



BIG "I" VIRTUAL UNIVERSITY

Risk & Reality Report

ATTENTION!

It's No Longer JUST the COI
That Gets You in Trouble

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INTRODUCTION

Chris Boggs: I am glad you're here to read about Certificates of Insurance. Everybody's favorite subject. Stuart Powell is also assisting in the conversation with me, and there are actually two reasons I asked Stuart to be a key part of this class. One is because of his incredible depth of knowledge as it relates to issues surrounding Certificates of Insurance. And two, because he's actually my mentor. He can take the credit or the blame for my being in insurance education. He gave me my first teaching job at Big "I" of North Carolina.

If you'd like to learn more about Stuart and his qualifications as an insurance expert, you can [read his bio here](#). If you'd like to learn more about me and my qualifications, you can [read my bio here](#).

We do have a lot of cover today in today's agenda, and we'll start with basics. We're going to start at the basic level, ground level. We're going to build a foundation.

We're going to answer the question, what is a Certificate of Insurance? Then, we'll look at Certificate of Insurance information and questions that you must consider regarding an individual section of the certificate. From there, we're going to delve into how a Certificate of Insurance responds to contractual risk transfer. This is where the trouble lies. This is where you can get in real trouble when you start looking and trying to make the certificate comply with a contractual requirement. Then we'll answer two questions. One, how should an additional insured be listed? And two, how should a certificate holder be listed?

From there, we're going to discuss the dangers of adding or altering wording on the Certificate of Insurance – whether or not you should do it and what the ramifications are of that. Then, we'll answer everyone's favorite question.

Does the Certificate of Insurance affect coverage? I won't answer that now. We'll wait until we get there. Then we'll talk about some new monsters to watch out for – the memorandum of coverage and addendum of request that you might be asked to fill out.

We'll end our discussion today discussing who should be involved in issuing the certificate. Who within the agency should be involved and should take the time to make sure that the certificate is issued correctly.



And, we're going to talk about five or six simple warnings if you will that you should take away from today's discussion.

WHAT IS A CERTIFICATE OF INSURANCE (COI)?

Let's jump into it and answer our first question. What is a Certificate of Insurance? Of course, just in case you forgot and just in case you weren't sure, we're talking about the ACORD 25, the Certificate of Liability Insurance. A full page sample of the form is included at the end of this document but here's a snippet:

ACORD		CERTIFICATE OF LIABILITY INSURANCE				DATE (MMDDYYYY)
<p>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.</p> <p>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).</p>						
PRODUCER		CONTACT NAME: _____ PHONE (AG, Res, Ext): _____ FAX (AG, Res): _____ 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:		
<p>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.</p>						
INSR LTR	TYPE OF INSURANCE	ADD. SUBR. (INSR) (IND)	POLICY NUMBER	POLICY EFF. (MMDDYYYY)	POLICY EXP. (MMDDYYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____					EACH OCCURRENCE \$ _____ DAMAGE TO RENTED PREMISES (If commercial) \$ _____ MED EXP (Any one person) \$ _____ PERSONAL & ADV INJURY \$ _____ GENERAL AGGREGATE \$ _____ PRODUCTS - COMPROP AGG \$ _____ \$ _____
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Per accident) \$ _____ BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ \$ _____
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED. RETENTIONS					EACH OCCURRENCE \$ _____ AGGREGATE \$ _____ \$ _____
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in WA) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ _____ E.L. DISEASE - SA 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		

Again, just to set a firm foundation, let's answer our first question. What is a Certificate of Insurance? Now in order to answer this question, we've got to realize that there are statutory definitions. There's a legal meaning to what Certificate of Insurance is. There's an applicable or a practical definition, and there's a perceived meaning of what a Certificate of Insurance is. And then, there's the reality of what a Certificate of Insurance actually is.

Let's look at one state's statutory definition of what a Certificate of Insurance is. This one states says, "Certificate" or "Certificate of Insurance" means any document or instrument, no matter how titled or described, which is prepared or issued by an insured or insurance producer as evidence of property or casualty insurance coverage.

The state says it's an evidence of coverage. That's all it is. An evidence of coverage. Now, Black's Law Dictionary defines Certificate of Insurance as a document acknowledging that an insurance policy has been written. It's just acknowledging that insurance policy has been written, and setting forth in general terms what the policy covers. What the policy covers, not what the requestors wanted to say. The certificate, according to Black's Law Dictionary, lays out what the policy covers.

What's the applicable, practical definition? What's the real definition of a Certificate of Insurance? Basically, a Certificate of Insurance provides a synopsis of coverage under an insurance policy as it exists at the time the certificate is issued. That's important:

- The synopsis of coverage under an insurance policy as it exists at the time the certificate is issued.

A certificate is not an insurance policy and cannot be used to alter or expand coverage, according to ACORD in their rules. ACORD 25, Certificate of Liability Insurance, is issued as a matter of information only and confers no rights upon a certificate holder. It's information only. We're going to say that several more times as we move through this document.

It confers no rights upon a certificate holder. The certificate does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policies listed on the certificate. That's the real definition. That's what ACORD says it is. That's what Black's all says it is. It's information only, but what's the perceived meaning? What do the requestors think a Certificate of Insurance actually is?

According to the holder, according to the additional insured sometimes, the Certificate of Insurance, to them, gives assurances of coverages, and that the lower tier, that the downstream contractor has complied with all the contractually required risk transfer mechanisms contained in the contract. That's where the trouble lies – the perception of

what a certificate is – and why Certificate of Insurance requirements are so ridiculous. Now such perception allows for another room for the reality of the Certificate of Insurance which we've already stated so far and all the real definitions.

In reality, a Certificate of Insurance is nothing. It's nothing but a waste of paper. It's not intended to confer anything other than information, initially. If we stick to the rules that we're going to be talking about here, it will remain an informational document only.

To recap, what is a Certificate of Insurance? It certifies to a third party that the named insured has the specified liability coverages provided by the specified insurance carriers. As we've already stated, a Certificate of Insurance is for a matter of information only. ACORD, just to solidify that, ACORD says this, "The purpose of the certificate is to provide information to an interested third party regarding insurance that is in force at the time of certificate issuance." Let me say that again – at the time of certificate issuance.

At least that's the intended reality. Holders seem to think of it as much more than that, that there's much more to it. One word in the Certificate of Insurance is what I believe is what makes certificate holders think it's bigger and badder than it really is. Where it says, "This is to certify that..." Some seem to think that certifying something is somehow a big deal. All certify means is to attest or confirm in a formal statement.

The dictionary also says that certify means to officially declare someone insane. Well, in the world of certificates, things have definitely become insane. Even internationally known and well-respected risk management information providers have contributed to this insanity. I won't name them but they've contributed to making recommendations as to how you can make a certificate do what you think it's supposed to do. With a Certificate of Insurance, you're being asked to attest to coverages and provisions in a general way that may actually misrepresent the policy.

Doing that is insane. Again, that's one of the definitions of "certify". Trying to condense policy wording, trying to condense a multi-page policy into a few lines, is insane. That's not the purpose of the Certificate of Insurance. It's intended to provide information only. You want to stay with the information only and that's the goal of today's discussion. Now, we're staying basic and we're going to build up to problem-avoidance as we go through this discussion.

COI INFORMATION & QUESTIONS YOU MUST CONSIDER

Now let's discuss a few sections of the Certificate of Insurance. When you complete a Certificate of Insurance there are several pieces of information and several questions that you must consider.

The first question you want to consider is what limits should be listed in the commercial general liability section of the certificate. Stuart, I want you to take us down this path.

Stuart: This question has come up frequently because at least in the past we would have situations where an insured would have let's say a million dollars of CGL limits. An agent would get a request from a certificate holder specifying that they need a minimum of \$500,000 and they would put \$500,000 on the certificate because that was all that was requested.

Well, the problem with that is, as Chris has very clearly stated, the certificate is evidencing the policy not the contract – the policy. You could also say that the certificate is sort of a reformatted summary of some of the information that you find on the declaration page of the policy. We really have to state the policy limits, regardless of whether those are the required limits or not.

One of the things that has come up quite recently with the 2013 changes to the Additional Insured endorsements that ISO published is, and if you just take the CG2010, there is wording in there now that says that the limits provided to the additional insured will be the limits specified in the written contract or agreement, or the policy limits whichever are less.

In the situation where an insured had a one-million-dollar limit but the contract only required a half a million-dollar limit, we are going to put a one-million-dollar limit on the Certificate of Insurance. But in the event of a loss, it's likely that the insurance company will only indemnify the additional insured up to half a million dollars because that's all that was requested in the contract.

This has not been out long enough yet for us to see any kind of litigation come out of it, so we don't really know what the long-range effect this is going to have. I do think it is potentially a problem to be showing one amount of insurance on the Certificate of Insurance but having an Additional Insured provide a lower limit because the contractual agreement specified a lower limit.

We're going to talk about this a little bit later as to what you should attach to certificates in order to try to meet some of the requests that are being made. Just remember Chris' predecessor Bill Wilson always joked with me because I made a verb out of certificate. You are certificating what's on the declaration page of the General Liability policy.

I will explain this to you because I do some expert witness work. If you would have put \$500,000 limits on here when actually the policy had a million dollar limits, the way the plaintiff's attorneys deal with that is they will ask you why you misrepresented that

information on the certificate and what other information on the certificate did you also misrepresent, which is a way to prejudice or contaminate you in front of the jury.

We are stating what's in the policy and that's the limits you should put on the Certificate of Insurance. Is that enough for that Chris?

Chris: I think that's perfect. Thank you, sir. Let's move forward. We're going to skip the Auto box and jump directly to the umbrella. What has to be corrected in the umbrella section of the Certificate of Insurance? You're required to convey to the holder whether or not coverage is provided on an umbrella basis versus an excess basis, and you have to check whether or not it's a deductible or a retention.

Umbrella versus excess is coverage provided by an umbrella or an excess policy. I would suggest the answer to that question is harder than it may seem. Just because a policy says umbrella does not necessarily mean it's an umbrella policy. That's one problem but it might be broader in some areas, but it might be narrow in other areas because it might be a self-contained type of policies. Again, same thing with excess policies.

