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*The following questions and answers come from a series of certificates of insurance webinars conducted on March 19, 2009, April 16, 2009, November 2, 2009, November 7, 2009, and March 24, 2010. There may be some duplication in questions and answers due to the long time span between sessions. This document was last updated on March 29, 2010.*

## Webinar Q&A

Below is Q&A that came from the two-part webinar indicated above. Additional certificates of insurance FAQs can be found on this public web page:

<http://www.iiaba.net/VU/NonMember/WilsonCertificateQA.htm>

Our entire Certificates of Insurance Resources section of the Big "I" Virtual University web site can be found on this public web page:

<http://www.iiaba.net/VU/NonMember/Certificates.htm>

These resources include a white paper on COI, a best practices agency procedures guide, information on state laws, regulations, and case law on COIs, and much more.

The following are representative samples of questions that came from our certificates of insurance webinar. They are provided as part of our usually member-only "Ask an Expert" service and subject to the same disclaimer:

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## 1. Can we charge for duplicate certificates?

**Q:** Are there agencies who charge for sending duplicate certificates?

**A:** In Part 1 of the webinar, I gave two examples of this. One involved a bank that was being audited and they contacted the agency for a copy of all the evidences of insurance they'd been sent in the past year. They had them on file...it was just easier to tell the agency to resend them than look them up themselves. The other example was a contractor who was setting up a new file and didn't want to copy certificates...he wanted the agency to send him new ones for this additional file.

This just shows how lenders and contractors have come to view agencies as public services that exist for their convenience. There is absolutely nothing wrong with charging for this duplication service IF your state law permits you to charge. Some states can and some can't, so you'll have to check with your state association or insurance department. The Society of CIC publishes a summary of whether fees are permitted in each state and, if so, under what circumstances. I can't say if this particular situation is adequately address, but this is where you can order the book: <http://www.scic.com/Academy/Publications/ProductivitySeries.asp>.

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## 2. Does charging for a certificate create a contract?

**Q:** If we charge for certificates, does that make them contracts?

**A:** In Part 1, I pointed out that lawsuits alleging that certificates are contracts are usually unsuccessful because to be a legal, binding contract, one of the required elements is "consideration," that is, the exchange of value (e.g., money) for the contract. Whether charging a certificate holder for issuing a certificate constitutes consideration is something a qualified attorney would have to opine on, based on laws in the jurisdiction of question.

One could argue that the payment is for the cost of issuance, not the document itself, but I don't know if that argument would hold water, as Cousin Vinny would say. In addition, when fees are charged for certificates, it is usually the insured that pays this fee, not the certificate holder. When an online/automated system is used, the access charge could be paid by the agency, insured, or certificate holder.

Needless to say, we don't want to create a contract out of the certificate with either the certificate holder or the insured, so the advice of competent legal counsel is necessary. Keep in mind, too, that you have to be able to make these charges to begin with and that requires confirming what your state law does or doesn't allow.

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## 3. How do I protect myself from customers issuing bogus certificates?

**Q:** How do you protect yourself from insureds issuing bogus certificates?

**A:** I know an agent who had this very problem. In most cases, the last thing the customer wants or expects is that someone will follow up with the agency on a certificate. When that happens, you protect yourself in a couple of ways. One is having a log/copy of all certificates you issue. Then if one is missing for that insured or if your copy doesn't match the one they have, then it's clear who committed the fraud. By applying "invariable practices" in your procedures (discussed in Part 2 of the webinar), it should be clear that the bogus certificate did not come from the agency.

Another way you protect yourself is through laws and regulations in your state and their vigorous enforcement. In Part 2 of the webinar, I gave examples from several states (e.g., Alabama and Louisiana) with very severe penalties for certificate fraud (both fines and imprisonment). I also gave examples of states who were enforcing their laws such as the instance where the North Carolina DOI found two men behind a Home Depot selling certificates for \$10 each and the Kentucky DOI which pursued a contractor handing out fraudulent certificates and secured a fine and prison sentence.

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#### 4. What is the proper way of indicating AI status on a certificate?

**Q:** How can we obtain a copy of the agency procedures best practices guide? Also, where can we obtain sample wording to put on an ACORD certificate in the description of operations...i.e., "the certificate holder is included as an additional insured"?

**A:** Go to the VU Certificate of Insurance resource page at <http://www.iiaba.net/VU/NonMember/Certificates.htm> --- the best practices guide developed by our Texas association is about the sixth bulleted link down the list of resources. As for indicating additional insured status on a certificate, check out pages 37-42 of the Texas Best Practices guide which has some excellent recommendations on how to handle this. With your insured's OK, we suggest providing a copy of the AI endorsement to supplement the AI checkboxes on the certificate.

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#### 5. What is the proper way of indicating *blanket* AI status on a certificate?

**Q:** When you have a blanket AI endorsement on the policy and there is a request for a certificate showing AI status, do you need to disclose that there is a blanket AI?

**A:** You have to be very careful when a third party has requested AI status and you're providing that via a blanket AI endorsement. The ISO endorsement (and most other proprietary ones) makes it clear that AI status is extended only if required by written contract. Unless you know for a fact that this is the case (which may not always be evident from a simple request), you should not imply that the requestor is an AI. Provide a copy of the endorsement as an alternative.

