liability

Be wary of sample ACORD forms that improperly indicate how to complete this field. Most likely, the requestor has not reviewed the FIG for this form and, as a result, in the case of auto liability coverage being required for owned, hired, and nonowned autos, their sample form shows checkmarks for something like "Any Auto," "Owned Autos Only," "Hired Autos Only," and "Non-Owned Autos Only." If liability coverage is provided in accordance with Insurance Services Office, Inc. (ISO), rules by symbol 1, only the "Any Auto" checkbox needs to be completed.

Types of Insurance—AI Column

The first point to be made here is represented by the second disclaimer on the ACORD 25: "IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed." As suggested below and later in this course, it is often a good idea to provide a copy of the actual AI endorsement to the AI.

Given the number of E&O claims and lawsuits involving AIs, this is one of the most important fields on the ACORD 25. It is common for ACORD 25 requestors to insist on more than just a checkmark to

indicate AI status. Requestors may want the names of specific entities and a declarative statement that such entities *are* AIs, along with other verbiage that may be inappropriate.

For example, the requestor may want the certificate to state verbatim that "XYZ and its [insert various entities here such as officers, employees, agents, etc.] are additional insureds **as per construction contract**." The contract that governs AI status is the insurance contract, not the construction contract. While it's best, from an agent E&O standpoint, to not include any explanatory verbiage regarding AI status, if the agent decides to do so, superior phrasing in this example would likely be something like "as per *insurance* contract" rather than "as per *construction* contract." Then include a copy of the AI endorsement or policy provision. The reason for this is discussed later in this course.

Sometimes AI certificate verbiage exceeds what the underwriter is willing to permit. For example, consider the following language that was requested to appear verbatim on an ACORD 25.

> XYZ Catering, Inc. (d/b/a XYZ Creations), ABC Sports & Entertainment LLC, ABC Holdings LP, the DEF Center, their respective principals, members, officials, officers, directors, shareholders, employees, and agents, their respective parent and affiliate companies and their respective Successors or Assigns as now or hereafter may be constituted and the Centennial Authority, the City of Raleigh, North Carolina, the State of North Carolina and their departments, divisions, commissions, and boards and their respective principals, members, officials, officers, directors, shareholders, employees, and agents have been named as additionally insureds under said policy with respect to any legal liability arising out of the Licensee's performance hereunder.

This language would appear to include as AIs everyone in the state of North Carolina. The contract in question was identical for all vendors at a convention center event, in this case for a hot dog vendor with a pushcart.

Again, be wary of elaborating about AI coverage. While ISO AI endorsement language dominates the marketplace, many insurers use proprietary forms or modify ISO forms. For example, as discussed earlier, most contracts calling for AI status presume that such coverage is provided for the direct liability of the AI, although many non-ISO AI forms extend only vicarious liability, and that fact is not always obvious from a cursory reading of the form. The problem is that many of these forms don't use the wording "vicarious liability." For example, consider the following four non-ISO AI endorsements.

- Coverage is provided "… only to the extent that 'additional insured' is being held responsible for the acts, omissions and/or negligence of the 'named insured.'"
- "The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization."
- "The coverage afforded hereunder is limited to imputed liability resulting solely from the conduct of the named insured for which the additional insured is held responsible and liable."
- "The coverage afforded to the additional insured is limited solely to the additional insured's **'vicarious liability'** that is a specific and direct result of your conduct."

Note that all of these forms extend AI status only for the AI's vicarious liability, though only one of the forms uses that language. The use of such forms might place the insured in breach of contract, but how many agents would be aware of the limitations in such endorsements?

Other AI endorsements include exclusions for certain liabilities—for example, claims based on negligent supervision. Some only provide excess coverage over the insured's policy, not the primary and noncontributory coverage universally requested in contracts. Others may include defense within limits. Automatic or "blanket" AI endorsements typically are triggered only by written contracts with the proper wording.

The bottom line is, if an Additional Insured field is checked on the ACORD 25, what does that tell you about AI status? Not much. The only way to know with reasonable reliability whether an entity is an AI is to review the policy language to see if it complies with the insurance requirements in the contract between the insured and certificate holder.

Types of Insurance—Subrogation Waivers Column

Sometimes an insurer will pay a claim or suit against an insured, though another party is legally at fault. Many policies grant the insurer a right of subrogation against another negligent party to recover what was paid under a policy on behalf of an insured. To avoid the possibility of subrogation claims from a downstream party, the contract may require that the downstream party's policy include a waiver of subrogation. Although some contracts, especially leases, include a mutual waiver of subrogation, one-sided waivers are more common when the subject policy is general liability, auto, or workers compensation.

As for AI status, the ACORD 25 includes a disclaimer that advises that certain policies may require an endorsement to waive subrogation. ISO CGL, business auto, and commercial property coverage forms grant waivers of subrogation if done prior to loss. In the case of commercial property, such waiver must be in writing. A workers compensation policy in most states, under National Council on Compensation Insurance rules, requires that subrogation be waived by endorsement, and optional endorsements also exist in ISO's CGL and business auto programs.

It is generally accepted that insurers cannot subrogate against their own insureds except in rare instances like intentional losses. Thus, AI status possibly grants some degree of protection from subrogation after loss. However, to fully comply with some contractual requirements, a specific waiver is recommended. In addition, AI status doesn't necessarily preclude subrogation against the AI such that a specific waiver of subrogation is not needed. The waiver prohibits a broader right of recovery. There may be no coverage for the AI under the AI endorsement for the type of claim (e.g., completed versus ongoing operations), and a loss may exceed the limits available to the AI.

Finally, be sure to follow any state laws dealing with subrogation that may call for attachment of an endorsement.

Limits—General Comments

First, note that the ACORD 25 includes a disclaimer that limits, especially aggregate limits, may have been reduced by paid claims. The agent may not be aware of this. Second, avoid adding any language on the certificate related to limits. The following is an example of an actual statement required to be added to an ACORD 25 that was impractical and likely impossible.

> *For those policies containing an aggregate, as soon as loss activity (paid **or reserved**) depletes the aggregate by 50% or more, written notice must be sent to the Contractor by certified mail.* [***Emphasis** added.]*

Agents are best advised to be vigilant about mandates like this and others discussed in this course.

Limits—Certificate versus Policy Limits

Perhaps the most common question about certificate limits is whether the entire limit available on a policy must be shown on the certificate if the insurance requirements in the contract into which the insured has entered are less than that amount. For example, an insured contractor has gotten a job where the insurance requirements include "not less than" $1 million in commercial general liability (CGL) coverage. Your insured has a $2 million CGL occurrence limit. He doesn't want the other party to know how much insurance he has, so he asks you to issue the certificate showing a $1 million limit, the minimum required by the contract. So, what do you show on the certificate, $1 million or $2 million?

The ACORD FIG says,

> Enter limits corresponding to those found on the policy declarations page.