Excess policies are sometimes following form but they may not be true following form. They might be a self-contained excess policy. It's not really as easy of a question to answer and a box to check as it appears just because you see the word umbrella.

My contention is if the policy itself that you're holding in your hand says umbrella, check umbrella. Would you agree with that Stuart?

Stuart: Yes.

Chris: Beyond that, you're not going to judge. You're not going to offer an interpretation as to whether or not it's an umbrella or an excess policy. If it says umbrella on it, check the umbrella. Otherwise, I think you're stuck with having to check excess but don't offer an explanation in the description of operations.

Deductible versus retention is coverage with a deductible which generally applies to every loss or is there a self-insured retention, which generally applies when there is a drop-down situation. The policy should tell you. That should be pretty easy, that should be on the deck page. That's not a major issue.

There's also a box that allows you to indicate if the holder is an additional insured on the umbrella. Be careful with this box. It's right next to all the coverages that are laid out where it says, "Are they additional insureds?" You can have yes, no, whatever. You've got to be very careful with that box because just because they are an additional insured on the underlined policy, that isn't necessarily the case with the umbrella policy. So be very careful when you're checking the additional insured box next to each coverage section –

GL, Auto, Umbrella. Be very careful with that because they may not actually be an additional insured just because they are on the underlined. You have to check and make sure.

Now again, nothing in the section requires you to note which policies the umbrella or excess form applies to. How do you handle it if the umbrella excess carrier won't sit over the work comp employers' liability policy?

Stuart, I didn't give you a heads up on this but could you help me answer that question? If the umbrella won't sit over it, do you put a note on that in the description of operation section?

Stuart: Yeah, I think if there are known limitations. I mean if there are situations where we clearly understand that the umbrella is not functioning in its true sense of going excess of over all of the underlined policies, probably there should be some notation made of that. We'll talk about description of operations later, but the wording of that section changed about seven or eight years ago because it included the term, "And additional endorsements." An agent got sued because they didn't disclose some endorsements.

They took that wording off. I think there are sins of commission but there are sins of omission also. I think if it's clear that there is a deficiency in the way the umbrella is functioning as opposed to how the average person would expect it to function, there probably should be some notation of that.

Chris: Thank you, sir. I appreciate you helping me clear that up. Now, let's move on to our discussion of the workers compensation section.

The first question on there says, "Is anyone excluded?" It doesn't ask it that way necessarily, but it's asking if there is anyone excluded. It has a yes or no box regarding if a particular person or persons is or are excluded. A sole proprietor, a partner, executive officers, or members. Are they excluded from coverage? More and more you're seeing contracts require this box to be completed, even if it's not required to be completed by the state.

If the contract is going to require you to complete that box, you got to complete that box. The only state in which that box is required to be completed is New Hampshire. Don't check this box unless you have to.

If it's yes, list the positions of the people in the description section. The managers, the members excluded, or a member is excluded or whatever. I prefer positions as opposed to names. If you're excluding the chief executive officer, include the position, not the person's name.

Stuart, do you have a preference on which to present the position or the names?

Stuart: I would do titles. If they were executive officers, I would do titles rather than names because the names could change during the year. If you got titles there, and Chris knows more about workers comp laws across the country than I do, I'm fairly familiar with North Carolina stuff.

Generally, you've got to have a certain position in order to be excluded. I think that would be consistent with most of the laws that say that there are certain types of positions or titles that you can exclude. I think it would be appropriate to use those titles.

Chris: Thank you, sir. The second question on there is coverage provided as on a per-statute basis or some other basis. This relates obviously to the work comp coverage part, not the employer's liability part.

Essentially unless you have something really weird, some really weird policy, check the first statute. That's a pretty easy box. Then, the next section of information, the next part of information that you've got to provide is the employer's liability limits.

Simply input the amount of employer's liability coverage. Remember, we're talking about the employer's liability, not the workers comp. Work comp, as we just discussed, is a per-statute and we don't have the limits for that.

The thing about employer's liability is we don't have time to discuss employer's liability here. Plus, that's not the intent of this session. But the Big 'I' Virtual University did a session back in June on work comp and we focused an hour on employer's liability because it is an exceptionally important coverage that a lot of people ignore. Do take time to take a look at that webinar if you get the opportunity – [Untangling the Work Comp Mess – When Employees Travel and Their Families Sue](#).

This section, the workers comp section of the Certificate of Insurance, does not address what you might consider nontraditional employees, direct employees, those that you see on the payroll. Those workers for whom you're insured could be held legally responsible for under workers comp like a de facto employee. You know those employees that everybody says, "Well, they're independent contractors, not employees." If you look at the fact of the situation, they're employees. There is nothing in the certificate that ask you to address de facto employees or de jure employees. Those employees that are your employees because the law says they're your employees. In 44 states and the District of Columbia, an upper tier contractor is responsible from a work comp standpoint for the employees of an uninsured lower tier contractor. That's statutory. That's a de jure employee.

There's nothing in the certificate that addresses those employment relationships. It just says, "Do you have workers comp?" The reason I mentioned that is because you need to be very careful if a holder asks you to comment on coverage for nontraditional employees. Something like, "Work comp protection is extended to include legal or subcontract employees," or some wording like that. Be very careful if they're asking you to extend that kind of wording because you aren't necessarily positive of who is covered and who is not covered. And you want to be careful what you commit to and putting wording in that looks innocuous.

It looks like you're not doing a whole lot to it. We're going to talk about these potentially or seemingly innocuous phrases in just a little while, but be very careful if you get asked about that.

Also, if you have a situation where you're doing work for a large general contractor or somebody who is in multiple states, they might ask you to comment on coverage for traveling employees – employees who leave your state to go work in another state on a temporary basis. Be very careful with that because you're not quite sure. That's an extraterritoriality and reciprocity issue. The extraterritoriality question is does the insurance follow the employee. Reciprocity, does the state to which that employee travels recognize that coverage and, if so, for how long? Or are there any limitations on that?

Unless you know both states laws and unless you've named both states as 3A, be very careful commenting on traveling employees in the description of operations. You've got to know the specifics of the laws of the coverages that you've written and who is going to follow who, what, where, and how.

It's a lot more complicated than just saying, "Yeah, we got coverage for traveling employees." You might not. Or, de facto employees and things like that.

Now, the big box. What's acceptable language in the description of operations? Stuart, fill us in on this.

Stuart: ISO, ACORD, some of you probably know, but for those of you that don't know, for every ACORD form, ACORD produces a form instruction guide. It's generally referred to on their website as a FIG. They have specific instructions as to what should be in that box.

For description of operations, ACORD says is, "It's for general remarks. The additional comments or special conditions that may exist in the policy." Then it goes on to say, "As used here, records information necessary to identify the operations, locations or vehicles to which the certificate was issued." It's really intended to indicate any kind of special

features that the policy might have if you want to do that. You're not compelled to do that.

But also, to give specifics about locations, vehicles those types of things that may be germane to the contract involved. Because this is a big blank area though, this is where we get into a lot of trouble with people wanting you to type a certain wording into this description of operations. The danger here is that you will type something in there that will lend itself to an interpretation that there is a contractual agreement involved, or that you have characterized coverage in such a way that is broader than it actually is.

Most of the states have address certificate issues in terms of the practices of agents and what you can and can't do. More than 40 states have, the last time I looked at it and that may be more now, but the amend alter extend is everywhere I've looked. The prohibition against using a certificate to amend, alter or extend. We don't want to say anything in the description box that could potentially be interpreted as amending, altering or extending coverage.

Now, I'll give you an example. Some certificate holder may want to have it typed into the description of operations that they are an additional insured. So you type in there, certificate holder is an additional insured. Additional insured for what? Sole torts, joint torts, vicarious liability? How much limits do they have? With the new additional insured endorsements, putting number of additional limitations on the coverage available to additional insureds, I think it's become imperative to attach the additional insured endorsement to the certificate and let the certificate holder read the additional insured endorsement.

You don't characterize it, summarize it. You don't give any kind of general statements that they're covered when there is a lot of fine print that basically limits that coverage.

You could put something in the description such as the certificate holder is an additional insured as per-attached endorsement. Or, as per form number XYZ. See attached endorsement so that the language of the policy is doing the speaking here. Not you summarizing or characterizing or in some ways generalizing what the coverage is.

Be very careful at what you put in this section. It is probably the most dangerous section to the certificate, simply because it's a blank sheet and it gives the certificate holders the opportunity to specify a lot of things they would like to see.

The certificate cannot be used in most states now to renegotiate coverage. Anything that you put in there that could be interpreted in a broader sense than the policy language actually allows for could be an allegation of, an alteration or extension of coverage. Chris.

Chris: Thank you, sir. We'll come back again and talk about additional insureds in just a second. Now our last major question about completing the Certificate of Insurance relates to who should or can sign the Certificate of Insurance.

We'll come back to the holder in just a second. Let's talk about very quickly this question. This actually comes up a lot in the Big "I" Virtual University. We get this question as, "Can this person sign it? Can this person sign it? Does this person have to sign it? Does it have to be an original signature or can it be a faxed signature, whatever. Basically, as you know, the Certificate of Insurance provides a space for an authorized representative for a signature. However, we really don't know what an authorized representative is. Is it the producer? Is it the CSR? Is it the office manager? Is it an administrative person? It really doesn't necessarily specify; it just says an authorized representative.

Our recommendation is that the signatures in that line should be those of a licensed agent appointed by the carriers on the Certificate of Insurance, if they're admitted carriers. The problem is, if they're not admitted carriers, then we have a whole other issue with needing permission and writing to even issue a Certificate of Insurance.

If you do get that, make sure that's kept in that file and have an office copy of that agreement, that allowance as well. Or, some recommendations are, just don't sign it and send it and see what happens. If it comes back, then you've got to make a business decision of whether you're going to sign it and if you can sign it.

We'll come back to the non-admitted issue again in just a minute. Our last question was...Yes, sir.

Stuart: Chris, before you go there, let me mention another couple of things about this authorized representative. A number of years ago, we surveyed a number of insurance company agency agreements. We didn't look at all of them. This is a generalized statement but about half of them had some wording in there that spoke to what agents could do with Certificates of Insurance and about half of them had nothing in the agency contract that was specific to Certificates of Insurance.