For more detailed procedural information, refer to the Best Practices for Certificates of Insurance guide published by our Texas association:  
<http://www.iiaba.net/VU/NonMember/BestPracticesForCertificatesOfInsuranceTexas.pdf>.

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#### 6. What do you think about online certificate retrieval systems?

**Q:** What is your position about the ability of insureds to access and issue "vanilla" certificates online themselves?

**A:** The systems I've seen that do this I like. The key is limiting what the insured can modify. All of the systems I've looked at don't allow the insured to modify coverages, limits, etc. I don't see any inherent problem in allowing the insured to identify the certificate holder and other information the insured would normally provide anyway. Just make sure the system you're using is accurate so, for example, it won't allow the insured to issue a certificate on a policy that has been cancelled and it reflects limits and coverages in real time without delay.

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#### 7. What are the SOLUTIONS to all these problems?

**Q:** From Part 1 of the webinar: I feel that you are stating our problems with certificates, giving examples, but not solutions or what we should be doing about these problems? Will solutions be addressed in the next session?

**A:** Now that Part 2 of the webinar is over, hopefully I've answered these questions as best as they can be answered. As I mentioned in Part 2, we can't tell you what to do and we wouldn't even presume to do so unless it's a question about what is clearly legal or illegal in your state. Every agency is different and there are degrees of business risk each is willing to assume.

My goal in this webinar was to present *options*. It's your decision to decide what is best for your agency. A useful tool is the Best Practices procedural guide from our Texas association that can be downloaded from our certificates resource page at <http://www.iiaba.net/VU/NonMember/Certificates.htm>. These are recommendations from your peers in that state, tempered by opinions from subject experts and E&O professionals.

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## 8. Should coverage information be volunteered that isn't requested?

**Q:** Should we show umbrella information on the certificate if it is not requested?

**A:** I see no reason to provide any information that is not requested. If you're issuing an ACORD 24 for a tenant and the lease asks for a certificate of insurance on the tenant's property and premises liability coverages, showing information about the insured's BOP or CP/CGL coverages should suffice. I can't think of any reason why you would want to volunteer proprietary information about your insured's umbrella, auto, or other coverage. On the other hand, if the contract asks for certain minimum limits and you have greater limits, the consensus is to show your actual limits and that is supported by the ACORD Forms Instruction Guide. Here is an article about this:

<http://www.iiba.net/VU/Lib/Bus/AM/Procedures/FacultyCertificateLimits.htm>

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## 9. Can a job or project number be included on the certificate if requested?

**Q:** You may have addressed this, but could you clarify if we should reference a job or project # on the certificate (we may or may not know what the job contract says)? Some companies are rejecting them unless it's listed.

**A:** While we're encouraged to limit what we add to a certificate, I don't see a problem with putting a job or project # on the certificate. Presumably its purpose is to aid the certificate holder in managing and filing certificates by job and that's probably a good thing if it will keep them from coming back to you because they've misplaced a certificate. This kind of identification doesn't appear to present any adverse situation for the agency or insured.

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## 10. Can we meet a limits requirement with a combination of CGL and umbrella limits?

**Q:** We are participating in your Certificate of Insurance Webinar, and I have a question regarding limits of insurance included in the insurance requirements of a construction contract.

We typically see requests that include a specific umbrella limit in addition to limits for underlying coverage. For example, CGL required with limits of \$2,000,000 occurrence/\$2,000,000 aggregate and \$2,000,000 umbrella limit. Let's say our insured has a \$1,000,000 occurrence/\$2,000,000 aggregate limit on CGL and \$2,000,000 umbrella. Can the umbrella be used to satisfy the deficient occurrence limit of insurance on the CGL and still be used to comply with the \$2,000,000 requirement on the umbrella, or is an additional \$1,000,000 limit required either on the underlying CGL or Umbrella?

We would like to know how you view the limits of insurance for each line of coverage and how umbrella/excess limits can be used to satisfy deficient limits of insurance.

**A:** I ran this by the VU faculty and the responses were unanimous that the umbrella could not be used to satisfy the deficient occurrence limit of the CGL. The contract requires a \$2M/\$2M CGL and a \$2M umbrella. Your insured has a \$1M/\$2M CGL and a \$2M umbrella.

Let's say one person is critically injured or killed in a single occurrence to the tune of \$4M. Your insured's current insurance program would pay \$1M under the CGL and \$2M under the umbrella for a total of \$3M. If your insured had the required coverages, the full \$4M (\$2M per occurrence on the CGL plus \$2M umbrella), the loss would have been fully covered.

Failure to comply with the contract could result in your insured not being paid for a job or, if there is an inadequately covered loss, being charged with a breach of contract with damages amounting to the missing \$1M in coverage.

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## 11. What states have laws that don't allow notice of cancellation to be shown on the certificate unless provided by the policy?

**Q:** When discussing the notice of cancellation, you indicated that some states have language stating that a certificate holder cannot expect rights that are not his under the policy. Could you refer me to the states in question (or better yet to the statutory references)?