Therefore, the intent of the ACORD certificate is obviously to show the actual policy limits, regardless of what the construction contract calls for and despite the fact that, under the current edition of ISO AI endorsements, the AI may only be entitled to the contract limits.

In addition, keep in mind that the ACORD 25 is certifying what coverage is available to the *insured*, not

necessarily to another party such as an AI. And, while the contract may specify a minimum insurance limit, it usually also has an unlimited indemnity agreement making the insured responsible for indemnification that may not be covered or adequately covered by insurance.

The construction contract asks for proof that the contractor has at least a $1 million insurance limit. Therefore, do you comply with the literal reading of the certificate (and ACORD instructions) and show the actual policy limits, maybe providing more information that the insured would want the contracting party to know? Or do you adhere to the perceived spirit of the construction contract by only advising that the insured has the minimal limits required?

As an aside, while the current editions of ISO AI endorsements say that an AI is entitled only to the lesser of the policy limit or contractual insurance requirement, many contracts today are being written to require an amount of insurance "at least equal" to or "no less than" the limit provided by the policy in an attempt to overcome this limitation.

Limits—CGL Damage to Rented Premises

Leases typically make tenants responsible for damage to rented premises. Decades ago, this requirement was often limited to fire damage to rented premises. As a result, to avoid having to purchase separate coverage for damage to rented real property, most CGL policies added an option for "fire damage legal liability" coverage.

However, today, most leases hold the tenant responsible for damage to rented premises for almost anything beyond normal wear and tear, and this liability is often imposed without regard to fault of the tenant. For example, if a vandal breaks a large plate glass window, the tenant may be held responsible for the damage under the lease. For this reason, CGL coverage only for fire damage is of relatively little value by itself. Fortunately, ISO and insurers have other ways to cover this exposure.

Where this provision is often abused is when the insured is a contractor or service provider and not a tenant. For example, one contract with a paving company hired to repaint lines in a strip shopping center parking lot required a $500,000 limit of insurance for damage to rented premises. Why would a contract have a requirement like this? Likely because the individual drafting the insurance requirements doesn't understand what "Damage to Rented Premises" means. Quite possibly, the drafter of this contract was the same individual who drafted the leases for the tenants and included this requirement simply because it was included in the leases.

An astute agent should catch unreasonable requests like this and accept them as opportunities to educate upstream parties.

Description of Operations

This field is probably the most "abused" of all fields on the ACORD 25. When superfluous comments are requested or demanded to be added to the ACORD 25, the contract usually specifies this field as the place for such verbiage. So, what commentary can be entered in the Description of Operations (DOO) field of the ACORD 25?

Generally speaking, if what you're being asked to show in the DOO field is not illegal (a violation of insurance or other laws, regulations, or regulatory directives), **and** it's not a violation of your agency/company agreement (you have permission from the insurer to enter that language on their behalf), **and** it does not misrepresent policy coverages, limits, and terms, you can put anything you're asked on the certificate and assume any potential liability as a business risk hopefully covered by your E&O policy.

Keep in mind that the right to do something doesn't mean that doing it is right, but, again, that's a business decision made daily by agents on a case-by-case basis. The ACORD FIG recommends that a certificate not be used "[t]o quote wording from a contract," and adverse case law against agents supports the suggestion that certificate verbiage be kept to a minimum.

Specifically, regarding the DOO field, the ACORD 25 preprinted language says that this field is used to provide a description of operations, location, and vehicle information. If space is inadequate, the ACORD 101 Additional Remarks Schedule can be added. The ACORD 25 FIG says,

As used here, records information necessary to identify the operations, locations and vehicles for which the certificate was issued.

Nothing on the form or the instruction guide suggests that it is appropriate to include elaboration about AIs, subrogation waivers, or any other information. One exception is noted on the form in that, if certain individuals are excluded from workers compensation coverage, that information can be described in the DOO field. In an earlier edition of the ACORD 25, this field also allowed for the listing of "exclusions added by endorsement" and "special provisions," but that language has not been on the form since 2009.

It is generally better, with the insured's permission, to simply provide a copy of the applicable policy form(s) and refer the requestor to the insurance contract to determine if it meets the requirements of the requestor's contract with the insured. Since the requestor drafted the contract with the insured, only the requestor is qualified to definitively determine if an insured's insurance program meets the requirements of the contract. This is particularly true when it comes to AI status and for a reason discussed later in this course.

Cancellation

A certificate holder will sometimes request that notice be provided of cancellation, nonrenewal, or even a "material change" (whatever that might be interpreted to mean) in coverage. Typically, the request is for 30 days (or more) notice. The following example is from a commercial lease.

All policies of Tenant's Insurance shall contain endorsements that the insurer(s) shall give Landlord and its designees at least 30 days' notice of any cancellation, termination, material change, or lapse of insurance.

No common commercial policy grants this type of broad notice, and use of the term "All policies" is overly broad in that it could be construed to apply even to auto and other policies in which the landlord would have no interest.

As a practical matter, most AI endorsements don't extend a right of notification of cancellation, much less a right of notification of a "material change." Under an ISO Commercial Package Policy, notice of cancellation is required to be provided only to the first named insured. In addition, unless state statutes specify otherwise, the insurer normally only has to provide the first named insured with 10 days' notice of cancellation for nonpayment or 30 days for other valid reasons.

Prior to 2009, ACORD certificates said that the insurer would "endeavor to" provide notice of cancellation to the certificate holder. Various dictionary definitions of "endeavor" include the following.

- To exert oneself to do or effect something; make an effort; strive
- A strenuous effort; attempt
- A conscientious or concerted effort toward an end; an earnest attempt
- To attempt by employment or expenditure of effort

Clearly, "endeavor" meant at least to try and probably to make a significant effort to provide notice. By 2009, few insurers made any effort to provide notice of cancellation, most flatly refusing to do so. A statement on the certificate that the insurer *would* "endeavor to" provide notice was perceived by many to be at least unethical, if not outright misrepresentative.

Another point made by insurers was that, if cancellation was initiated due to nonpayment or a missed premium installment, but ultimately the insured paid and coverage was never canceled or it was reinstated, the certificate holder then had to be notified a second time. This sometimes frustrated and angered both agents and insureds, not to mention that the entire process was expensive, and, if notice to a certificate holder was mistakenly not made, it might open the insurer to liability.

In addition, prior cancellation notice language did not distinguish between cancellation by the insured or insurer. Given that the insured usually can cancel immediately, it would be impossible to give a certificate

holder advanced notice.

As a result, in 2009, the cancellation provision on ACORD certificates was revised to state that notice would be provided in accordance with policy provisions. Again, under ISO rules, other than exceptions for mortgagees or certain loss payees, no one other than the first named insured is entitled to notice of cancellation. None of ISO's AI endorsements provide cancellation notice to the AI, though there are insurers whose forms might or that have cancellation notice endorsements used with underwriting discretion.

E&O experts recommend against agents voluntarily providing such notice, and, depending on how they are interpreted, some state laws or regulations may preclude any notice unless provided by the insurance contracts.