The ones that did refer to Certificates of Insurance said something like, "The agent can produce unaltered 24s and 25s." That's not what it said. I was involved with a conference call years ago with Westboard where we had some attorneys on there and we were talking about Certificates of Insurance.

One of the attorneys was involved with a case down in Texas where an insurance agency had been sending certificates. The agency contract was silent on Certificates of Insurance. The agency contract, the agent had been sending certificates, copies off certificates to the company for 10 years. One of these certificates blew up and the

company notified the agent that they had no authority to issue these things. Legally, that's a really weak situation because of a concept in law called waiver estoppel.

The fact of the matter is that if your contract is solid, you may actually need to ask your carriers if it's OK if you do these because you have to be authorized to do this and if the agency agreement does not specifically authorize that, then you may need a supplemental authorization.

I have seen, and I don't know how broadly this is being done now because I'm really out of the loop on what agency contracts are looking like. A couple of years ago, I saw an agency contract agreement addendum by one carrier that was about two and a half pages long that was all about what agents could and could not do with Certificates of Insurance.

If your company has specified what you can do with them, then you've got to stay within that parameter or you could be in breach of your agency agreement. This authorized representative, I've been around this business a long time. I've never seen that term used anywhere except on Certificates of Insurance.

A number of years ago, more than 20 years ago, when I was still a retail agent, I wrote a lot of artisan contractors and we have an assigned risk in North Carolina and I ended up placing a lot of worker's comp through assigned risk.

One of the major carriers was a servicing carrier for the assigned risk plan. I did not represent them. I did not have an agency contract with them. I wrote them and I said, "Is it OK if I issue Certificates of Insurance?" They wrote me back and said yes.

As best I can tell, that made me an authorized representative. It is a very nebulous term. It's a vague term. It's not a real term of art in the language of insurance agency representation. I think you should be careful with this and make sure if you're issuing certificates that your carrier either knows about you sending them to the carrier -- we'll talk about that a little bit -- or the carrier had specific grants of authority within the agency contract to issue Certificates of Insurance.

Not that it's going to be a big problem but it could be a legal complication under certain circumstances. Chris.

Chris: Thank you, sir. The last question that we were talking about is, does it have to be an original signature? A wet signature. That's sort of anybody's guess what's an authorized representative, but probably not. I don't know that that's ever come up as a major issue. Have you seen that pop up as a problem anywhere, Stuart?

Stuart: No, and most states have electronic signature laws now. I've never heard that. It would be up to the certificate holder as to whether they would accept it or not. I do not know of any reason why you can't do it, other than the fact that they would prefer a wet signature rather than a facsimile signature but that would be it. I don't recall running into that.

Chris: From a legal standpoint, it probably doesn't matter or maybe doesn't matter. I don't think it does. But from a personal standpoint, from having been on the agency side myself, is, if you're going to have special language in there, I would kind of like to see it and don't just send it out with my name on it. Now I'm responsible for what's on there.

From a personal standpoint, I prefer to see it as the producer. Especially when you go outside of a standard, basic, just a request for information about the coverage. I would kind of like to see it and know what was put on there since I am now responsible for what's out there.

But once you've completed the Certificate of Insurance, to whom should you send copies of the form? Should you send it to the distributor? Absolutely, that's a stupid question. Just put it on there just because you had to talk about it.

How about the named insured? Should you send it to the name insured? My personal opinion is I think you should send a copy to the named insured. Maybe not each and every time, hold them and send them to them at one time or whatever.

Especially if there's going to be a charge for adding an additional insured to the policy or if the agency, I do know of some agencies who charge for issuing Certificates of Insurance. I don't know how long they keep those clients but I do know some agencies that charge for producing Certificates of Insurance.

But if you send one to the insured as suspicious as this sounds, I might have it stamped sample, to avoid misuse of it. We'll talk about this again in just a few minutes. The now holder of that certificate. Not the certificate holder but the insured, doing something that's not exactly on the up and up if you will.

Stuart just addressed this. Should you send it to the insurance company? Many companies say, "We don't want copies of the Certificate of Insurance." I think from an errors and omissions standpoint, you send it to them anyway. Let them throw it away. Let them deal with that.

In that conversation, I want to go back to our agent broker carrier relationship, ENS relationship, a non-admitted situation. What happens when you're using a carrier with whom you don't have a license and you're using them by way of a broker?

Again, an ENS situation. I have an agency friend of mine who's on our technical affairs committee who sent me an exchange that he just had with a broker on an ENS policy. Let me read what came up. He said, "We asked one of our NGAs to issue a certificate of liability insurance for us. Broker came back with this, 'Please note, we do not issue certificates.' We emailed her back that we have no contract with the excess surplus noncarrier and we would need the company to issue the certificate or get their permission to do so."

This line scares me, "She told us she had never had that request before." Now, hopefully, you're asking, if you don't have a contract with a carrier, hopefully you're getting permission and having it in writing.

Letter continues, here's what she sent back after a few hours of research, "Please refer to the binder for certificate instructions and note, we do not issue certificates, nor does the carrier." Sort of implied permission that now the agency has it but the authority that issues Certificates of Insurance says this, "Certificates of Insurance are not to be sent to the company," and that was in capital letters.

"The company does not accept or retain certificates and we will not notify certificate holders of any interruption, termination, or change in coverage."

Here's where it gets maddening from an agency standpoint, "It is the responsibility of the issuing agent broker to make sure the certificates accurately reflect the policy's terms and conditions. Following certain terms and guidelines, keep in mind..." it goes on from there with the guidelines.

As I said, I would say that that constitutes written permission to issue the Certificate of Insurance but keep it in the file and still send copies to the company, let them throw it away because when you show up in court -- I'm going to let Stuart attest one way or the other on this -- when you show up in court and said you always sent it, you better be able to say yes. Because if you say, "No, I only sent it every third," then you've got an issue of whether or not you've sent this one. There's a question of you not doing your job well. Stuart, would you agree to that?

Stuart: Yeah. There's a fundamental issue here that sometimes we don't talk about and I'll just bring it up. It is why are our agents doing this to start with? I mean, if coverage needs to be verified or certificated, if we can use the word, if information about policies should be supplied, who should supply that? I would argue it's the carriers. I mean, if you've got an account that's on direct bill, a commercial account that's on direct bill, to which you are being asked to issue a Certificate of Insurance and you issue it without checking to find out if that policy is still in good standing with the carrier, you may be

issuing a Certificate of Insurance at the same time that the carrier is issuing a cancellation notice.

The only party that has real-time information about the status of a policy is the insurance company and for them to say they're not going to issue these things is just lunacy to me. And I do know of an intermediary. They do both admitted and non-admitted business but they do Certificates of Insurance. They have them on their website and you can pull them down. The problem is, you can't negotiate about that because all you're going to get is what's on the computer.

I asked companies years ago, why they can't have a -- we'll come to this a little bit later when we talk about this new take of memoranda of insurance -- why you can't have a document on the website that a policyholder with a policy number and a pin number, I mean a customer insured with a policy holder and a pin number couldn't go in and you'll print off whatever they can get.

At the time they said, "Well, the internet, we can't do this, we can't do that." Then there was a lot of fluff about what they couldn't do. This is just lunacy that we're the agents caught in the crossfire on this thing when we're just the vendor of the policy. We have a license to sell, solicit, or negotiate.

This is a servicing issue. We don't do claims because we don't have a license for that. This is a servicing issue that should be done by the carriers. I've just never understood why they dumped this on us 25 or 30 years ago; my guess is they just don't want it back. But we're the ones that are having to deal with this issue, fight this battle on a day-to-day basis and the companies are not always very helpful with us in the demands of the marketplace and dealing with these issues. That's my little sermon for the day, Chris.

HOW DOES A COI RESPOND TO CONTRACTUAL RISK TRANSFER?

Chris: Thank you, sir. Well said.

Let's move away from some of this basic information and we'll jump into exploring how a Certificate of Insurance responds to contractual risk transfer. This is where the real fun begins. This is where the trouble arises, when we start trying to comply with contractual agreements and what the contract says the certificate should say. We're going to look first at the Certificate of Insurance's place in the world of contractual risk transfer. We'll start with this thought. Insurance is a slave to the contract.

What does that mean exactly? Essentially, contractual risk transfer, the agreement between the upper tier contractor and the lower tier contractor, the contractual risk transfer sets the course for the relationship. Between what the upper tier contractor is

placing on and transferring to the lower tier contractor. Now, as part of the contractual transfer, the lower tier agrees to indemnify, defend, and hold harmless. You've seen that wording if you've done contractors for 10 minutes. You've seen that in the contract.

Obviously, we call that the indemnity agreement. The upper tier, they agree to indemnify, defend, and hold harmless the upper tier for certain costs and expenses and losses. When certain events occur, certain losses or damage or whatever, the insurance policy is forced to respond due to the contractual agreement.

Remember, the insurance policy is written for the named insured for their actions. The contract transfers it over to being responsible for managing somebody else's liability for your actions or joint liability or we're getting into more contractual risk transfer there that we don't have time for today but that's what this does. It creates the contractual risk transfer, creates the relationship and the insurance becomes the slave. It has to respond to the contractual risk transfer but only to losses covered by the policy wording. I highlight that for a specific reason. Because, as we said from the beginning, a Certificate of Insurance is nothing more than information about the policy in effect.

What the contract says the lower tier's responsible for is one thing, what the insurance policy will respond to is another thing. Again, the contract sets the course of the relationship and the insurance policy provides a source of financing from the agreement but only up to a point, only up to the coverages provided by the policy. Never confuse contractual risk transfer with contractual insurance requirements. Nothing in the contract between the parties, nothing in that contractual risk transfer, can make the insurance policy broader. It can't do it.

The policy is what the policy is. The contract between the upper tier and the lower tier is a whole different document. It forces the lower tier's policy to respond in certain events. Insurance is a slave to the contract but remember, the Certificate of Insurance can be a slave to the law, not the contract. It's also a slave to the insurance policy and not the contract.

Some contracts, as we've talked about and as you're aware, require the certificate to contain specific wording or provisions. They want it to. They say, "It needs...the Certificate of Insurance and the description of operations needs to say X."

Well some states have laws, as Stuart mentioned, that forbid certificates from attesting or being altered for reasons just because of the contract language. Let's go back to where we started on this.