**A:** Here are all the laws (statutes, regulations and DOI directives) I'm aware of:

<http://www.iiaba.net/VU/NonMember/WilsonCertLawsRegs.htm>

In some cases, it's a matter of interpreting what the law or regulator says. That's how I interpret the laws in some of these states. In other cases, it's more direct. For example, check out the commentary under NC where it's clear to me that you can't strike the words "endeavor to" on an ACORD form (again, that's my opinion but I wouldn't want to put words in the mouth of the regulator). This may be true for most states that require certificates to be filed. The only way to know for sure is get the opinion of your insurance department. For that, you might want to contact your state association and have them direct the question to the DOI.

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## **12. What kind of information can be added to an ACORD form without creating a copyright problem?**

**Q:** I understood that for a policy pending cancellation, the overall consensus was that it should be disclosed. How do you generally determine what type of information can be added to an ACORD form without creating a copyright problem?

**A:** As long as you're completing the certificate (filling in the blanks), there shouldn't be a problem. It's sometimes debatable what the agent should be putting in those blanks (even ACORD suggests not citing contract language in the special provisions section). It's only when you start striking, adding, or modifying the actual pre-printed certificate language that it gets hairy.

Even at that, while the folks I've talked to at ACORD admit that this is probably a technical copyright violation, it's doubtful they'd pursue it legally because they know how pervasive this is. I believe they're far more likely to go after an entity that has taken an ACORD form and modified for use as their own proprietary form without licensing its use from ACORD. But, when in doubt, contact ACORD for their official position.

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## **13. Should we notify certificate holders if an insured misses a finance payment and is given notice of cancellation that will most likely be retracted?**

**Q:** If a policy is being financed monthly and we receive a Notice of Nonpayment after a payment is missed or late giving the insured 10 days to pay or the account will cancel, do you suggest we send this notice to all of the certificate holders? I would like to know what other offices do in these situations. We spend a lot of time issuing, tracking, revoking, and revising certificates.

**A:** This is the reason given by many insurers for not handling certificates and providing notice of cancellation to certificate holders. I know a company underwriter who said they stopped providing notice of cancellation on certificates years ago because of the complaints of agents. Often these insureds miss a payment and, when they get notice of cancellation, they pay up. The company or agency then is expected to retract the cancellation or reissue the certificate.

If the insured has a history of late or missed payments but they always make good on them, then it's probably not worthwhile to notify certificate holders. Many E&O experts suggest that insureds with a history of late payments are more likely to file an E&O claim, so you might look at that potential cost along with the cost of following up on reinstated policies and certificates in determining if such insureds are really profitable for the agency.

Another issue is whether you even want to provide notice or not. Typically, notice even to an INSURED of cancellation is left to the insurer. The insurance policy is a contract between the insurer and insured, not the agency. Most E&O experts suggest that the agency not provide notice of cancellation to insureds or certificate

holders. However, if you choose to do so (and some/many agencies do), you should realize that you are assuming a business risk and that your failure to provide notice could result in a lawsuit that leads, as we saw in Part 1 of the webinar, to a six-figure (or greater) settlement or judgment.

Still another issue related to that is whether it is ethical to issue a certificate that advises that someone will "endeavor to" provide notice of cancellation if, in actuality, no one intends to do so. I know of agencies that do provide notice of cancellation to certificate holders and even strike the "endeavor to" language on the ACORD form to make it clear that they intend to provide notice. This is a business decision and some states and a legal issue in other states that might prohibit this. Again, E&O experts strongly suggest that agents not do this, but some choose to do so anyway. This issue is discussed, I believe, in the Best Practices procedural guide that can be downloaded from our resource page at <http://www.iiaba.net/VU/NonMember/Certificates.htm>.

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#### **14. Who should be sent copies of a certificate?**

**Q:** I wanted to clarify...did you say that copies of the certificates should go to both the insured and the insurer? What is your recommendation on sending insured's copies of all certificates completed for their company – part of the agency says we should and part of the agency says their clients do not want them.

**A:** I don't believe this issue was ever addressed during the webinar. Needless to say, copies of the certificate should be retained by the agency and sent to the insurer. There is no compelling reason I can think of to copy the insured other than a request by them for their own piece of mind or if the certificate reflects an additional insured's interest. Many/most insureds probably don't care or want to be bothered with them while others may track this information carefully since it does provide an indication of the exposure their policies are subjected to when others are named as additional insureds.

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#### **15. What are the flood insurance issues you mentioned?**

**Q:** You mentioned that there were some new issues with flood insurance and ACORD forms. Can you elaborate?

**A:** When it comes to evidencing flood insurance, things are a bit different than other property coverages. In May, 2008, the Flood Insurance Manual was changed to include the use of a "Certificate of Insurance" for renewals but because FEMA does not have an OMB form, it did not address what the correct "Certificate of Insurance" would be.

A copy of the flood application and premium payment or paid receipt is used for new business in lieu of a binder since there are no binders in flood insurance. The renewal policy is only issued after payment is received for the renewal of a flood policy and the mortgagee and loss payees are listed on the declaration and receive a copy of the flood policy. ACORD 27 & ACORD 28 can be used as well for renewals.