Specifically, in the construction industry, if cancellation notice is essential, then in lieu of AI status, the party requesting the certificate could ask the insured to obtain an owners and contractors protective policy if the insurer is unwilling or unable to extend cancellation notice to AIs and such notice is critical.

Summary

All agency personnel using ACORD forms should have access to the FIGs for each form. Many E&O experts recommend that the FIG be incorporated into the agency procedures manual, at least by reference. What can or should be shown in the various fields of the ACORD 25 are, or should be, governed by the FIG and reasonable agency procedures based on legal requirements, sound E&O loss control principles, and the business strategy of the agency.

Chapter 10
Other Certificate of Insurance Issues

Overview

In the last section, we examined a number of issues that arise when completing an Association for Cooperative Operations Research and Development (ACORD) 25. In this section, we will consider a number of real-life examples of information agents often request that may be considered unreasonable, improper, impossible, or even illegal. The reason for this exercise is to make the student aware of the types of information requests that take place in the marketplace and to explain *why* the agent must be very careful in how they respond to such requests, especially when referred to as "warranties" or "affidavits."

In addition, we'll discuss related issues such as lender requests to provide policy limits greater than the value of the property that is the subject of a loan, what is meant by "primary and noncontributory," responding to "following form" excess and "Insurance Services Office, Inc. (ISO), or equivalent" requirements, sending copies of certificates to insurer, sending additional insured (AI) endorsements or other policy forms to AIs, and using online certificate systems.

The first question is, why are agents sometimes expected to do the unreasonable or impossible? These are reasons perhaps you've heard from certificate requestors.

- "Every other contractor working [at this] facility is able to obtain coverage with this clause." – city port authority
- "I've never had an agent refuse to do this. If you won't do it, we can give your customer a list of agents who will." – a gazillion general contractors
- "You are the only agent in the entire state who has refused to issue the certificate as requested." – state governmental entity

Agents are asked to do things every day but maybe shouldn't be. If the agent is willing and able to comply, they should exercise due diligence and great care.

Chapter Objectives

Upon conclusion of this chapter, you should be able to

- identify the pitfalls in issuing “affidavits,” warranty statements, compliance checklists, and similar documents;
- identify reasons to be wary of warranting “primary and noncontributory” coverage, “following form” excess or umbrella coverage, and other easily misinterpreted terminology;
- recognize why certain verbiage should not be used verbatim on a certificate of insurance (COI) and how to recognize such language;
- identify reasons why underwriters should be copied on issued certificates;
- recognize the value of providing AIs copies of relevant policy forms, especially in lieu of making coverage or AI status comments on certificates; and
- identify potential pitfalls in the use of online certificate systems.

What Information Can Be Included on a COI?

As discussed earlier, as long as what you’re asked to include on a COI is not illegal, a violation of your agency/company agreement, or arguably a misrepresentation of coverage or policy terms, you can put whatever is requested on a COI or other document. Again, the right to do that doesn’t mean that doing it is right or advisable. In such cases, the agent must balance the business decision against the errors and omissions (E&O) exposure. As one defense attorney put it,

> Any time you attempt to summarize policy language on a certificate of insurance, you are opening yourself up to the possibility of allegations that you have misrepresented policy terms. Many coverages, exclusions, and conditions do not lend themselves to one-sentence summary statements and the failure to adequately and completely express such policy terms can result in successful E&O claims, allegations of fraud, and censure (or worse) by insurance regulators.

Particular care should be given when such requests are made to elicit some sort of warranty or guarantee of coverage, as discussed below.

Agent “Affidavits” or Warranties of Coverage or Policy Terms

Requests to add explanatory or summary verbiage on certificates are common. Less common and probably much more dangerous given the likely absence of disclaimers are requests involving forms with various titles such as the following.

- Agent Affidavit
- Pre-Qualification Document
- Coverage Verification
- Certificate Confirmation Affidavit
- Agent Opinion Letter
- Coverage Questionnaire
- Agent/Broker Affirmation
- Compliance Checklist
- Insurance Warranty Statement

These types of supplementary documents often include language that effectively serves as an E&O noose in which agents are asked to stick their necks. For example, consider the following document required of a franchisee’s agent.

Agent Waiver Application

I, [agent’s name] acknowledge that I have read and fully understand the insurance requirements as

provided and the indemnification language as detailed in the Franchise Agreement….

I understand that it is my responsibility to ensure that all required coverages and additional insureds are endorsed to the policy.

I understand that I am required to carry a minimum of $2 million per occurrence Errors and Omissions coverage and I acknowledge that I meet this requirement. I further acknowledge that I may be liable for any omission if a claim is brought against an additional insured and I have failed to ensure that the entity was properly endorsed.

Does your agency's E&O policy cover a written admission of liability for "any" omission (even if committed by an underwriter)? You might remember this actual E&O policy excerpt cited earlier in this course.

> The insured shall not, without our written consent, do any of the following:
> 1. Admit liability….

A certificate holder may request that the agent include a letter or form, sometimes required to be witnessed and/or notarized, attesting to the fact that, "In the opinion of the agent, the policy contains the required insurance coverages/indemnifications required by the contract with the insured." Examples include the following.

- **"It is agreed that the coverages, endorsements and conditions shown on these pages are in effect and apply, as indicated, to the coverages certified on the attached 'Certificate' and 'Marine contract' and the Certificate Holder is entitled to rely on them."**

  This affidavit included a "compliance checklist" with 40 questions and required notarization and witnessing by someone not an employee of the agency or the contractor. What does "entitled" mean?

- **"This 'Certificate Confirmation Affidavit' certifies that the insurance provided conforms to the construction contract."**

  This agent affidavit was required by a general contractor. What does "certifies" mean in the absence of any disclaimer as to its presumed meaning as a warranty of coverage?

- **"Insurance policies will remain in force until the expiration of the statute of repose."**

  This provision in an agent affidavit was required by a public entity in a state with a 10-year statute of repose. How can the agent ensure that policies will remain in force for the next 10 years?

- **"I have reviewed the insurance requirements contained in the 'XYZ' contract and determined that our agency can provide the needed coverages in accordance with those specifications and without substitutions."**

  At least it doesn't say "will" provide the needed coverages, though substitutions are common.

A "Compliance Checklist" mandated by one large corporation to be completed by a contractor's agent included pages of 5- to 6-word cryptic coverage questions that would require almost 500 entries by the agent to complete, with many of them requiring guesswork as to what the actual question meant.

A bank demanded that a customer's agent submit a "certified" affidavit of insurance that said,

> Agent hereby represents and certifies to Lender, as of the date hereof, that the provided commercial property insurance certificate completely and accurately reflects the insurance in force under the insurance policies for the above named Property.

No certificate of insurance "completely" reflects the insurance in force. The very essence of a COI is that it is a basic summary or enumeration of policy forms.

Addressing Unreasonable, Improper, Impossible, and/or Possibly Illegal Insurance Requests

Contracts or insurance specifications sometimes insist upon statements to be shown verbatim in a certificate or a supplementary document. Below is a listing of sample verbiage requests, each followed by a notation of why the requested language could be problematic.