Remember that a Certificate of Insurance is a representative of the insurance policy in force on the date the Certificate of Insurance is issued. It's a snapshot in time and it only

is supposed to show what is enforced, actually enforced, on that day. While the insurance policy might be a "slave to the contract," the contract does not alter coverage. Since coverage can't be altered, neither can the Certificate of Insurance.

Let's combine all these elements. The insurance policy responds to the contract, but only to the level provided by the insurance policy. The Certificate of Insurance is nothing but a representation of the insurance policy and altering the Certificate of Insurance may be against the law. These three factors mean that you do not have to and sometimes cannot be required to put anything in the Certificate of Insurance that isn't in the policy.

That's a familiar theme for this session. You've heard it a few times and we'll talk about it a couple more times and we'll sort of clarify that out and we'll point out in just a little while some wording that, again, looks innocuous. It seems like it's not going to cause much problems. But it could be misinterpreted or it could be a misrepresentation of the policy.

I'll hold that for you and we'll come back to that. Let's dig a little deeper into the relationship between Certificates of Insurance and contractual risk transfer. How does the Certificate of Insurance respond to contractual risk transfer?

First, what did the insured contractually agree to? We're delving into the area of contract law. Contracts are private agreements between two parties, the upper tier and the lower tier, the upstream and downstream parties. Courts generally don't like to alter contracts because they see the right to contract as a personal right and it's a right that they choose to stay away from unless the contract violates public policy, or it violates statute somehow. Since these are private contracts, contractual risk transfer, each party can agree to almost anything but not everything agreed to is necessarily insurable.

When I worked on the consulting side of this business, I had a municipality that was one of my clients. I got a call at least once a week from an agent who would call me and say, "What you're asking them to agree to in the contract is not covered by the insurance policy." I'd say, "Yes, sir, I know." And he would get all upset. I said, "You're misconstruing. Don't confuse the private contract between our municipality and your insured and the insurance coverage. We're not saying that it should be insured. We're not saying that it is insured. We're just saying they have to agree to this. How they finance it is their problem, not ours. Don't confuse the private contract with the insurance coverage."

That's what a lot of holders try to do. They try to make the Certificate of Insurance something it's not because the contract says you've got to agree to this. Well just because the contract says you've got to agree to this doesn't matter because the Certificate of Insurance is, once again, a representation of what's in the policy. Just

because it says it in the contract does not mean you can or have to put it on the Certificate of Insurance.

This leads to the next question, which we've already sort of answered. Does the contractual risk transfer agreement compel the insured or the agent to comply with anything? Like I said, we've already answered that question, it doesn't matter what the insured, what the lower tier, agreed to in the contract. The insurance policy covers what the insurance policy covers. The insurance carrier is not compelled to provide coverage for anything simply because its insured agreed to it in the contract.

Now I know that's hard for you to...In that same vein, you as an agent shouldn't put anything on the Certificate of Insurance that isn't in or endorsed to the policy. This is the area, contractual wording, where most agencies get into trouble in regard to Certificates of Insurance, because there is so much pressure placed on you and such a time constraint on making decisions and getting things done. Not only is that pressure coming from the upper tier, but it also comes from your own insured. The upper tier says you got to do this. Well, you can't do it then all of a sudden your insured is calling you putting the exact same pressure on it.

Saying something like, "You've had this call at 4:45 on Friday afternoon saying, 'They're holding my check until I can get the Certificate of Insurance that proves all this stuff.'"

I'm sorry, you can't provide that. Honestly, from an agency background I feel bad because you can't do that. You didn't have the opportunity. Just because the contract says it doesn't mean that you can do anything about it or that you should do anything about it. All you can do with a certificate is what is in the policy.

They say, "They're hoarding my check," or, "They kicked me off the job site." In both of those instances, the time to comply is very short. As we've already said several times today, and we're going to say again several times today, the only thing that you're going to put on that Certificate of Insurance is what is in the policy. Again, just because your insured agreed to something doesn't mean the carrier will agree to it. If the carrier won't agree to it, you can't put it on the certificate. I've already said you are in a hard place.

Your carrier, and Stuart alluded to this, your carrier's probably not going to pull you out of this hard place. You're stuck, but don't make it worse by just throwing something on the Certificate of Insurance thinking, "Nothing will ever happen." Well, you just don't know that. I'm sure you don't want to take that chance, and I'm sure your E&O carrier would prefer that you didn't take that chance, as well. Stuart and I were joking...he taught for a year at Appalachian State. In his time there, he dealt with and had some students in his class that were getting actuarial degrees. The joking question, he'd say, "What are the chances of that happening?" They would say, "7.35 to 7.6 percent" or

whatever. He said, "No. If it happens to me, it's a hundred percent." The fact of you saying, "It's never going to happen," it only takes once. Then, it's a hundred percent so don't put yourself out there.

Like I said, I know. I've been an agent. You're in a hard place. The carrier's probably not going to pull you out, and you're being told you're going to lose the business because of it. You've got to make a decision at that point.

Stuart, do you want to have a swing at that?

Stuart: Chris?

Chris: Yes, sir.

Stuart: I have a lot of respect for attorneys, even though we all joke about attorneys. We joke about insurance agents, accountants, and actuaries, too, but attorneys are, to some degree, unsophisticated when it comes to insurance issues. They don't teach them a lot about insurance in law schools.

I was in a conversation with an attorney one day, and he was really pressing me as to why an agent couldn't do something. The thought just dawned on me, and I asked him, I said, "Well, do you understand the difference between private contracts and public contracts?" He said, "What do you mean, public contracts?"

I said, "Well, private contracts are negotiated contracts, bilateral contracts, contracts of cohesion, where both parties argue about what's going to be in and out of the contract. Insurance policies are contracts of adhesion. They are unilateral contracts. They are written by one party, and take it or leave it by the other party.

"The contracts are public in the sense they have to be, in most states, filed and approved with a regulator. The only way to alter those contracts is to file and approve the alteration with the regulator. The insurance policy is kind of like a public utility in a sense. It's a contract that we vend to an individual. The transaction is private, but the contract itself is really kind of a public thing."

Sometimes lawyers really don't grasp that and don't understand that you can't wheel and deal and negotiate on insurance policies like they commonly do, and usually do, on private contracts.

Chris: That's a good point. Over the next several minutes...and I'm going to turn this back over to Stuart in just a couple of seconds...we're going to discuss some of the danger areas that flow from these contractual requirements, again, those seemingly innocuous phrases.

HOW SHOULD ADDITIONAL INSUREDS BE LISTED?

We'll begin with listing additional insureds. Stuart, I'm going to ask if you mind taking us through what we need to consider when we're listing additional insureds?

Stuart: Well, additional insureds is part of the risk transfer mechanism. I mean, there are really two sides, typically, to a risk transfer. One is an indemnity agreement, which is the private contract Chris referred to between the upper-tier and the lower-tier parties. The second is often a requirement to make the upper tier an additional insured on the lower tier's policy. That sounds like a duplication. If you've got an indemnification, what do you need to be an additional insured for? In fact, lawyers know that sometimes those private contracts are not upheld in courts the way they are anticipated to be, and so they are not sustainable. The additional insured is a fallback position.

Additional insured, we really have to be careful with this. Additional insureds are different from names insureds or insureds by definition that are stipulated inside the terms of the policy. Additional insureds have to be endorsed on. ISO has about 40 additional insured endorsements. Why so many? Because there are a number of different relationships that additional insureds can have.

The carriers, the underwriters want to have some control over the degree and the amount to which they are insuring these additional insureds because they are parties to the insurable risk, but they are not actually involved with the insurable risk in a direct sense.

When you look at these additional insured endorsements, some of the changes have been made in 2004 to 2013, there has been a fairly consistent pairing down of the coverages available to additional insureds. That's why it's so important for an additional insured to see the actual language and the policy which grants them whatever coverages the policy's going to provide them. That's done on the endorsement. Generally, additional insureds are required in the contract, often times are written contracts, sometimes it's an oral contract. Typically, it's a written contract. There may be some guidelines that carriers have as to who will they add as additional insured, not just everybody, John Q. Public, needs to be an additional insured.

There has to be some kind of legal or operational relationship that warrants additional insured status. The additional insured language in the policies Chris has just talked about, the policy language is a standalone contract. It is not a function of the private contract between the opportunity of the lower tier contract.

The upper tier, lower tier private contract can say whatever it wants but the insurance policy is not compelled to comply with the terms of the private contract. It is its own

standalone form. The coverage actually provided by the additional insured endorsement may not comply with the contract. If it doesn't, you have two options.

You can't do anything about it, or go to the carrier and see if they will do some type of manuscript endorsement. There are a number of carriers who have carrier-specific additional insured endorsements, and you really need to read those things. When we're dealing with ISO forms, we will see them multiple times, we know what's in there but the company started coming up with their own forms.

When you look at the bottom of an endorsement, it gives you a date and says, "Copyright © Insurance Services Offices Inc.", that's a full ISO form. If it says, "Contains copyrighted information by Insurance Services Offices," that is a knock-off form some carriers have taken an ISO form and amended it in some way.

You really need to know how they amended it because I've seen company-specific additional insured endorsements that said our coverage is not primary, noncontributory, and a number of other restrictions put in there that...It was only vicarious liability. There's been a lot of lawsuits about that. A lot of lawsuits that were prompted the 2004 change that took the "arising out of" language, out of this ACORD 2010 and put the causes and holder part bi-language in there. Especially, if it's not a standard ACORD additional insured form. Make sure that the additional insured is informed. If you've got to put that on a certificate, put additional insured as per -- give the form number -- and see attached form. Attach it to it and send it to them.

You don't really owe the certificate holder an explanation of the coverage. That's really their problem. You provide them with the language. It's up to them to determine whether they're willing to accept that language or not. If they're not, there's just not a lot we can do except manuscript forms. The filing process is the filing process. It's different in different states, but using older endorsements is a problem in some states.

Manuscript endorsements take time and money. Companies are reluctant to do those because you don't know exactly when you get away from the ACORD formats. You really don't know what you're opening yourself up to. Chris...