However, there is a lot of confusion about the ACORD forms usage when it comes to documenting flood insurance from FEMA/NFIP and the lender community brought about by forms misuse by agents. Therefore, an ACORD Working Group is forming with representation from all stakeholders to clarify, explore and possibly modify the current ACORD forms as respects flood insurance - what form to use and what information to provide. Anyone interested in participating in this working group can contact [linda.mackey@iiaba.net](mailto:linda.mackey@iiaba.net).

**Update:** As of April 1, 2010, an ACORD working group is almost finished with a draft document of the ACORD 29 which should be released this spring.

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#### **16. Should we send cancellation notices to certificate holders?**

**Q:** At a recent E&O seminar, the agency principal was told that we should "never" send out cancellation notices. Another agency in the building writes "Cancelled" on their certificates and sends them out to their certificate holders. What are your thoughts or recommendations and why would someone say "Never"?

**A:** If you were to insist on a “yes” or “no” answer, my response would be, “No, do not send notice of cancellation to certificate holders.” Part of the logic for this is that notice of cancellation is a *policy* right, not a voluntary action. If the certificate holder is not entitled to notice of cancellation under the contract (policy) itself, then this point of view says, they should not be sent notice. Do you send notice to insureds? Probably not, since the parties to the contract are the insured and insurer, not the agency, and it’s usually the insurer who sends notice, not the agency. So, why would you send notice to a party that is not contractually entitled to notice when you don’t even do that for a party who is?

Needless to say, this creates at least an ethical dilemma since the certificate most likely says that someone will “endeavor to” provide notice of cancellation to the certificate holder. Some agents try to get around this by entering zero (“0”) for the number of days. Frankly, if I had my way, the certificate would not provide for notice at all unless the policy does. At least one large broker I’m aware of uses a memorandum of insurance that can be accessed 24/7 online. This memorandum is not signed by anyone nor does it provide for notice of cancellation.

These issues are discussed in the webinar manual, certificates white paper, and in the Best Practices procedural guide published by our Texas association. Their procedural guide suggests not providing notice of cancellation to certificate holders but it recognizes that, in the real world, there are agencies who will make a business decision to do this for several reasons...value-added service, competitive pressure, prospecting, and other reasons (as discussed in the Top 10 “good” things about certificates in Part 1 of the webinar).

So, we suggest you not show on the certificate that you or anyone “will endeavor to” provide notice of cancellation and that you do not actually provide such notice; however, IF YOU DO.....this is what we suggest (refer to the Best Practices guide).

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## **17. Why should we not enter 30 days notice of cancellation on the certificate?**

**Q:** I just attended the Part II of your certificate webinar. I believe that you stated that agencies should not be entering 30 days written notice of cancellation on their certificates because there is no way it can be honored. What do you recommend? Leave it blank?

**A:** See the discussion above. Aside from the recommendations made above and in the referenced materials, there is a good reason why the often-requested/demanded 30 days notice of cancellation should NOT be entered on a certificate: If the agency is taking the initiative to provide cancellation notice, then what you’re saying will most likely be impossible under certain circumstances.

For example, the agency unilaterally agrees to provide 30 days notice of cancellation to the certificate holder. What happens when you get copied by the insurer (and hopefully you will) that the policy will be cancelled in 10 days because of nonpayment? It’s now impossible for you to give the certificate holder 30 days notice, yet the certificate holder has a document where you’ve agreed to do this. As discussed in Part 2 of the webinar, increasingly claims are being made and suits filed against agents based on fraud and detrimental reliance and you’ve just given the certificate holder ammunition to uphold such a claim or suit.

Again, we suggest leaving cancellation notice to the insurer. If a certificate holder wants notice of cancellation not provided to them by the policy, then they need to rely on the party that they’re doing business with (your insured) to provide them notice. If they don’t trust their contracting partner and insist that you be that party’s guarantor, then they should consider doing business with someone they trust.

If the agency makes a business decision to provide notice of cancellation to a certificate holder (and this is permissible under their state’s laws and regulations), in most cases, they cannot provide any more than 10 days notice for something like nonpayment. Keep in mind that there are insurers who WILL give 30 days notice to certificate holders/additional insureds under certain circumstances, but this is largely the exception, not the rule...and it’s the insurer’s call.

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## **18. Which state law do you follow if the parties are in different states?**

**Q:** Which state law do you follow if your holder is in one state-GA, the agent is in another state-NC, and the client you are issuing the certificate for is in a third state-FL? This would be related mainly to the days notice for cancellation.

**A:** With regard to state policy cancellation laws, since cancellation is a matter between the insurer and insured, where the certificate holder (if not an insured) and agent are located is probably immaterial. Otherwise, you'd probably need advice from the applicable DOIs or an attorney. The law may apply to where the property is located and/or where the contract (policy) was effected. The appropriate law should be reflected in the policy forms or endorsements.

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## 19. Should we read contracts for insureds or not?

**Q:** In Part 1 of the webinar, you said that we should NOT be responsible for reading clients contracts, and when we finally got signed in today to hear, that is what you were going through...the contracts...please advise. Please advise your suggestions on what to tell clients and how to handle these situations. Do we send to the MGA to read these?