- **"Building covered at 100% replacement cost."**

  Is this a requirement to insure the building on a 100 percent coinsurance or guaranteed replacement cost basis? Or is it a warranty that the limit of insurance on the building *will* cover 100 percent of the actual replacement cost at the time of loss? Or does it mean something else? These questions should be answered before a loss occurs.

- **"There are no claims (pending or paid) that could significantly reduce the aggregate."**

  How is the agent supposed to know if a claim is pending? Should the agent contact the insured and the claims department to confirm this before issuing the certificate? And what constitutes "significantly" reducing the aggregate? Not understanding or knowing what these questions mean in the mind of the COI requestor is one reason not to include this verbatim statement on the certificate.

- **"Insurer will provide written notice of any reduction of coverage with reasonable promptness."**

  What constitutes a reduction of coverage? Increasing the deductible? Issuing an auto lay-up endorsement? And what constitutes "reasonable promptness"? Does the policy provide for notice to the COI holder if coverage is reduced? Has the agent been granted the authority by the insurer to make statements like this? Highly unlikely.

- **"Property insurance is provided without limitation on an All Risks basis."**

  What does "without limitation" mean no limit of insurance and no exclusions? The term "all risks" is one usually not found in most policies, and it's a term used too often within the industry as illustrated in the number of court decisions where the use of that term was material in a decision against the agent or insurer. It is often a mistake to describe policy coverage or terms using language not in the insurance contract itself.

- **"General liability insurance includes blanket contractual, broad form property damage, and coverage for independent contractors."**

  The term "blanket contractual" likely refers to the "insured contract" exception in the ISO commercial general liability (CGL) policy's contractual liability exclusion, but it is a descriptive phrase not found in that form and should be avoided. Likewise, the term "broad form property damage" has been obsolete for decades. With regard to "coverage for independent contractors," is that referring to coverage for an insured if held liable for the acts of an independent contractor (probably), or does it imply that independent contractors are themselves insureds under the policy? These are issues too often litigated when vague phrases are referenced without a clear understanding of their meaning.

- **"The coverage afforded under this certificate shall be primary."**

  Certificates of insurance don't afford *any* coverage. While the statement is probably an assertion that the referenced policy provides coverage that is primary and noncontributory, the phrasing implies that the certificate itself extends such primary coverage.

- **"Automobile Property Damage Liability is provided as Occurrence Basis Coverage."**

  It is the rare auto policy that covers claims on an occurrence basis. Auto policies almost always

cover “accidents,” not “occurrences”—a minor distinction but possibly an important one.

- **“There is no exclusion for damage resulting from leaking galvanized pipes.”**

  This probably refers to the requirement of no specific exclusion related to galvanized pipes, but leaking pipes can cause types of damage that might otherwise be excluded without a specific galvanized pipe exclusion.

- **“There is no exclusion for giant robot attacks.”**

  OK, we made that one up. Just making sure you’re paying attention.

- **“Insurer agrees to accept Contractor’s choice of counsel.”**

  Is that specified in the policy? Again, is the agent authorized to accept this on behalf of the insurer? Highly unlikely.

- **“In the event insurance requirements are not met and any coverages required have not been obtained, agent or broker agrees to be directly responsible therefor and consents to direct suit by any party to be named as an additional insured hereunder.”**

  Yes, an agency customer service representative (CSR) actually placed that statement in the Description of Operations on an ACORD 25. This illustrates why the certificate issuance process is not a clerical function and requires proper training and oversight.

- **“Other States endorsement included.”**

  Since the 1990s, “Other States” coverage has been included as an option in the National Council on Compensation Insurance workers compensation policy itself and not as a separate endorsement.

- **“Coverage for additional insureds is not impacted by any breach of the insurance policy by the named insured.”**

  Many, if not most, policies have some provision (e.g., fraud) that may void the policy so that no one is entitled to coverage absent an “innocent insured” exception or applicable separation of insureds clause.

- **“All requirements from our Project Manual are covered by the Insurance Certificate.”**

  The odds are that the agent has not read the project manual, and, again, insurance certificates don’t “cover” anything.

- **“Assault and Battery is not excluded.”**

  Most likely, this refers to a specific “Assault and Battery” exclusion by that name. However, given that many policies have “intentional or expected loss” exclusions, it’s possible that assault and battery are governed by an exclusion other than one with that name. If the agent asserts, with this statement, that assault and battery are effectively covered, although the policy has an intentional loss exclusion, an E&O claim will likely arise if the intentional loss exclusion is invoked.

- **“Comprehensive form of general liability provided which includes personal injury with Employment Exclusion deleted.”**

  “CGL” has referred to commercial, not comprehensive, general liability for decades. The use of the word “Comprehensive,” as discussed earlier, is archaic and usually illustrates the contract drafter’s unfamiliarity with the current insurance marketplace. “Employment Exclusion” is a term not found in mainstream CGL policies today, so its meaning is unknown.

- **“A properly executed copy of this document [non-ACORD certificate] shall be legally**

binding as a Carrier Certificate of Insurance Form.

"Legally binding" on whom and for what and to what extent? Anytime the word "legal" is required on a COI or other document, be wary.

- **"Policy covers Certificate Holder without restrictions or limitations based on negligence."**

  No policy provides coverage without restrictions and limitations, yet a producer insisted that an agency CSR add this statement to a COI allegedly because the insured could not get a job without that statement on the COI. Keep in mind, as discussed earlier, that upstream parties will sometimes make demands they know are unreasonable, impractical, or worse. Refusal to include statements like the one above are rarely deal breakers. Most likely, this is simply on the requestor's wish list, or, at worse, the upstream party has a fallback position that allows for negotiation of the language.

- **"Other Insurance clause in policy states this insurance is primary."**

  As discussed later in this chapter, CGL policy primacy is predominantly determined by the upstream party's policy, not the downstream party's policy. More likely, the requestor is interested in an endorsement that asserts the downstream insurer's intent for its policy to be primary, but that is normally not found in the other insurance clause.

- **"Snow plowing operation is covered by the policy."**

  There might not be a specific "snow plowing" exclusion, but there could be other exclusions that apply. In addition, while an ongoing snow plowing operation might be covered under an auto policy, a *completed* operation might not (given, for example, that ISO's business auto policy does not cover completed operations), at least without an endorsement to that effect on this or another policy. This illustrates why competent coverage knowledge is critical in evaluating statements like this.

- **"Additional insured endorsements shall not contain ANY restrictions."**

  No AI endorsement exists without some restrictions in coverage, limits, or terms.

- **"Policy includes Contractual Liability and Pollution Liability. (Y/N)"**

  The ISO CGL policy includes a contractual liability *exclusion*, but certain contracts are covered by exception. Likewise, some pollution liability coverage is provided by exception or absence in the pollution exclusion. So, the statement is both correct and incorrect and completely pointless. Either response (Y/N) would be true and false.