Chris: Thank you, sir. Now, before we leave this discussion of additional insureds, I want to read a question that we received last week in leading up to the class. I'll read the question. I've also got an answer that I want to put out there. You can digest it as you will.

Here's the question that we had pinged to us. It says, "Our insured has an entity requiring individual additional insured status and also wanting a couple of affiliates/subsidiaries to be listed within the description box as additional insureds."

First problem, the client's policy includes an endorsement providing blanket additional insured -- that's a cuss word, by the way -- to the institute with whom they have a written contract.

Again, the holder additional insured requested that the certificate list them as additional insured and the two other entities be listed as additional insureds in the description box."

I think Stuart just addressed a little bit ago. "I sent each entity a separate certificate, listing each entity as a holder. They rejected this and sent me a request to have one certificate listing as described above.

I asked the carrier. Here's what they said, 'When multiple holders are listed, only list the holder with whom the insured has the written contract.'" This is the carrier's guidelines. When multiple holders are listed, only list the holder with whom the insured has the written contract.

"When additional insured is listed on policy via the specific endorsement, attach a copy of the endorsement or indicate endorsement number and addition date." Sort of what we've been talking about.

"Number three, when the additional insured includes under blanket -- I hate if the carrier uses that -- do not mark the additional insured box in the description box, but in the description, include wording -- and this is the word in the carrier recommending, included in the description of operation -- the endorsement amending the business owner's liability coverage form includes several additional insureds automatically."

That's the carrier's recommendation. She ends the question with, "Is the carrier correct?" To me, there are several issues here.

One, be very careful with the phrase blanket additional insured. I've already said that's a cuss word. There is no such thing as a blanket additional insured endorsement. I wish the carrier wouldn't have used it. I wish we would stop using it in the industry. I have another gentleman on the Technical Affairs Committee who actually has a visceral response. He actually gets mad when he hears that term.

There are automatic additional insured endorsements, but they differ greatly in regards to who is extended protection as an additional insured. The CG 20 33, the additional insured -- owners, lessees, or contractors -- automatic status when required in construction agreements with you endorsement requires, let's call it, privity of contract.

Basically, in order to be granted protection -- whatever level of protection that is -- as an additional insured, you actually have to be in contract with the name insured. The two

names on the front of the contract between the upper tier and lower tier requires contractual privity in order to gain any benefit as an additional insured.

The other one is the CG 20 38. This one's a little broader. It's the additional insured -- owners, lessees, or contractors -- automatic status for other parties when required in written construction agreement endorsement. It grants additional insured status to any party that is required by the contract. It does respond to the private contract between the upper tier and lower tier. It doesn't require, let's say, privity of contract.

This is the reason why I have a problem with the carrier saying that or putting that wording in there. Even if you have the CG 20 38, if you read the endorsement, it says, "The name insured must be working on behalf of the additional insured for the additional insured to garner any protection under the CGL."

It says the same thing in the CG 20 10, which is where you specifically lease people. Additional insured status might be granted but it's a myth, if you will. Unless the name insured is actually doing something for that "additional insured," they're not granted any protection whatsoever.

My second problem with this is that do the issues with these options of additional insured endorsements that I just discussed...I wouldn't recommend sending separate Certificates of Insurance stating the holder is additional insured.

I saw what they were trying to do in sending separate certificates. Because you're trying to show them as additional insured, you might not be correct in that, depending on what the wording of the endorsement is – CG 20 33 or a proprietary form that's like that or the CG 20 38 or a proprietary form like that. You're giving them hope that might not actually exist. It creates this thing called detrimental reliance, which Stuart will talk about later.

My last thing in relation with this question is I think the carrier is incorrect in recommending that you use the wording that the endorsement amending the business owner's liability coverage form includes several additional insureds automatically.

I recommend against using that in the description of operations. It's an overly broad statement. It means nothing. You probably have just misconstrued, misrepresented the policy. You should list the endorsement with the addition dates. Provide a copy to the holder. Regardless of what you and I think or regardless whether or not you and I agree with what the carrier says, you do have to pay attention to what these carrier guidelines are to a certain point.

Don't get yourself in trouble because the carrier says you can put that kind of wording. I don't think that's appropriate type of wording. My recommendation when you're looking

at a Certificate of Insurance in relation to additional insureds, or anything you put in the description of operations, is read the Certificate of Insurance like somebody who is not in the insurance business; somebody who has no insurance background. If there's anything fuzzy in there or unclear -- that can be taken in a lot of different ways -- don't use the phrase. Stick to the facts -- name, duties, policy forms in use. I've said it 18 times now -- only put on Certificate of Insurance what is actually on the form.

Stuart, you want to add anything to that before I move on?

Stuart: Yeah, I would just take a slightly different attack and say don't even put things on the certificate that are stated in the form. Send them a copy of the form and let them read it themselves.

I just have a visceral reaction to us restating coverage on a certificate. The form should speak for itself. The certificate says clearly that it is not an insurance policy. We shouldn't make it look like one.

Years ago, ACORD didn't want you to put stuff on there, because they didn't want the certificate to even look like a policy. They didn't want you to attach endorsements, because they didn't want to look like a policy, but I think the world has changed to the point now where we just got to do that, because the form, we should not do anything that appears to stand in front of the form in terms of what coverage is provided or not provided, and how those coverages are characterized.

CERTIFICATE HOLDERS – HOW SHOULD THEY BE LISTED?

Chris: Thank you, sir. Let's move away from additional insureds, and let's talk about how we list certificate holders. The right ways or more importantly the wrong ways to list certificate holders. In the Virtual University, we get questions through our Ask an Expert service that address these issues all the time. You might not be surprised how often we get asked this question, but it does pop up.

Should we ever list a certificate, or issue a certificate, with the holder being to whom it may concern? We'll come back and talk about this again in just a few minutes. We will talk about the memorandum of coverage, but in general terms, you should never issue a certificate to the world, to whom it may concern.

They're intended to be issued to persons or entities in a business relationship with your insured, not, again, in general. There's also some other things from a business standpoint, or a realistic standpoint, that if you issue to whom it may concern certificate that you might miss out on some information.

You might not know who the insured is doing work for. The reason that's important is because you might be asked to issue a Certificate of Insurance to an entity that it doesn't make sense the insured does X, but this entity has hired them, and it looks now the insured has jumped over and has starting doing Y.

You don't know that if you never had the option to take a look at the Certificate of Insurance. From a practical standpoint, you want to know who the certificate had been issued to, because you like to know and need to know from an underwriting perspective, an underwriting standpoint, who your insured is doing work for. You need to find out who they're working for. Now, the last thing from "to whom it may concern" is you also lose control over the Certificate of Insurance. We're going to talk about that in a moment.

The next one that we get questions are what about leaving the holder blank. [laughs] This is even worse than to whom may concern.

Sort of the same vein, you are giving it to whomever is out there, whomever has a hold of it. When you issue a blank holder, I hate to say this, but you have created an even greater chance of fraud. The situation where the insured, or previous insured, fills in the Certificate of Insurance for years after they stop paying you.

It happened to me. When I was an agent, I got a call. I had owned an agency, I got a call from an insured, not my insured. I got a call from a lady who said, "Are you familiar with such and such?" "Yes, he used to be insured here," and she said, "Used to be." I said, "Yeah, his policy was cancelled a long ago."

She said, "That's funny. I've just got the Certificate of Insurance with your agency listed on it for current policy." He got a hold of a Certificate of Insurance blanked out and was using it over and over and over again. Fraudulently, to be quite honest, but that's what can happen if you issue a blank certificate now.

I do know, you're going to be forced into this, or there's going to be an attempt to you be forced into this, because I get this all the time where somebody comes to my house or an HVAC contractor, or somebody else who's going to do some work around my house. They have within a blank Certificate of Insurance, like that's going to impress me.

Or like anybody else knows what it is, especially when you look at the dates and everything else. But they want to give it to them to show a prospective customer. I've had them shown to me. Your contractors are going to say, "Hey, I want it to carry with me. What's the harm in that?"

One is fraud. The second is the purpose of the Certificate of Insurance, and you got to explain to them that a Certificate of Insurance, again, certifies covers on a particular date

to a particular holder, and that you can't certify coverage on an unknown date to a unknown holder to a unknown person to an unknown entity, because the coverage may no longer be in effect, but your name is on it. Let them know they can ask you and call you for a basic Certificate of Insurance with no superfluous wording or requirements any time they need one, but do not issue a blank one.

This next one is a little more esotery. Should you make the holder match contractually required language? The contract, we talked about the contract risk transfer earlier.

We start to look to the contract, and it says, "Certificate holder should be listed as," and from there they go on to a long list of holders, or a strange list of holders like ABC Inc. and their successors and/or assigns as their interest may appear. I said, "The dumbest thing in the world," because a Certificate of Insurance is of that date where there's not going to be any successors and/or assigns, because that's the effective date of that day.

Now, I'm going to say a real problem with listing that. It's a no effect, but sort of how that's what we're talking about. Then they want you to list all these people, because the contract says you got to list all these people as holder. The problem arises in the additional insured status, because if the Certificate of Insurance shows that additional insured status is provided and based on how the form is set up, which we'll see this in a few minutes, it potentially looks like all the parties listed as holders have additional insured status, and they might not.

We just talked about that. That, again, will depend on what form is being used. Some carriers only allow the listing of a party with whom the name insured has a contract. We just saw that in the question that we got. Just because the name insured should agree to it in the contract.

You've heard this from me before. Just because the name insured should agree to it in the contract does not mean they can always comply. There may be certain legal or even contractual issues that we'll discuss in the next section. Stuart, do you want to add anything to that before I move on?

Stuart: I will go back to the blank or to the whom it may concern. You cannot put the certificate holder's additional insureds as per attached endorsement to somebody who you don't know.

Chris: That's true. [laughs]

Stuart: It's just perilous in the current environment. We are going to talk about something in a few minutes. It's changing this a little bit. In the current environment, just having, not specifying a certificate holder is traditionally banned potentially for misuse, abuse, and fraud.

We will see what develops out of this memorandum issue we're going to discuss. I'm a little concerned about how well this is going to be received. Anyway, I think Chris is exactly right. The certificate cannot be used to alter coverage.

It cannot be used to signify that there's contractual compliance with an external contract. We just can't do that.