**A:** This is an example of one of those "You probably shouldn't do this, but if you do..." issues I've mentioned. Let me clarify what I said (or meant) in the webinar on this issue. From a purely E&O perspective, it is probably better that you not review contracts (construction contracts, commercial leases, loan agreements, condo CC&Rs, etc.) for your insureds. Of course, from a purely E&O standpoint, it might be advisable for you to simply close your doors since you might get sued by somebody for anything.

Obviously, this isn't a practical example for many agencies. In a perfect world, your insureds should retain legal counsel to review every contract they sign BEFORE they sign it. Then the attorney should tell YOU what the contract requires with regard to insurance. This is far more preferable than you assuming the risk of ascertaining the exposures and insurance needs, particularly given (as discussed in the webinar) that attorneys have FAR more experience than most agents in analyzing contracts. In addition, while it's probably not a problem in most states, you must be very careful about engaging in activities that could be construed as practicing law without a license.

During the webinar I believe I mentioned that these contracts can be dozens of pages long and an insured's indemnity obligations may be found in areas of the contract that aren't clearly labeled "Insurance Requirements." Some construction contracts may exceed 200 pages. I mentioned one I reviewed recently where the insurance requirements alone amounted to 51 pages. Lease agreements can be extensive and include "damage and destruction" clauses that govern insurance needs without saying as much. Are you qualified to review such documents for your insureds? I'm quite confident that *some* agents are, but many are not. As a result, many agents should not attempt to review contracts for their insureds.

However, we acknowledge again the reality of the marketplace and the nature of the business. Some agencies offer this service because they have staff members with the experience and expertise to do this and it's a value-added service that gives them a competitive advantage. In such cases, we say that, while as a general rule this could be a bad idea, IF you do offer this service, we suggest the following.... The certificate white paper and the webinar manual both discuss this issue at some length and, in fact, include a sample disclaimer statement that the agency's legal counsel can review for use in accompanying such reviews.

The bottom line is that all insurance practitioners should only engage in the activities for which they are properly trained and skilled to deliver at as minimal a risk as possible. Since so many of your insureds will not have the resources to conduct these kinds of risk/insurance analyses, agencies that can do this will can provide a valuable service. Just make sure you're as qualified as possible to do this and follow the guidelines provided by our certificate resources (including use of a disclaimer) to minimize your E&O exposure.

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## 20. Should we send all certificates to the carriers?

**Q:** We should or should not send all certificates (AI and certificate holder only certificates) to the carriers? I write

surplus and standard markets and I send ALL certificates to the carriers. Many of the standard companies do NOT want to see the certificate holder only certificates. Please elaborate. I've been told that the best thing is to have all carriers (MGAs) issue the certificates.

**A:** Every E&O expert I know suggests sending copies of all certificates issued on behalf of carriers you represent to those carriers whether they want them or not. In many ways, it would be wonderful if the carriers took over this processing chore, particularly given that they have a means of absorbing these costs since they, not the agent, control the premium. However, the reality at the moment is that certificate issuance is the purvey of agents. Still, since the certificate implies that the "issuing company" may do certain things, the carrier should be copied on these certificates. In addition, you may recall the case law cited where a carrier attempted to relieve itself of responsibility by asserting that they never got a certificate.

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## **21. What is the difference between an additional insured and an additional *named* insured?**

**Q:** What is the difference between additional insureds and additional named insureds? I didn't think there was a difference.

**A:** While not directly related to the certificates issue, this was something mentioned during the webinar. Sometimes a contract calls for naming a party as an additional insured. On other occasions, it requests additional named insured status. So, what's the difference and what are the advantages and disadvantages to the parties? While our certificates resource area of the public section of our Virtual University web site has a tremendous amount of certificate-related information, there are peripheral issues, like additional insureds, that are discussed in detail only in the password-protected area of the web site. This is one such issue and here's an article on it:

### **"Additional Insureds vs. Additional Named Insureds"**

<http://www.iiaba.net/VU/Lib/Ins/CL/CGL/ComiskeyAdditional.htm>

If you are a Big "I" member agency, you can access our 4,000+ pages of content in the VU research library and use our "Ask an Expert" service for FREE as part of your membership. You will need a user name and password. To get that, email [logon@iiaba.net](mailto:logon@iiaba.net) and provide your name and agency information to get a login. If you are not with a member agency, subscriptions to the VU are available at [www.iiaba.net/VU](http://www.iiaba.net/VU).

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## **22. Should certificate cancellation notices include the reason for cancellation?**

**Q:** If an insured cancels for nonpayment, when sending out the cancellation notification to the certificate holders, is it OK to note the reason the policy cancelled?

**A:** Please refer to the prior discussions about cancellation. It is suggested that this is not a good thing. However, if you are doing this anyway, there is nothing on the ACORD forms that indicate that a reason for cancellation will be provided, and it could be something your insured would prefer you not share.

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## **23. What is the difference between legal liability and fire legal liability?**

**Q:** In writing coverage for a tenant in a strip mall, why do some companies use legal liability and others use fire legal liability?