- **"All policies are primary and noncontributory. (Y/N)"**

  The policies listed on the ACORD 25 included workers compensation, which certainly did not extend to the upstream party's employees on a primary and noncontributory basis.

- **"Effective immediately, all liability insurance forms must indicate that 'NO EXCLUSIONS APPLY.' This must be clearly indicated on each certificate of insurance submitted with every building permit application. No application will be accepted with certificates that do not contain these words."**

  This was an insurance requirement of all contractors doing work for a New York village. Needless to say, an insurance agent uprising put an end to this requirement.

Lastly, sometimes insurance requirements specify certain ISO policy forms but may allow for an equivalent form by requiring an "ISO or equivalent" form or saying that the form must be "no more restrictive than" a specified ISO form. So, what does "ISO or equivalent" mean? According to Merriam-Webster, "equivalent" means "virtually identical, especially in effect or function." In other words, if it's not the specified ISO form, it's not "equivalent." It may be similar or comparable, but it's

not virtually identical.

Lender Requirements for Property Limits Equal to the Outstanding Balance of a Loan

Entities that have a direct interest in property being purchased want to ensure that the loans secured by real estate are adequately insured so that the property can be rebuilt if damaged or destroyed. As a result, sometimes lenders will demand a policy limit equal to the outstanding balance of the loan without regard to the actual replacement cost of the building.

The problem with this is that the loan amount is likely based on the market value of the premises and not just the replacement cost of the structure. Market value is often greater than replacement cost. Market value also includes the value of the land, something typically excluded by property insurance policies. So, even if the insured value equals the outstanding loan balance, neither the insured nor the lender could ever collect the full amount because it includes the value of uninsured property.

Many states have laws making it illegal for lenders to require an amount of insurance greater than the replacement cost of the insured property. For example,

> No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

In addition, some states have "over-insurance" or "valued policy" laws that might govern loans on real property.

Primary and Noncontributory

Many, if not most, contracts require that downstream parties provide "primary and noncontributory" liability coverage for upstream parties. Upstream parties who are AIs will often want a unilateral confirmation of this from the downstream party's insurance agent in the form of a statement on a certificate or other document.

Customary industry usage or meaning of the term "primary and noncontributory" is that the downstream party's policy pays first, without any contribution from the upstream party's policy. The upstream party's policy, at best, provides excess coverage if the downstream party's policy limit is exhausted.

Assuming that both parties have ISO CGL policies, the problem is that it is the other insurance clause in the *upstream* party's CGL policy is the one that governs primacy. For example,

> Other Insurance
>
> If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:
>
> **a.** Primary Insurance
>
> This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.
>
> **b. Excess Insurance**
>
> **(1) This insurance is excess over:**
>
> **(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.** [**Emphasis** added.]

In reality, one must look to this provision in *both* policies to determine primacy, especially when the upstream policy is not an ISO form. As result, the downstream party cannot absolutely guarantee that its CGL policy is truly primary without examining the upstream party's CGL policy, as found in *Graphic*

Arts Mut. Ins. Co. v. Essex Ins. Co.[26]

The primacy issue can be more complicated when it comes to auto and excess liability forms. For example, the current ISO business auto policy is primary only if the named insured owns the vehicle or assumes liability under contract (Condition 5, Other Insurance, subparagraph c.); otherwise, the coverage is excess. Umbrella policies are largely company-specific and therefore do not follow ISO verbiage in all instances. And, again, not all CGL policies are ISO forms.

The industry solution, though not perfect, is to offer an endorsement expressing the downstream party's intent that its policy be primary. ISO accomplishes this with its Primary and Noncontributory—Other Insurance Condition endorsement (CG 20 01) for the CGL policy and with their Primary and Noncontributory—Other Insurance Condition (CA 04 49), Noncontributory—Other Insurance Condition (CU 24 78), and Noncontributory—Other Insurance Condition (CX 24 33) endorsements for auto, umbrella, and excess policies, respectively. In addition, many insurers have similar endorsements or incorporate the "primary and noncontributory" language into their AI endorsements.

This issue gets even more complicated with required limits of insurance are met by, for example, a combination of CGL and excess/umbrella liability insurance. Between the contracting parties, how are such policy limits exhausted, vertically or horizontally?

Following Form Excess Requirements

The following is a statement from a "coverage checklist" a general contractor was requiring a subcontractor's agent to complete.

> Umbrella or excess liability insurance is "Following Form" to the General Liability Policy, meaning no additional exclusions that aren't already on the CGL policy (Y/N).

It is the rare umbrella or excess policy that truly follows the form of underlying policies and contains no additional exclusions. Since umbrellas often provide much broader liability coverage than the underlying policies, they almost certainly will have exclusions not found in those policies or, otherwise, they'd cover anything that could possibly happen. Many umbrella and excess policies, unlike underlying auto forms, provide no uninsured motorists coverage. Coverage for damage to rented premises provided by CGL policies is usually not duplicated in excess forms, and that may be expressed by exclusion.

Sending Certificates to Insurers

At one time, agents routinely sent copies of certificates to insurers. One reason was that certificates at one time indicated that insurers might "endeavor to" provide notice of cancellation and that would not be possible unless the insurer was aware of that assertion on the certificate. Now that this language is no longer on ACORD certificates, many insurers have advised agents not to send copies of certificates. E&O experts caution otherwise.

One of the reasons is that mistakes might be made in providing coverage or AI status, and it's unclear where that mistake occurred, in the agency or the insurer's underwriting department. In fact, there are some insurer "blanket" AI endorsements where coverage is triggered by the issuance of a COI.

Two cases often cited by E&O experts as a basis for copying insurers on COIs are *Marlin v. Wetzel*[27] and *Erie v. National Grange Mut*.[28]

In *Marlin v. Wetzel Cty. Bd. of Educ.*, the court opined,

> [T]he insurance company asserted that it never received the certificate of insurance or any other documents suggesting the insurance policies needed to be amended [to make the plaintiff an additional insured].
>
> [T]he insurer argues that it had no knowledge of the certificate's existence [and, therefore, could not modify the policy to include coverage for the plaintiff as an additional insured].

To illustrate the "blanket" AI endorsement triggered by certificate issuance problem, in *Erie Ins. Group v. National Grange Mut. Ins. Co.*, the court observed the following insurance contract language.

> Each of the following is added as an Additional Insured … [a]ny general contractor, subcontractor or owner for whom you are required to add as an additional insured on this policy under a written construction contract or agreement where a certificate of insurance showing that person or organization as an additional insured has been issued and received by [NGM] prior to the time of loss.

Note that AI status is contingent on a COI being issued "and received by" the insurer. The COI can't be received by the insurer unless it is first sent by the agency. The safest procedure, from an E&O standpoint, is for the agency to copy all insurers on COIs

In addition, this process can benefit insurers that can use at least a sample of received COIs to quality check their agents' work product. For example, as previously discussed, consider the following statements placed on COIs by agency staff.