ADDING & ALTERING WORDING ON THE COI

Chris: With that, it's a perfect lead in from Stuart. I want you to start perking up your ears. If you stopped listening, now we are going to need to get you back in here and start listening to the hazards that are created when you are asked to, and when you do, in fact, alter a Certificate of Insurance.

How should you handle a request to alter a Certificate of Insurance. I think you probably already know my responses to this.

First, what does the contract require? If the request is within reasonable use of a Certificate of Insurance, I don't have a problem, as long the certificate is being used to show what the policy provides, I don't have a problem with what the contract requested. The problem arises when you start seeing these strange requests and strange wording. What are the carrier guidelines? That's the second thing we got to look at. Stuart mentioned earlier about amendments to agency contract that says it may not allow you to alter a certificate in any way, so you got to check your contracts.

Thirdly, is it allowed by law? Stuart mentioned earlier, there are 40 more states now that just do not allow you to alter a Certificate of Insurance in statute. All you can do in those states, and literally all you can do in any state is issue a Certificate of Insurance in compliance with the policy that's in effect. That's it.

Doesn't matter with the contract says. You can't alter the Certificate of Insurance, because the contract says you got to.

One of the last things that I want to mention is something that IRMI has put out. IRMI has said that the improper altering of a Certificate of Insurance -- now listen closely, this comes from IRMI -- could negate the disclaimers in the form. The reasoning for saying that is because such changes to a Certificate of Insurance, so a potential intent outside the limitation of the form, but there's good news in that. That's sort of a case by case basis, and Stuart will talk about that a little bit later.

We are going to answer another question about whether or not certificates actually do affect coverage. Sometimes, contractually required wording does not look like an attempt to alter the Certificate of Insurance, but when you start looking at the document

in front of the court, like a courtroom test, the finding maybe alter based on the entirety of the document. What did you put in there? In short, be careful of any non-policy wording.

Which leads to my question, what is the most dangerous phrase to use in a Certificate of Insurance? The most dangerous phrase in a Certificate of Insurance is as per contract. We get this question a lot in the Virtual University. If you use as per contract or any similar language, that can be misinterpreted.

How might as per contract be misinterpreted? Let's look at it. It usually comes across this way where you're asked to put this statement on a Certificate of Insurance, "Coverage is provided to the holder as per contract."

Are you absolutely positively, 100 percent without a doubt sure that everything agreed to in the private contract is covered by the policy or policies as the case may be?

Even those sneaky little contractual requirements in that private contract that request or require protection for against breach of contract and loss of reputation; the policy doesn't cover that. You can't say it's as per contract.

Again, are you sure the coverage is written as per the contractual requirements? If you are absolutely positively sure, still don't put that in the contract. That is the most don't. Don't certify a certificate, as Stuart mentioned earlier, that the policy is written as per the contract.

You can't do it. You don't know for an absolute positive fact it's insured. Stuart.

Stuart: I'm looking at my wall right now desperately seeking a law certificate or diploma, but I don't have one. Interpreting contracts, we can look at the contract and see what we can figure out, what the insurance requirements are, but interpreting, pining about compliance, we run the risk of stepping over this line of practicing law.

We have to be very, very careful about that. Contracts and workers' comp are the two areas where what we do in the insurance business and what lawyers do get awfully, awfully, and sometimes uncomfortable close together. We have to be vigilant about what those lines are, unless you have a law license. If you do, that's fine. I don't, so it's not my job to determine whether an insurance policy complies with an external legal contract or not. It's fraught with problems.

Chris: Thank you, sir, and my law degree has expired, especially since I never had one.

Some weird and dangerous requests, if you will, just a few examples that you might see, contains no residential exclusions. Now what the upper tier is looking for in this is they

were building houses, one and two family houses, and what they were looking for was they wanted to make sure that there were no endorsements to the policy saying that there are no endorsements that preclude coverage for insureds working on, contractors working on, one and two family dwellings.

I understood what they were looking for but if you put on the Certificate of Insurance, "Contains no residential exclusions," well, guess what? There's still exclusions in the policy that apply to any operation you're doing even if it has to do with the house.

You simply can't have that overly broad type of statement. That's just too easily misinterpreted and misapplied to say no residential exclusions. Too broad. Way too broad. You got think what's it going to look like to the folks in front of the jury?

Waiver of subrogation, this is my favorite. I'm going to let Stuart speak on this in a little bit. Waiver of subrogation applies in favor of the certificate holder with respect to general liability.

First, you can only say this if the endorsement is attached. Secondly, there is no such thing as a waiver of subrogation endorsement. There is a waiver of transfer of rights to recover against others to us endorsement, which weighs more than subrogation rights but that waives again more than just subrogation. Lastly, to what extent is subrogation being waived by the endorsement, and what extent is intended by the request?

Waiver of subrogation applies in favor of the certificate holder with respect to general liability. OK, fine. It looks like it applies to just the general liability policy but two things that are covered by the policy and not covered by the policy, it's too broad. List the endorsement, attach it, especially if it's proprietary form.

One other thing, because in the form itself it already shows where beside the bottom that waiver of subrogation has been provided, so it's already addressed. It doesn't necessarily need to be in there.

This third one, as broad as the CG 20 10 11/85 hopefully you see the problem with that right up front. There is no combination of forms or endorsements as broad as the 11/85 edition of the CG 20 10, period. You can't build that breadth of coverage anymore. You can't put it on the Certificate of Insurance because it doesn't exist. The CG 20 10 with the CG 20 37 is not as broad in any way, shape or fashion as the CG 20 10 11/85.

You cannot attest that coverage is as broad as the CG 20 10 11/85 because it's not. To use the Queen's English improperly, it ain't. You can't attest to that.

This one popped up yesterday. Notwithstanding. Oh, that's a scary term notwithstanding. Let me read you the beginning of the wording and this was recommended by a contract

of situations. It says, "Notwithstanding any inconsistent statement in the policies described above, the parties intended that..." [laughs]

It went on from there. Basically, it's trying to make the Certificate of Insurance into something it's not. Notwithstanding scares me to death. How about you, Stuart?

Stuart: Oh, yeah. Oh, yeah. That is an undoing word. It basically has the potential to negate exclusions of all kinds. It's just a terribly difficult word to deal with. The legal consequences of that word are various and dangerous.

Chris: Very much so. Now, for the last one here, I'm going to it turn over to Stuart, is a certificate holder is an additional insured. You talked about this earlier, but Stuart, I want you to clarify and to solidify what you said earlier, in relation to putting that on the Certificate of Insurance under the description of operations.

Stuart: Additional insureds have different degrees of coverage than named insureds and insureds by definition. That's why we have all these endorsements. It's just become imperative now to qualify to the extent of which the additional insured is covered and the only way to really do that is to attach the endorsement with it.

The wording could be, it's better just to say, "See endorsement," but it could be a certificate holder isn't this insured as per attached form number blah, blah, blah, so they can read the form. That says that you're an additional insured but you're an additional insured by the specified wording of the form, not just an additional insured but we don't know what that means. It could mean different things to different people. It could mean if I'm an additional insured, why don't I have coverage from my sole torts? It's very obvious now after the 2004 changes to the additional insureds endorsement that in sole torts of additional insureds is not something that ISO and the companies want to insure.

That's very clear in the language now but in using this clause and in whole part bi-language, which implies there has to be some negligence on the part of the named insured, in order for the additional insured to have any coverage.

That statement right there, in and of itself, is incomplete, inadequate statement which is subject to substantial misinterpretation. You have to be more specific. You have to refer to the former endorsement number and you have to attach the language to the endorsement in order for them to read the policy language themselves. If they come back and say they don't like it well, you got to back to your carrier and say, "Is there any alternative to this?"

Probably not because again we're dealing with public contracts. The filing and approval processes can be laborious and they can be expensive. The form is what the form is but

they should have the ability to see the language that qualifies to the extent to which they are provided additional insured status under the policy. Chris?

Chris: Thank you, sir. Let's move on and talk about the overarch in the grand, overarch in rule around contractual request to alter the Certificate of Insurance. Basically, the key role is this in regard to Certificates of Insurance. If it's not illegal, not a misrepresentation of policy terms or in violation of your agency contract, what is placed on the Certificate of Insurance is a business decision.

Now, that rule sounds like it gives you a quite a bit of freedom in relation to the Certificate of Insurance, but in actuality, it doesn't. In reality, you can't condense a hundred pages of insurance language into a few lines on the Certificate of Insurance. You will misrepresent the policy terms and conditions if you try to do that.

In reality, second reality of this, the rule limits you to only certain information like a brief description of the operations as you understand them. I would recommend using the classification wording in the description of operations, a listing of the policy forms and endorsements, and even attaching them.

As Stuart just discussed, it's even a bit dangerous to state that the holder is just an additional insured. You've got to specify that more specifically, it's actually not...Another thing about that it's actually not necessary to state that the certificate holder is an additional insured because as I mentioned earlier, each coverage block already provides a place to indicate where additional insured status is granted to the holder. I've got it circled right here for you.

INSR LTR	TYPE OF INSURANCE		ADDL INSD	SUBR WVD
	COMMERCIAL GENERAL LIABILITY			
	<input type="checkbox"/>	CLAIMS-MADE	<input type="checkbox"/>	OCCUR

	GEN'L AGGREGATE LIMIT APPLIES PER:			
	<input type="checkbox"/>	POLICY	<input type="checkbox"/>	PRO- JECT
	<input type="checkbox"/>	LOC		
	OTHER:			

Commercial general liability section, are they additional insured? It's already addressed there, so it's sort of a duplication of effort to put it in the description of operations. It's addressed here, attach the form.

DOES THE COI AFFECT COVERAGE?

Now, to everybody's favorite question. Does the Certificate of Insurance affect coverage? Technically, no.

A Certificate of Insurance as we've talked about this whole session is for information only, if you follow the rules. Stuart, give us the bad news if we don't follow the rules.

Stuart: If we had more time we could go back through a little bit of the judicial history of court actions on certificates. When the court actions first started, the argument was, This is the contract, I've relied on it, you didn't notify me of the cancellation, it said you would endeavor to," that's contractual language. "I've relied on that, I've been harmed by it and therefore you are in breach of contract." The courts in a number of cases rule that a certificate was not a contract of insurance.