**A:** That's impossible to answer without knowing what the insurers' forms cover? Under the ISO CGL, the coverage you are probably referring to is commonly called fire damage legal liability (FDLL).

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## **24. Can we give the certificate holder a copy of the policy and declarations?**

**Q:** Could the agent attach a copy of the policy along with declarations to the certificate?

**A:** If your insured is agreeable to this, it is probably preferable to providing an “agent affidavit” that the insurance coverages comply with the insurance requirements given to your insured. Rather than respond affirmatively, simply provide a copy of the policy and let the certificate holder make this determination. Again, make sure your insured concurs since the declarations, in particular, may provide information the certificate holder did not ask for nor is entitled to.

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## **25. What can we specifically do or not do on a certificate?**

**Q:** Are we going to see an actual certificate of insurance and advised as to what to write/what not write? For example, don't ever write "affiliates," etc.

**A:** In the time we had for the webinar, we simply were not able to go through each ACORD form in details as to what should or shouldn't be provided in each field. In part, this can be ascertained from the ACORD Forms Instruction Guide mentioned during the webinar. In addition, we covered a number of general issues that can be applied more specifically.

In particular, the “affiliates” point you mention was briefly discussed in that often a contract or insurance requirements will want a certificate to list something like “...officers, directors, members, employees, agents, shareholders, partners, joint venturers, affiliates, successors, and assigns....” In most cases, the insurer would not authorize such a listing as AIs and it's not something that should be shown on a certificate either. As mentioned in the webinar, ACORD itself recommends that contract language not be included on a certificate..

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## **26. Does striking “endeavor to” violate laws or regulations prohibiting a certificate from amending policy language?**

**Q:** Would striking "endeavor to" violate laws/directives stating that certificates cannot alter or extend coverage? Seems it would as cancellation provisions are in the policy.

**A:** That would probably be a call of your insurance department. The certificate itself says it cannot amend a policy, so striking “endeavor to” should have no legal affect from a contractual standpoint. However, we know that some DOIs agree with you. That's even more true in states where certificates must be filed...striking that language on an ACORD form in those states would require that the resulting language be filed. In addition, keep in mind that suits against agents have been successful when detrimental reliance, apart from any contractual grounds, has been alleged. The bottom line is that it is recommended that this wording never be stricken from an ACORD form.

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## **27. If we do not modify the wording of ACORD forms, we cannot be held liable, correct?**

**Q:** Based on the last class, if we do not modify wording of ACORD certificates of insurance, we cannot be held liable, correct?

**A:** Not necessarily correct. If you issue only unmodified ACORD forms with all the disclaimers intact, the risk is low that you would be held liable. However, there is case law in some jurisdiction that supports grounds of fraud or detrimental reliance distinct from contractual liability. So your best bet is the issue an unmodified ACORD form that contains only accurate information and includes only obligations you can comply with without fail. In other words, we can never remove potential liability completely, but we can minimize it significantly.

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## **28. Where can I get more information on the alternate employer endorsement?**

**Q:** Where did he say the article was on the alternate employer endorsement...was it IRMI?

**A:** Yes, if you have access to IRMI's materials ([www.irmi.com](http://www.irmi.com)), they have a nice historical article on this form. In the near future (tentatively June), we plan on running an article in our VU newsletter on the endorsement. If you want information on subscribing to our free bi-weekly email newsletter, go to [www.iiaba.net/VU](http://www.iiaba.net/VU) and click on the Newsletter link on the left.

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### **29. Does the “endeavor to” language impose a “good faith” requirement on the insurer?**

**Q:** With respect to the cancellation “endeavor” language, it would seem to me that this imposes a GOOD FAITH requirement on the insurer to attempt to do so.

**A:** Many people would agree with you. The ACORD forms say that the “*issuing company* will endeavor to.” It doesn't mention the agent. This could be interpreted to imply that the insurer will at least make an attempt to provide notice or, if they believe they have delegated this to their agent, at least they would insist that the *agent* try, not simply leave it to the agent's discretion. The certificate mentions the insurer, not the agent. This issue is discussed in the white paper and webinar manual.

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### **30. Does the insurer need to be notified of new AIs under a blanket endorsement?**

**Q:** If a blanket insured endorsement is on the policy, is it necessary to notify the carrier of additional insureds?

**A:** That depends on what the endorsement says, if anything. Otherwise, it's the insurer's call and may be specified in their underwriting guidelines. With many of these endorsements, coverage is triggered simply by request in a written contract between the insured and another party. In such cases, notice to the insurer is usually a function of underwriting and possibly rating, not coverage. However, the blanket AI endorsement take on many forms and in reality can be a minefield. Some require written only contracts which specifically ask for AI status. Some will honor an oral contract as AI is intended by the parties and still others require the written contract to be signed before any work is begun. It is CRITICAL to read ANY and ALL of these endorsements...they are NOT the same.

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### **31. How do we download the webinar manual and access the recorded/archived webinar?**

**Q:** How do we get to the certificate webinar manual?

**A:** Go to [www.independentagent.com](http://www.independentagent.com). Hover your cursor over the Education link near the top of the home page. When the menu drops down, click on “Webinars.” Scroll to the bottom of the page (or where the information is on the archived Certificates of Insurance webinar) and you'll find a link to download the manual. In addition, for a brief time following the webinar, there will be two links to the webinar recording (Parts 1 and 2)...to access it, you will need to use the email address that you used to register for the webinar.