> Insurer will provide written notice of any reduction of coverage with reasonable promptness.

> Insurer agrees to accept Contractor's choice of counsel.

What insurer would not want to know that a representative of its company was placing statements like this on COIs, regardless of the presence of disclaimers?

Sending AI Endorsements to AIs

Upstream parties often want the downstream party's agent to place verbiage on a certificate that they, and likely others, *are* AIs. Sometimes, they may want this verbiage to state that "XYZ" is an AI "as per construction contract." As discussed earlier, many AI endorsements in the marketplace do not comply with contractual requirements.

By sending AI endorsements to AIs, the agent puts the onus on the AI to actually read the form. This is supported by case law such as the following.

> … an insured has a duty to take certain steps for its own protection such as reading their policies, certificates of insurance or any cancellation notices **in their possession**. [**Emphasis** added.][29]

A state government entity said, "If an entire insurance policy was submitted but not requested, we shall not be obligated to review the document and shall not be chargeable with knowledge of its contents."

One AI insisted, "Please do not send any endorsements. We will only accept certificates with the additional insured statement listed above or as typed on the certificate."

According to the Alabama Supreme Court, citing various sources, in *Alabama Elec. Coop., Inc., v. Bailey's Constr. Co., Inc.*[30],

> An insured has a duty to read the insurance policy and is charged with knowledge of its provisions.

> The Court concludes that [the client], claiming to be an additional "insured" under [the policy], should be held to the same obligation as a named insured to review a policy of insurance on which it seeks to rely, and its reliance solely on the agent's certificate of insurance is not reasonable under the circumstances….

> Thus, the Court finds that Plaintiffs' reliance upon [the insurance broker's] representation of [the client's] additional insured status was not reasonable. Accordingly, as a matter of law, Plaintiffs' claims for negligent and fraudulent misrepresentation fail.

Couch on Insurance (3d ed. 1997) says,

> Where an entity requires another to procure insurance naming it an additional insured, that party should not rely on a mere certificate of insurance, but should insist on a copy of the policy.

For these reasons, E&O experts recommend that, with the insured's permission, copies of applicable policy forms be sent to AIs rather than making any statements on a COI as to AI status or coverage.

Online Certificate Systems

Businesses sometimes perform work for or provide services to entities that outsource their certificate tracking and management to online vendors. Many of these vendors will not accept ACORD 25 certificates, even in digital form, insisting that agents enter information into their proprietary systems. That can present potential business, legal, and privacy problems for agents and the insurers they represent.

For example, one such system required the agency to pay a fee to access the system to enter or update policy information. The agent also had to pay a fee every time their insured's business partner accessed this information. In one case, the airport authority checked policy information daily for a concourse vendor, and the vendor's agent was charged a fee each time. The agent had three such customers at the airport, each generating daily charges for the agency. This was the business model for the online COI tracking system—provide your service for free to entities and have the insurance agents of their business partners fund the service.

A similar system's marketing strategy was based on the flexibility of the number of coverage questions that could be required far beyond the limited information on an ACORD 25. The system allowed over 300 possible questions, many of which were very broad, vague, and ambiguous. For example,

- Broad form contractual (Y/N)?
- Special all risk contractual (Y/N)?
- Blanket operations (Y/N)?
- Independent contractors (Y/N)?
- Auto pollution liability (Y/N)?
- Primary and noncontributory (Y/N)?
- Severability clause (Y/N)?
- Cross-liability exclusion (Y/N)?
- Punitive damages exclusion (Y/N)?
- Assault and battery exclusion (Y/N)?

The system stored a scanned signature of the agent, and the contract for the use of the system by the agent included several hold harmless provisions for the online system if the information was obtained and used by others.

Another online system allowed the *insured* to enter anything desired in the description of operations field. Worse, the *certificate holder* could enter a list of AIs at any time even if they weren't actually AIs.

Still another online system offers to interface with agency management systems to minimize human intervention in the sharing of policy information. Some agents have expressed concern about the possibility of data corruption within their own systems or the possibility of a data breach along the lines of what happened to Target when cyber criminals gained access to Target's systems through a vendor's system.

Again, these types of systems and their complexity impose additional and potentially significant costs on agents in the time required to complete information requirements, including any double-entry into agency management systems to document these transactions and possibly direct entry and access fees. In addition, these systems and their functionality may enhance an agent's potential liability due to system complexity, ambiguity of required information, the ability of unauthorized entities to access or even modify entered data, privacy concerns, and the fact that there is no assurance that the online vendor will still be in business if the entered information is needed.

As a result, many agencies refuse to use these systems, some going as far as giving up customers as a result. Other agencies may be able to negotiate more favorable terms. Still other agencies simply accept this as a business risk.

Agency Procedures and Caveats

The COI process today is far more complicated and prone to professional liability claims than in years past. No longer is it advisable to employ purely clerical staff to oversee this operation. Agency staff must be properly trained and supervised, and management should have an effective quality control program in place. Do not engage in contract review without the proper trained and experienced personnel, and do so only with disclaimers, as discussed earlier in this course.

Specific certificate procedures should be implemented on an "invariable practice" basis. "Invariable practice" means "one way, all the time, by everyone" in the agency. Agencies should consider incorporating, at least by reference, ACORD's Forms Instruction Guides into their procedures manual.

In addition to internal education of staff members, agencies are encouraged to actively engage in external education of customers and, when warranted, their business partners. For example, a government entity wanted a contractor's CGL language amended by the agent, advising that "I received a communication from you today telling me that you don't have the authority to alter insurance company forms. As their agent, why not?" This is clearly an individual who knows little about the insurance industry and its regulatory constraints. While it's frustrating to deal with issues like this, one might view this as an opportunity to educate.

All agency staff members should be aware of the agency/company agreements, underwriting guidelines, and related documents and procedures of all insurers represented by the agency. This should be kept up to date and communicated as needed.

ACORD forms should always be used with rare exceptions. If exceptions are made, do not issue non-ACORD forms without clearance from the insurer(s) involved.

Never modify the preprinted text of an ACORD form, especially the disclaimers, and minimize the use of extraneous descriptive, contractual, or potentially misrepresentative language on the ACORD form. If you must add verbiage to an ACORD form, carefully review what you said and how it might be interpreted and then modify as warranted.

Proofread certificates and perform quality control checks on completed COIs.

The Future

Some businesses and government entities have discontinued asking for COIs. They still require vendors to obtain and maintain the appropriate insurance. Instead of using a COI to assist in pursuing third parties as part of subrogation recovery, they rely on the vendor contract's insurance and indemnification requirements. Unfortunately, from the agent's perspective, these decisions have been made by a tiny minority of entities.

Some industry commentators suggest that, given the billions of dollars invested by all parties in the insurance certification process, more elementary means be used such as memoranda of insurance or even documentation approaching that of auto insurance cards.

In the long run, the technology exists to access necessary information directly from insurers, although security and privacy issues will have to be addressed. Emerging technologies like blockchain may prove to be the most effective approach. In the meantime, hopefully, the ideas and suggestions provided in this course will help agents and others address some of the issues they currently face on a daily basis.