It's not a contract, a legal contract, because there was no contractual intent. Look at the disclaimers all over the certificate, how much do you get paid for doing this? There is no compensation and a number of other technical legal issues. They were not contracts.

What's happened in the last 10 or 15 years is the plaintiffs bar has adjusted their strategy now to where we are seeing the lawsuits go is not a dispute over whether the certificate has contractual provisions or not, but the idea of misrepresentation in detrimental reliance.

Chris mentioned that word before. If you say anything in the course of your business, that is generally in legal terms of representation. If I rely on that representation, if that representation is inaccurate and I rely on that representation and then I'm harmed by that reliance, then I may have a tort cause of action not a contractual cause of action. Unfortunately, a number of the cases where detrimental reliance has been argued the plaintiffs have won.

This is one of the reasons we are so concerned about what you say on a certificate because those statements you make on certificates are representations. If a representation can be interpreted in multiple ways, the courts generally like to favor the party that didn't make the representation. Therefore, you can be exacerbating your exposure by the statements that you make. My doctrine on Certificates of Insurance is the fewer the words, the better.

The less you say other than checking boxes and putting in numbers, the better off we are because the more granularly we get and what we say, the more chance there is that something could be interpreted different from what we intended. Legally, that could work against us and could create a situation where the people would allege detrimental reliance. It's getting very, very important.

There was a very famous case -- I don't know how it came out. I assume it got settled but it was against one of the large brokerage operations, where they had issued an evidence of insurance form on a property risk. They had denoted a subordinate coverage a sub-limited coverage that was available, but they failed to denote that that sub-limited coverage was qualified for certain types of risk. Well, the loss that occurred was a certain type of risk.

The insured gets us evidence saying that I've got a hundred million dollar's worth of this but the policy says no, you only have 25 million if it meets certain conditions. They are saying, "We relied on that," and in that particular case, I talked to the attorneys a little bit, and they sent me some of the initial documentation. There was an opinion expressed by the Mortgage Bankers Association that said, "It is perfectly legitimate for financial institutions to rely on a Certificate of Insurance as an accurate portrayal of the coverage." The outside world is looking for a one-page explanation of coverage that they can legally rely on and that's not, as Chris has said before, possible; you cannot summarize these policies down to one page. It just can't be done. There are legal consequences that are possible when we start adding wording to these certificates which is subject to multiple interpretations. Chris?

WHAT IS A MEMORANDUM OF COVERAGE/INSURANCE?

Chris: Thank you, sir. For this next section, I'm going to turn it over entirely to Stuart. We are going to discuss the new monsters that we talked about in preparation for this class, the Memorandum of Coverage that Stuart has talked about a couple of times and addendum requests that you might see as an agent. Stuart, I'm going to turn it over to you.

Stuart: Thank you, Chris. Years ago, we used to see these things called Memorandum of Insurance that were generally produced by the certificate holder. They would send them to the insurance agent and it would be a multi-page document and would have a lot of check boxes on it. Do you have pollution coverage, yes or no? Do you have contractual liability coverage, yes or no? And on and on and on and on. Extremely dangerous.

There are maybe two questions in the whole world cosmos of insurance that can be answered yes or no. Other than that, everything has got some kind of qualification. Yeah, you have some pollution coverage but not much, but they don't have a box for "some but not much". They have a yes or a no box. Those things were extremely dangerous and we often counseled agents not to fill those things out, to send them to the carriers.

They are not going to fill them out but remember you are an agent of the company and not the company, not a branch office of the company. What's happened in the last year or two, and I got a call from an attorney from a large brokerage operation a couple of

months ago asking me about these. I actually thought he was talking about the old version of these memorandum, when in fact he was talking about something that's newly emerging.

Some of these large brokerage operations are apparently producing a document that is a certificate-like document, that emulates some provisions of the ACORD form. It has a lot more disclaimers on it but it's on their website and a customer of one of their insureds can go into their website, who is authorized to access this information. They can print out a copy of this thing.

Strangely enough, it does not have a certificate holder's name on it because it's sort of a generic document and it does not have a signature box on it. There are pros and cons with this.

I think the pro here is this is maybe the golden goose that we've all been looking for to get out of this business of issuing individual certificates. The graphic on the next page is one I pulled off the Internet.

MEMORANDUM OF INSURANCE						DATE 01-20-15	
<p>This Memorandum of Insurance is issued as a matter of information only to Authorized Viewers for their internal use only and confers no rights upon any viewer or holder of this Memorandum. This Memorandum does not affirmatively or negatively amend, extend or alter the insurance coverage described below. This Memorandum may only be viewed, copied, printed and distributed by an Authorized Viewer for such Authorized Viewer's internal use. Any other use, duplication or distribution of this Memorandum without the consent of [redacted] is prohibited. "Authorized Viewer" shall mean an entity or person authorized by the insured named herein to access this Memorandum via [redacted]. The information contained herein is current as of the date of this Memorandum. [redacted] shall be under no obligation to update such information.</p>							
PRODUCER [redacted]				COMPANIES AFFORDING COVERAGE			
				Co. A [redacted]			
INSURED [redacted]				Co. B [redacted]			
				Co. C [redacted]			
				Co. D [redacted]			
<p>COVERAGE</p> <p>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 MEMORANDUM 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.</p>							
CO	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS		
A	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE	[redacted]	01-Jan-2015	01-Jan-2018	GENERAL AGGREGATE PRODUCTS - INCLUDED IN GEN. AGG.	\$ 3,000,000	
					PERSONAL AND ADV INJURY	\$ 3,000,000	
					EACH OCCURRENCE	\$ 3,000,000	
					FIRE DAMAGE (ANY ONE FISC)	\$ 1,000,000	
					MED EXP (ANY ONE PERSON)	\$ 10,000	
	UNFASSIBLE LIABILITY				COMBINED SINGLE LIMIT		
					SOCIETY INJURY (PER PERSON)		
					SOCIETY INJURY (PER ACCIDENT)		
					PROPERTY DAMAGE		
	EXCESS LIABILITY				EACH OCCURRENCE		
					AGGREGATE		
	GARAGE LIABILITY				AUTO ONLY (PER ACCIDENT)		
					OTHER THAN AUTO ONLY:		
					EACH ACCIDENT		
					AGGREGATE		
B	WORKERS COMPENSATION / EMPLOYERS LIABILITY	[redacted]	01-Jan-2015	01-Jan-2018	WORKERS COMP LIMITS	STATUTORY	
					EL FARN AGREEMENT	\$ 3,000,000	
					EL DISEASE - POLICY LIMIT	\$ 3,000,000	
					EL DISEASE - EACH EMPLOYEE	\$ 3,000,000	
<p>The Memorandum of Insurance refers solely to the insurance policies, limits and dates of coverage. Any modifications hereto are not authorized.</p>							
MEMORANDUM OF INSURANCE						DATE 01-20-15	
<p>This Memorandum is issued as a matter of information only to Authorized Viewers for their internal use only and confers no rights upon any viewer or holder of this Memorandum. This Memorandum does not affirmatively or negatively amend, extend or alter the insurance coverage described below. This Memorandum may only be viewed, copied, printed and distributed by an Authorized Viewer for such Authorized Viewer's internal use. Any other use, duplication or distribution of this Memorandum without the consent of [redacted] is prohibited. "Authorized Viewer" shall mean an entity or person authorized by the insured named herein to access this Memorandum via [redacted]. The information contained herein is current as of the date of this Memorandum. [redacted] shall be under no obligation to update such information.</p>							
PRODUCER [redacted]				INSURED [redacted]			
<p>ADDITIONAL INFORMATION</p> <p>THE GENERAL LIABILITY POLICY INCLUDES THE FOLLOWING ENDORSEMENTS:</p> <p>BROAD FORM VENDORS COVERAGE - ANY VENDOR WITH WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT, EXECUTED PRIOR TO LOSS, TO NAME AS AN ADDITIONAL INSURED, BUT ONLY FOR THE LIMITS AGREED TO IN SUCH CONTRACT OR TO THE LIMITS OF INSURANCE OF THIS POLICY, WHICHEVER IS THE LESSER OF THE TWO.</p> <p>MANAGERS OR LESSORS OF PREMISES - ANY MANAGER OR LESSOR OF PREMISES WITH WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT, EXECUTED PRIOR TO LOSS, TO NAME AS AN ADDITIONAL INSURED, BUT ONLY FOR THE LIMITS AGREED TO IN SUCH CONTRACT OR TO THE LIMITS OF INSURANCE OF THIS POLICY, WHICHEVER IS THE LESSER OF THE TWO.</p> <p>The Memorandum of Insurance refers solely to the insurance policies, limits and dates of coverage. Any modifications hereto are not authorized.</p>							

I blacked out all the identifiable information but that looks like a ACORD form but you'll notice that there's a produce your information, there is company information but there is no certificate holder on there. I saw another one.

This was just one and you'll notice in the descriptions section down there, there are some indications of some certain endorsements that apply. The language on these things is pretty specific that the only people that should be accessing these things are people that

have authorization to do it, but I found it on the Internet with a Google search so security is kind of lax. This may be the golden goose if we can figure out how to do this.

The con question, the downside of this is will this satisfy the certificate holders? I don't know the answer to that question. I do not know the experience these large brokerage operations are having with this.

I would suspect, because of the years of experience, that on small to medium size accounts they're probably saying, "This is all you're going to get," but on the very, very, very, very large accounts they're probably still doing some individual certificates because they probably just have to do it.

From an E&O standpoint and I think I'm right about this, the E&O carriers would probably tell you to be very, very careful and probably not to fill out any documents that are not authorized documents by either the regulator or the insurance carrier, when it comes to expressions of what's covered and whose covered, and how they're covered and all that kind of stuff. It's kind of interesting that this has popped up in the last year or so and it would be interesting to follow and see how this goes. Those of you that have computer systems that allow your policy holders or possibly their customers to access certain data, this may become a trend and this would be a not a to whom it may concern replacement for the certificate.

A replacement of the certificate that is generic and is available to interested parties or parties who are authorized to access it to summarize coverage. One of the ones I saw had a page two which was the ACORD 101, which is the blank page that you can put all kinds of data on. It listed about 25 or 30 companies that were additional insured, which I thought that was kind of interesting also.