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### **32. Where can we find out if we can charge fees in our state?**

**Q:** What is the web address to check and see if fees can be charged in your state plus commissions?

**A:** The Society of CIC web site ([www.scic.com](http://www.scic.com)) has a publication for sale that summarizes the fees vs. commissions laws of each state. When you go to the web site, click on Publications.

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### **33. What is the certificate law in Florida?**

**Q:** Can we show state law of Florida?

**A:** You can find the certificate laws and regulations for every state we're aware of here:

<http://www.iiaba.net/VU/NonMember/WilsonCertLawsRegs.htm>

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### **34. How should we document certificates copied to an insurer?**

**Q:** What is the proper documentation that we should use to show that we have mailed or supplied a company with certificates?

**A:** Use the same method you use to document the mailing or transmission of any other processing document. This can vary by statutes or case law in your area. One of the best things you can do is make sure you have written agency procedures for certificates that specify that a copy of ALL certificates, evidences, etc. will be sent to the insurer. Then implement a QC procedure for periodically verifying this. Our Florida association calls this the Invariable Practice Rule: One Way, All the Time, By Everyone. If you do not have formal ACORD form procedures in your agency, you can download our Texas association's Best Practices guide on the VU certificate resource page.

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### **35. What if the certificate holder does not specify a number of days for cancellation notice?**

**Q:** If the certificate holder does not specifically ask for a certain number of days notice for cancellation, is it acceptable to leave the number of days line blank?

**A:** If they don't ask for cancellation notice at all, you might enter a zero (0) in the blank. If they ask for notice of cancellation but don't specify the number of days, some agencies enter the least amount provided by the policy or law, typically 10 days. HOWEVER, our recommendation has always been that cancellation notice is an obligation of the INSURER, not the agency. Do you normally give cancellation notice to insureds or does the insurer? If you don't, then why would you want to give someone notice who is not even a customer of yours? The insured has gotten notice of cancellation...why can't the insured notify the certificate holder since that's the person they have a contract or business relationship with, not you.

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### **36. Can you have an additional insured on an ACORD property form?**

**Q:** Why is there a box for "additional insured" on the Evidence of Property form - this is liability terminology?

**A:** Good question. Traditionally, we refer to parties with an insurable interest in property as mortgagees, additional interests, loss payees, etc. However, some property forms do reference "additional insureds." An example is the ISO CP 15 03 – Business Income - Landlord as Additional Insured (Rental Value).

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### **37. Should copies of certificates be sent to the insurer?**

**Q:** Do you recommend sending copies of certs to the company?

**A:** Yes. Without exception.

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### **38. Should we complete surveys for certificate holders?**

**Q:** I have had certificate holders (landlords asking us to fill out a coverage survey online in addition to a certificate). I have advised we are unable to do this.

**A:** In one respect, this is a business decision. Is it worth your time to complete a possibly lengthy survey or questionnaire for someone with whom you have no business relationship, that is conducted purely for their benefit, and which they are paying you nothing? That's your call. However, be very, very wary. Often these questionnaires ask vague questions or those, if you think about it, are impossible to answer affirmatively. In the webinar, we gave a number of examples. These surveys are often presented as "affidavits" or warranties that the coverage afforded your insured is in compliance with the contract they've signed. It almost never is.

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### **39. Is it copyright infringement to modify an ACORD form?**

**Q:** Isn't it an ACORD copyright infringement if something is crossed out?

**A:** We're not attorneys so we can't give you a legal opinion. We can, though, ask the question, is the ACORD form copyrighted? Does your licensing agreement with ACORD explicitly give you the right to modify this form by crossing out pre-printed text? If not, could you be in violation of copyright law? If so, would ACORD seek a legal remedy against you? Unfortunately we can't answer these questions, though we do know that ACORD has protected its copyright when someone has used a modified ACORD form as their own.

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### **40. What book(s) did you recommend?**

**Q:** Could you please repeat the website where you can get the book for contract provisions?

**A:** Go to [www.irmi.com](http://www.irmi.com). The International Risk Management Institute is perhaps the premier provider of commercial lines reference material. In particular, they have vast amounts of information dealing with the construction industry. While they have a considerable public library of articles that you'll find worthwhile, the really, really good stuff has a cost. One book we highly recommend from IRMI is "The Additional Insured Handbook" which can be ordered from their web site. Any agency writing contractors should have a copy of this in their library.

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### **41. What if a bank does not want a disclaimer on the ACORD form?**

**Q:** A bank is demanding that the certificates and EPIs issued to them not include the wording "for informational purposes." What is the best way to respond to this demand?

**A:** We recommend that NO disclaimer language EVER be stricken from an ACORD form. When you look at case law where agents have been found liable for claims arising from certificates, a common reason is the use of certificates without adequate disclaimers. In at least one state (and likely increasingly more), the insurance department mandates that the "for information only" language be on all certificates. Many, if not most, states require language that says the form cannot be used to amend, extend, alter, etc. a policy. If someone wants a form modified to the point that it implies that it grants policy rights and that form is not filed with the insurance department, you are probably violating the law by issuing it. In most states, only policy forms and binders can extend policy rights. Certificates of insurance should never be used to (attempt to) do so.