Summary

Information sometimes requested of agents may be considered unreasonable, improper, impossible, or even illegal. Agents need to be aware of the types of demands and information sometimes requested and why compliance with these requests may increase their E&O exposure. This concluding chapter provided dozens of examples of specific requests and related issues of which agents and others should be aware in their efforts to be as accommodating as possible to their customers' business partners, while minimizing the agency's E&O exposure and bottom line.

Appendix

ACORD

VEHICLE OR EQUIPMENT CERTIFICATE OF INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

This form is used to report coverages provided to a single specific vehicle or equipment. Do not use this form to report liability coverage provided to multiple vehicles under a single policy. Use ACORD 25 for that purpose.

PRODUCER	CONTACT NAME:
	PHONE (A/C, No, Ext): / FAX (A/C, No):
	E-MAIL ADDRESS:
	PRODUCER CUSTOMER ID #:

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	

DESCRIPTION OF VEHICLE OR EQUIPMENT

YEAR	MAKE / MANUFACTURER	MODEL	BODY TYPE	VEHICLE IDENTIFICATION NUMBER

DESCRIPTION	VEHICLE / EQUIPMENT VALUE	SERIAL NUMBER
	$	

COVERAGES — CERTIFICATE NUMBER: — REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICY(IES) OF INSURANCE LISTED BELOW HAS/HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD(S) INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICY(IES) DESCRIBED HEREIN IS/ARE SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICY(IES).

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
		☐ VEHICLE LIABILITY				COMBINED SINGLE LIMIT	$
						BODILY INJURY (Per person)	$
						BODILY INJURY (Per accident)	$
						PROPERTY DAMAGE	$
		GENERAL LIABILITY				EACH OCCURRENCE	$
		☐ OCCURRENCE				GENERAL AGGREGATE	$
		☐ CLAIMS MADE					$

INSR LTR	LOSS PAYEE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS / DEDUCTIBLE		
		☐ VEH COLLISION LOSS				☐ ACV ☐ AGREED AMT	$	LIMIT
						☐ ☐ STATED AMT	$	DED
		☐ VEH COMP ☐ VEH OTC				☐ ACV ☐ AGREED AMT	$	LIMIT
						☐ ☐ STATED AMT	$	DED
		EQUIPMENT				☐ ACV ☐ AGREED AMT	$	LIMIT
		☐ BASIC ☐ BROAD				☐ RC ☐ STATED AMT	$	DED
		☐ SPECIAL ☐				☐		
		☐						

REMARKS (INCLUDING SPECIAL CONDITIONS / OTHER COVERAGES) (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

ADDITIONAL INTEREST

Select one of the following:

☐ The additional interest described below has been added to the policy(ies) listed herein by policy number(s).

☐ A request has been submitted to add the additional interest described below to the policy(ies) listed herein by policy number(s).

VEHICLE / EQUIPMENT INTEREST: ☐ LEASED ☐ FINANCED

NAME AND ADDRESS OF ADDITIONAL INTEREST

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

DESCRIPTION OF THE ADDITIONAL INTEREST

☐ ADDITIONAL INSURED ☐ LOSS PAYEE

☐ LENDER'S LOSS PAYABLE ☐

LOAN / LEASE NUMBER

AUTHORIZED REPRESENTATIVE

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ACORD

CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

PRODUCER	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: PRODUCER CUSTOMER ID:

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

LOCATION OF PREMISES / DESCRIPTION OF PROPERTY (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE		POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	COVERED PROPERTY	LIMITS
	☐ PROPERTY					☐ BUILDING	$
	CAUSES OF LOSS	DEDUCTIBLES				☐ PERSONAL PROPERTY	$
	☐ BASIC	BUILDING				☐ BUSINESS INCOME	$
	☐ BROAD	CONTENTS				☐ EXTRA EXPENSE	$
	☐ SPECIAL					☐ RENTAL VALUE	$
	☐ EARTHQUAKE					☐ BLANKET BUILDING	$
	☐ WIND					☐ BLANKET PERS PROP	$
	☐ FLOOD					☐ BLANKET BLDG & PP	$
							$
							$
	☐ INLAND MARINE		TYPE OF POLICY				$
	CAUSES OF LOSS						$
	☐ NAMED PERILS		POLICY NUMBER				$
							$
	☐ CRIME						$
	TYPE OF POLICY						$
							$
	☐ BOILER & MACHINERY / EQUIPMENT BREAKDOWN						$
							$
							$
							$

SPECIAL CONDITIONS / OTHER COVERAGES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ N / A						E.L. EACH ACCIDENT	$
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

ACORD

EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY PHONE (A/C, No, Ext):	COMPANY
FAX (A/C, No):	E-MAIL ADDRESS:
CODE:	SUB CODE:
AGENCY CUSTOMER ID #:	
INSURED	LOAN NUMBER POLICY NUMBER
	EFFECTIVE DATE EXPIRATION DATE ☐ CONTINUED UNTIL TERMINATED IF CHECKED
	THIS REPLACES PRIOR EVIDENCE DATED:

PROPERTY INFORMATION

LOCATION/DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION PERILS INSURED ☐ BASIC ☐ BROAD ☐ SPECIAL ☐

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE

REMARKS (Including Special Conditions)

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS	☐ ADDITIONAL INSURED ☐ LENDER'S LOSS PAYABLE ☐ LOSS PAYEE ☐ MORTGAGEE
	LOAN #
	AUTHORIZED REPRESENTATIVE

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ACORD

EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

PRODUCER NAME, CONTACT PERSON AND ADDRESS / PHONE (A/C, No, Ext):	COMPANY NAME AND ADDRESS / NAIC NO:
FAX (A/C, No): / E-MAIL ADDRESS:	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH
CODE: / SUB CODE:	POLICY TYPE
AGENCY CUSTOMER ID #:	
NAMED INSURED AND ADDRESS	LOAN NUMBER / POLICY NUMBER
	EFFECTIVE DATE / EXPIRATION DATE / ☐ CONTINUED UNTIL TERMINATED IF CHECKED
ADDITIONAL NAMED INSURED(S)	THIS REPLACES PRIOR EVIDENCE DATED:

PROPERTY INFORMATION (ACORD 101 may be attached if more space is required) ☐ BUILDING OR ☐ BUSINESS PERSONAL PROPERTY

LOCATION / DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION PERILS INSURED ☐ BASIC ☐ BROAD ☐ SPECIAL ☐

COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: $ DED:

