



# Certificates of Insurance Issues & Answers

January 2007



# Executive Summary

“A certificate of insurance is a document issued by or on behalf of an insurance company to a third party who has not contracted with the insurer to purchase an insurance policy. The most common type of certificate is that provided for informational purposes to advise a third party of the existence and amount of insurance issued to the named insured.” (Allan D. Windt, *Insurance Claims and Disputes*, 4th ed., 2001)

Such informational certificates are usually issued in conjunction with a contractual relationship between a third party and the named insured, requiring that the named insured have a particular amount and type of insurance. Such requirements are particularly common in construction contracts with large contractors, government entities, and major corporations.

In addition to describing the insurance available to the named insured, a certificate may also convey information that the certificate holder is an additional insured under the policy issued to the named insured, thus giving the certificate holder some interest in the policy itself.

According to Black’s Law, a certificate of insurance is a “[d]ocument evidencing the fact that an insurance policy has been written and includes a statement of the coverage of the policy in general terms.” Certificates are simply snapshots of basic policy coverages and limits at the time of issuance of the certificate. Certificates cannot modify coverages or change the terms of the insurance contract.

According to one professional liability insurer, during the past year, E&O claims involving certificates of insurance have increased 28%. About 1 in 25 E&O claims now involves a certificate of insurance. The two main sources of certificate E&O claims are failure to add, or improperly identifying, additional insureds (36%) and misrepresenting coverage on the certificate that doesn’t actually exist (21%).

These statistics track closely with the experience of our Virtual University “Ask an Expert” service in answering dozens and dozens of questions about certificates over the past seven years. Our experience (and the statistics) seem to indicate three major recurring problems involving certificates of insurance:

- The unwillingness of insurers to provide notice to certificate holders of cancellation, despite the “we will endeavor to” language in most certificates of insurance.
- Onerous insurance requirements by large contactors, huge corporations, governmental/public entities, etc. that cannot be met by coverages typically available in the admitted marketplace.
- Certificate fraud by agents and insureds (including the indication of coverages or conditions that don't exist) so an insured subcontractor can get a construction job or get paid for one.

The first problem above has existed for many years and is just now being questioned in an ethical context. The other two problems represent an emerging issue that has become an increasing problem for agents and insureds alike.

For example, a contract might require that the certificate requestor be named as an additional insured (something the insurer may or may not be willing to do), be provided notice of cancellation (something rarely afforded to additional insureds in an insurance contract), or be provided with a type of coverage (e.g., completed operations) that the insurer cannot or will not provide. Such contracts may specify certain endorsements by form number and edition date that the insurer cannot provide because they have been superseded by new editions and the older ones have been withdrawn.

As a result, agents are sometimes asked to produce a certificate that cannot comply with the contract the insured has signed. Refusing to do so, agents are often faced with the claim from the insured or certificate requestor that they know of agents who can or will provide such certificates. Failure to do the same could mean the loss of an account for the agency. These unreasonable requests too often lead to the issuance of fraudulent certificates by insureds or agents.

The issue of onerous insurance requirements is largely an educational one. From the standpoint of many businesses and governmental entities, it doesn't hurt to ask for the moon, even if you know you won't get it. As one attorney opined, "I ask for everything I can get. It's the other guy's responsibility to say 'no.'" In many instances, these organizations are asking for concessions for which there is no insurance product in the marketplace. They ask because they have the leverage to do so. Unfortunately, some agents will indicate — usually by a certificate of insurance — that their insured is in compliance. It could be that the additional insured isn't concerned, knowing that the agent's E&O insurance provides a backstop.

Often organizations will ask for coverages out of ignorance. Contracts may specify additional insured endorsements that are dated over 20 years ago. If a company (or ISO) has filed a new endorsement and withdrawn an older one, the carrier cannot legally provide the older form without refilling it. However, some agents will indicate on the certificate of insurance that the form or its equivalent are being provided.

One other issue is the "will endeavor to" cancellation wording that very few insurers follow. This has potential to become a legal problem, though right now it's more often considered one of ethics...is it ethical to provide a certificate that says the insurer will attempt/try (i.e., "endeavor") to provide cancellation notice when it's clear that the insurer has no intention of doing so?

In addition to these broad issues, the following topics and questions are posed and answered:

## **Contractual Insurance Requirements**

What onerous insurance requirements are often demanded in construction contracts? Should agents review construction, lease, and other contracts for insureds? What is meant by a request for additional insured status that is "primary and noncontributory"? How should waivers of subrogation be effected? Can notice of cancellation be extended to additional insureds, particularly if more liberal than the amount of notice granted to the named insured? Does the CGL, in the absence of an additional insured endorsement, provide some coverage to third parties via the definition of an "insured contract"? If a contract specifies a minimum liability limit but the insured's policy provides a *higher* limit, should the agent show the requested limit or the policy's actual limit on the certificate?

### **Policy and Processing Forms**

How should ACORD certificate and evidence of insurance forms be used? Are there copyright issues in modifying ACORD forms or developing proprietary forms based on ACORD forms? How should non-ACORD forms be handled and what is the role of the agency/company agreement in issuing certificates? How are certificates handled when placing business in the E&S market?

### **Statutes and Regulations**

In response to the growing problems with certificates, some states have imposed legal restrictions on their use. In this section of the white paper, we examine each state that has adopted meaningful reform with regard to the filing and use of certificates and other processing forms. (Note: In addition to statutes, regulations, or contractual guidelines, the use of certificates may be governed by court cases. Such cases exist with regard to contractual obligations, fraudulent certificates, ostensible agency authority, deceptive, incomplete or misrepresentative certificates, and non-ACORD certificates. A special supplement to the white paper that discusses a number of these court cases is available to Big “I” members and paid VU subscribers on our Web site.)

### **Conclusions and Appendix**

In the Conclusions section, we outline a dozen recommendations that agents can implement to address many of these problems. In the Appendix is a Certificate Checklist that can be used in conjunction with contract review, a sample state certificate regulation, and links to about two dozen other articles and reports that address many of these issues.

For additional information, visit our Web site at [www.independentagent.com](http://www.independentagent.com).