Here again, they have language in these documents that prohibit use of these documents for unauthorized personnel or entities who do not have authority to access them. As I said, I got this off the internet with a Google search and you can get it too, if you just search Memorandum of Insurance one of these things may pop up and you'll see the stuff that I blacked out because it's just floating around the internet.

The internet, when it comes to certificates, it's kind of an interesting thing because it's a wide open arena. As we found out, it's very difficult to secure access completely to stuff that gets on the internet. It's going to be interesting to follow this and see how this develops. If in fact this becomes a real trend, then we maybe finally solve this thorny problem of producing these hundreds and thousands of certificates a year by just saying, "Here's a code, go into this website and punch in this code and that's what you're going to get."

Now, whether people will take it or not that's yet to be seen. I think this is kind of an interesting thing to watch and see how it develops. Chris, back to you.

WHO SHOULD BE INVOLVED IN ISSUING A COI?

Chris: Thank you, sir. Well, we're getting down to the end of this. Our last two things we're going to talk about. One is, who should be involved in the Certificate of Insurance and completing the Certificate of Insurance? Then, we're going to end with some simple warnings.

Now, who should be involved? Well, it depends on the request if you will. If it's a basic request, which means it doesn't ask for anything other than what's printed out. The policy numbers and the carriers and no special wording. No wording of any kind. If it's just a basic request which you will probably never get, but every now and then you might. If it's just a basic request, again, maybe a CSR or administrative person can handle the request but the signing should be somebody who is licensed, in my recommendation.

But again, that's if it's a basic request with no special wording. If it's anything other than basic, which means just about every request for a Certificate of Insurance that you get. If it's anything other than basic you need to have someone who has sufficient knowledge of insurance and who understands the implications of the request of the seemingly innocuous wording.

Stuart: Chris?

Chris: Yes, sir?

Stuart: Years ago, one of the E&O classes we used to teach, and this goes back 15 or more years now. There was a case we used to talk about where the insured was a sprinkler installer. We all know sprinkler systems are kind of a specialized thing. But anyway, a request came into the agency to issue a Certificate of Insurance for this sprinkler installer. The request said, "Specify coverage for design E&O."

The agent had never talked to the sprinkler installer about it. The sprinkler installer had never asked for it. The person that got the request was pretty much a clerical person. They put it on there. It went out. There was a problem. There was no design E&O coverage. It came back to the agency. They asked the person why they put it on there and they said, "Because they asked for it."

People have to understand the significance of some of these requests and to some degree what can and can't be done and to have a sense of judgment about that and to know when to kick these things upstairs. You can't just do what the people ask you to do or we're going to be in a lot of trouble. Back to you, Chris.

Chris: Thank you, sir. I was actually going to quote you. When Stuart and I were talking about this, basically what we're looking at, basic request versus anything other than basic which is just about everything that you get. You're trying to balance the highest and best use of people's time, E&O avoidance, and doing it right. That's what you're trying to do. Basic request, all right, simple enough.

Anything other than that, as Stuart mentioned in a conversation he and I had, you really want the office...and this is Stuart's term...the office "Compliance Nazi." Basically, the person who knows state and carrier guidelines and how to use them in the discussion with the requester. And they also understand the potential ramifications of like the account that Stuart just gave of what may have appeared to somebody who is not in the know, innocuous.

Or, any of those other phrases that we showed earlier that appeared to be innocuous and not causing you any problems, but actually they will. You need somebody who understands what the problems are and the potential problems are and onus to a point of ridiculousness of, "I can see how this would be misconstrued and misapplied."

Remember you are only supposed to show what the policy actually shows. That's it. Don't use a term or a phrase just because it looks like it's not going to cause you a problem. You got to understand the problem that it might cause.

CLOSING RECOMMENDATIONS

The last thing we want to look at, in case you missed all these things during the class today, and a couple of them we didn't actually mention, but I just want to point them out. Here are some simple warnings for you as it relates to Certificates of Insurance.

As ridiculous as this sounds, always confirm the policy is in effect when the Certificate of Insurance is issued. I was talking to our national E&O carrier and they were explaining to me that, that's actually one of the biggest problems they have in certificates is that the agency, Stuart mentioned earlier, the cancellation has been sent out, or hasn't been paid, or whatever. They'll issue a Certificate of Insurance and never check to see if the policy is still in force. Be sure you actually check and make sure the policy is still in effect before you issue the certificate.

Number two, always confirm coverage amounts are correct. The debate of whether or not they're current, meaning you have addressed any lowering of your aggregate limits due to payment, that's a question for another day. Unfortunately, we don't have time to go into that right now.

Confirm that any and all policy coverages and/or conditions indicated on the Certificate of Insurance are actually on the policy. I think that's what our entire discussion has been about today. You can put it on the certificate if it's in the policy. Don't summarize. Make sure it's in the policy. Confirm any entity you list as an additional insured is actually an additional insured. What do I mean by that? If you need an endorsement, endorse it. If they're provided coverage by the automatic coverage, you might want to check the relationship.

Again, as I said, CG 20 33 requires contractual privity. If you say somebody's an additional insured who doesn't have contractual privity under the CG 20 33, you are actually misrepresenting the policy. You've got to check and make sure those that you list as additional insured are, in fact, additional insureds.

Stuart mentioned this several times. Remember to attach the additional insured endorsement to the Certificate of Insurance. I want to add one more. Don't add nonpolicy wording to the description of operation. This includes synopsis wording. Stuart said it. Keep it simple. List the policy endorsement names and numbers, say, "See attached," and attach it.

That's what we had to discuss today.

Here's my contact information, Chris Boggs, chris.boggs@iiaba.net. Feel free to email me if you have a question and Stuart and I will be happy to help

Stuart and I appreciate the time you've taken to read this document. If you have any questions about what we've covered, please visit www.independentagent.com/VU to research the topic further. Big "I" members can also use the Virtual University's [Ask An Expert](#) service, and you can always reach out to us with questions, comments, or concerns at VirtualUniversity@iiaba.net.

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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:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED	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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MMDD/YYYY)	POLICY EXP (MMDD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 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

ABOUT THE AUTHORS



Stuart Powell, Jr., MA CPCU, CIC, CLU, ChFC, ARM, AMIM, AAI, ARe, CRIS is an Executive in Residence in the Walker College of Business at Appalachian State University and has been involved in the insurance business for more than 40 years. He joined the staff of IIANC as Director of Education in 1995, and in 2004 was named Vice President of Insurance Operations and Technical Affairs for IIANC. Stuart is semi-retired but continues to teach, write, is a frequent speaker on insurance matters and is a technical resource for 600+ agencies and 6,000+ agents that are members of IIANC. He has been a frequent instructor of insurance courses and is on the National Faculty for the Society of Certified Insurance Counselors (CIC). Author of numerous articles on insurance and related matters, Stuart is a member of the Risk Management and Insurance Program Advisory Board for East Carolina University School of Business, and the IIANC is endowing a scholarship in Insurance and Risk Management at East Carolina University in Stuart's name. He also serves on the Chairman's Advisory Committee for the North Carolina Industrial Commission and is a member of the Board of Directors for the North Carolina Community College Foundation, Inc. Stuart retired after twenty plus years with IIANC and assumed the position of Executive in Residence in the Walker College of Business at Appalachian State University where he teaches insurance courses to risk management and insurance majors.



Christopher J. Boggs, CPCU, ARM, ALCM, LPCS, AAI, APA, CWCA, CRIS, AINS, is the executive director of the Independent Insurance Agents & Brokers of America (the Big "I") Virtual University. He joined the Big "I" team in November 2016. His current duties involve researching, writing, and teaching property and casualty insurance coverages and concepts to Big "I" members and others in the insurance industry.

During his 29-year insurance career, Boggs has authored nearly 1,000 insurance and risk management-related articles on a wide range of topics as diverse as Credit Default Swaps, the MCS-90, and enterprise risk management. Additionally, Boggs has written 15 insurance and risk management books:

- [*The Insurance Professional's Practical Guide to Workers' Compensation: From History through Audit*](#), now in its second edition;
- [*Business Income Insurance Demystified: The Simplified Guide to Time Element Coverages*](#), now in its third edition;
- [*Property and Casualty Insurance Concepts Simplified: The Ultimate 'How to' Insurance Guide for Agents, Brokers, Underwriters and Adjusters*](#);
- [*Wow! I Never Knew That! 12 of the Most Misunderstood and Misused P&C Coverages, Concepts and Exclusions*](#);

- [Insurance, Risk & Risk Management! The Insurance Professional's Guide to Risk Management and Insurance;](#)
- *Workers' Compensation: How You Can Effectively Answer Your Clients 12 Most Commonly Asked Questions;*
- [Workers' Comp: Practical Answers to the Most Common Workers' Comp Questions](#)
- [Homeowners' Coverage: Managing Your Client's Most Valuable Asset](#)
- *Glossary of Insurance Terms;*
- *Choosing the Best Risk Financing Option;*
- *Writing Property and Liability Coverage for Condos;*
- *The Truth about Enterprise Risk Management;*
- *The Experience Mod Worksheet;*
- *What has ISO Done to us Now? and*
- *Cancellations, Non-Renewals & Conditional Renewals: THE Insurance Professional's Guide to Statutory Insurance Carrier Notification Requirements for All 50 States!*

In addition to his responsibilities at the Big "I", Boggs is a regular speaker at industry events including the National Association of Mutual Insurance Companies (NAMIC), the National Society of Insurance Premium Auditors (NSIPA), the American Association of Managing General Agents (AAMGA), the Institute of Work Comp Professionals (IWCP), and the Chartered Property Casualty Underwriter (CPCU) Society. He has also earned numerous professional accolades including the 2017 Institute and Faculty of Actuaries (IFoA) Brian Hey Prize and the 2019 Casualty Actuarial Society (CAS) Charles A. Hachemeister Prize as part of a of collaboration with a diverse group of industry professionals.

His professional background includes work as a risk management consultant, loss control representative, insurance producer, claims manager, journalist and columnist, and quality assurance specialist.

Boggs earned a Bachelor of Science degree in journalism at Liberty University in Lynchburg, Virginia, and holds nine professional designations.



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