	YES	NO	N/A	
☐ BUSINESS INCOME ☐ RENTAL VALUE				If YES, LIMIT: / Actual Loss Sustained; # of months:
BLANKET COVERAGE				If YES, indicate value(s) reported on property identified above: $
TERRORISM COVERAGE				Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?				
IS DOMESTIC TERRORISM EXCLUDED?				
LIMITED FUNGUS COVERAGE				If YES, LIMIT: DED:
FUNGUS EXCLUSION (If "YES", specify organization's form used)				
REPLACEMENT COST				
AGREED VALUE				
COINSURANCE				If YES, %
EQUIPMENT BREAKDOWN (If Applicable)				If YES, LIMIT: DED:
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg				If YES, LIMIT: DED:
- Demolition Costs				If YES, LIMIT: DED:
- Incr. Cost of Construction				If YES, LIMIT: DED:
EARTH MOVEMENT (If Applicable)				If YES, LIMIT: DED:
FLOOD (If Applicable)				If YES, LIMIT: DED:
WIND / HAIL INCL ☐ YES ☐ NO Subject to Different Provisions:				If YES, LIMIT: DED:
NAMED STORM INCL ☐ YES ☐ NO Subject to Different Provisions:				If YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS				

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

☐ CONTRACT OF SALE ☐ LENDER'S LOSS PAYABLE ☐ LOSS PAYEE ☐ MORTGAGEE	LENDER SERVICING AGENT NAME AND ADDRESS
NAME AND ADDRESS	AUTHORIZED REPRESENTATIVE

ACORD 28 (2016/03) The ACORD name and logo are registered marks of ACORD

End Notes

[1] Association for Cooperative Operations Research and Development (ACORD) is the global standards-setting body for the insurance and related financial services industries. ACORD facilitates fast, accurate data exchange and efficient workflows through the development of electronic standards, standardized forms, and tools to support their use. ACORD members worldwide include hundreds of insurance and reinsurance companies, agents and brokers, software providers, financial services organizations, and industry associations. ACORD maintains offices in New York and London.

[2] *Bradley Real Estate Trust v. Plummer & Rowe Ins. Agency, Inc.*, 609 A.2d 1233 (N.H. 1992)

[3] *Insurance Claims & Disputes: Representation of Insurance Companies and Insureds*, 6th ed. (2013)

[4] *U.S. Pipe & Foundry Co. v. U.S. Fid. & Guar. C*, 505 F.2d 88 (5th Cir. 1974)

[5] *Lezak & Levy Wholesale Meats, Inc. v. Illinois Employers Ins. Co. of Wausau*, 121 Ill. App. 3d 954, 77 Ill. Dec. 419, 460 N.E.2d 475 (App. Ct. 1st Dist. 1984)

[6] ISO is an organization that collects statistical data, promulgates rating information, develops standard policy forms, and files information with state regulators on behalf of insurance companies that purchase its services.

[7] *Geier v. Hamer Enters., Inc.*, 226 Ill. App. 3d 372, 168 Ill. Dec. 311, 589 N.E.2d 925 (App. Ct. 1st Dist. 1992)

[8] *J.A. Jones Constr. Co. v. Hartford Fire Ins. Co.*, 269 Ill. App. 3d 148, 206 Ill. Dec. 728, 645 N.E.2d 980 (App. Ct. 1st Dist. 1995)

[9] *Multicare Health Sys. v. Lexington Ins. Co.*, 539 F. App'x 768 (9th Cir. 2013)

[10] *Geiere v. Hamer Enters., Inc.*, 262 Ill. Dec. 311, 589 N.E.2d 711 (App. Ct. 1st Dist. 1992)

[11] *JCM Constr. Co., Inc. v. Orleans Parish Sch. Bd.*, 663 So. 2d 429 (La. Ct. App. 4th Cir. 1995)

[12] The "belt and suspenders" phrase refers to redundant systems, where either the belt or the suspenders serves as a backup in the event of the other failing. A person who wears a belt and suspenders is very cautious and takes no risks. No one needs to wear both a belt and suspenders to hold up their pants.

[13] A D&D clause in a commercial lease outlines the rights and obligations of both the landlord and the tenant if the leased premises are damaged or destroyed while the lease is in effect.

[14] Jack P. Gibson, CPCU, CRIS, ARM, "Sound Advice for Contract Drafters: Fix Your 'Out-of-Date Insurance Requirements'" (Dallas: International Risk Management Institute, Inc., 2019).

[15] *U.S. Pipe & Foundry Co. v. U.S. Fid. & Guar. Co.*, 505 F.2d 88 (5th Cir. 1974)

[16] *Binyan Shel Chessed, Inc. v. Goldberger Ins. Brokerage, Inc.*, 18 A.D.3d 590, 795 N.Y.S.2d 619 (App. Div. 2d Dep't 2005)

[17] *Handley v. Providence Mut. Fire Ins. Co.*, 898 A.2d 492 (N.H. 2006)

[18] 17 U.S.C. Section 504C

[19] Forms 24 and 25 merely verify that coverage exists, but forms 27 and 28 provide evidence of insurance to parties with an interest in the covered exposure(s). Forms 24, 25, 27, and 28 are included in the Appendix and are more specifically discussed in Chapter 7.

[20] A sidewalk elevator operates to convey freight between a landing in the sidewalk or other exterior area and floors below the sidewalk or grade level. The elevator opens onto the exterior area through a horizontal opening.

[21] In 1970, the organization now known as the IIABA was known as the National Association of Insurance Agents. In 1975, the

organization's name was changed to the Independent Insurance Agents of America. In 2002, the association became the Independent Insurance Agents and Brokers of America (IIABA or the Big "I") to recognize the group's entire membership of both independent insurance agents and insurance brokers.

[22] *Mountain Fuel Supply v. Reliance Ins. Co.*, 933 F.2d 882 (10th Cir. 1991).

[23] *Taylor v. Kinsella*, 742 F.2d 709 (2d Cir. 1984

[24] *American Country Ins. Co. v. Kraemer Bros., Inc.*, 298 Ill. App. 3d 805, 232 Ill. Dec. 871, 699 N.E.2d 1056 (App. Ct. 1st Dist. 1998)

[25] *Bucon, Inc. v. Pennsylvania Mfg. Ass ' n Ins. Co.*, 151 A.D.2d 207, 547 N.Y.S.2d 925 (App. Div. 3d Dep't 1989)

[26] *Graphic Arts Mut. Ins. Co. v. Essex Ins. Co.*, 465 F. Supp. 2d 1290 (N.D. Ga. 2006)

[27] *Marlin v. Wetzel Cty . B d. of Educ* ., 569 S.E.2d 462 (W. Va. Ct. App. 2002)

[28] *Erie Ins . Group v. National Grange Mut . Ins. Co.* 2009 NY Slip Op 5059, 63 A.D.3d 1412, 883 N.Y.S.2d 601 (App. Div. 3rd Dept.)

[29] *Admiral Ins. Co. v. Cresent Hills Apts.*, 328 F.3d 1310 (U.S. Ct. App. 11th Cir. 2003), citing *Brooks Brown Ins. Agency, Inc. v. Harden*, 236 Ga. App. 781, 513 S.E.2d 755 (1999)

[30] *Alabama Elec. Coop., Inc., v. Bailey's Constr. Co., Inc.,* 950 So. 2d 280 (Ala. 2006)