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### **42. Should we review leases for all clients?**

**Q:** Should we ask for a copy of the lease from every client that is a tenant?

**A:** That's a business decision. Some agencies do, some don't. Ideally, your insured or your insured's attorney should review the lease and tell YOU what needs to be insured. Leases can be lengthy, complex, and difficult to understand. Only someone competent and experienced should review them. One of our VU faculty members, consultant Jim Mahurin, CPCU, ARM, says that he frequently sees small mall or shopping center tenants who have uninsured six-figure exposures. Tenants may be assuming the risk of loss to building components in parts of the lease distinct from the section on "insurance requirements," such as damage and destruction clauses. Our best

advice is that, if you are going to review a lease, review the lease in its entirety, as many of the key exposures are found in sections other than the insurance requirements.

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#### **43. What if I fail to list an exclusionary endorsement on the ACORD 25?**

**Q:** What about the problem with the wording under the "Description of Operations, etc." box where attorneys are suing agents if there are restrictive endorsements that are not listed? How do agents protect themselves?

**A:** In his column in the October issue of Rough Notes magazine, VU faculty member Don Malecki, CPCU, discusses a court case involving a suit against an agent who did not list an exclusionary endorsement in the ACORD 25 field that prompts for that information. The September 2009 edition of the ACORD 25 has been amended to remove the reference regarding exclusions added by endorsement.

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#### **44. Can you explain how to complete the WC limits section?**

**Q:** Recently, we have been getting certificates that we have issued for a client rejected because the WC "Statutory Limits" box was NOT checked. If the insured has 500/500/500 or \$1mil/\$1mil/\$1mil, why are they rejecting the certificate and requesting another with the box checked? What are we missing?

**A:** This is what ACORD says:

The ACORD Forms Instruction Guide (FIG) instructions for the fields in the ACORD 25 FIG labeled "LIMITS - WC STATUTORY LIMITS" and "LIMITS OTHER" are incorrect. By a copy of this email, I am asking ACORD staff to make the following corrections.

WC – STATUTORY LIMITS. Change to:

"Check the box (if applicable). Indicates that workers compensation statutory limits apply."

LIMITS – OTHER. Change to:

"Check the box (if applicable). Indicates that additional coverage above the workers compensation statutory limits applies (permitted in some states). Describe the additional coverage in the Special Provisions section."

There are a few states that permit individual insurers to file for WC coverage that exceeds statutory requirements. An example would be the offering of 75% wage replacement in a state with a required 66 2/3% wage replacement. That's what the "Other" field is all about. This has nothing at all to do with Employers Liability.

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#### **45. Should a certificate be reissued following a cancellation?**

**Q:** What recommendation would you make for the following scenario: (a) Certificate is executed for a 12 month term (proof only), (b) Policy is then canceled (whatever reason: nonpay, exposure, requested by insured), (c) Does our agency need to generate revised certificate to ALL holders with the correct X date showing?

**A:** We don't understand why you would want to reissue a certificate on a policy that is cancelling. The certificate or evidence is issued to provide the status of a policy(ies) at a specific point in time, not for a period of time. Therefore, there is no requirement to reissue a certificate reflecting the circumstances cited.

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#### **46. How do we notify ALL of the additional insureds on a blanket AI endorsement of a cancellation?**

**Q:** If we have a blanket additional insured endorsement on our GL policy, we never request that an new additional insured to be added to the actual policy. What happens if the policy cancels -- how are the AIs notified if they have never been added to the actual policy?

**A:** See our comments in the prior question about cancellation above. We (and likely your E&O carrier) do not recommend notifying anyone of a cancellation or advising them in advance that you will. Cancellation is a policy right. The policy determines who is to be notified of cancellation and almost always says that notice will be provided by the insurer. You'll be hard pressed to find a policy that says the agency will give notice.

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#### **47. How should we show an AI on the certificate if it's a blanket endorsement?**

**Q:** What wording do you recommend be used on the certificate when the holder requires that they be an additional insured, but you do not know if there is a written contract requirement and your policy contains a blanket additional insured endorsement that has a written contract requirement?

**A:** Our recommendation is to avoid if at all possible adding ANY extraneous information not explicitly provided for by the fields on the ACORD forms. I'd be inclined to simply include a copy of the endorsement when responding and let the other party determine if it meets their requirements. I have seen statements, though, to the effect, "Additional insured status provided by blanket additional insured endorsement only if there is a contractual requirement for this coverage." I would avoid making any statement that says or implies that additional insured status as provided complies with the contract requirements, one reason being that many insurer AI endorsements only provide vicarious liability.

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#### **48. Should policy forms be included with certificates?**

**Q:** You mentioned that you do not favor including forms with certificates. May I ask why?

**A:** I don't recall that. I don't see a problem with including policy forms or endorsements with the permission of the insured. Including them is better than making a subjective statement on the certificate itself about the endorsement(s), particularly with regard to whether they meet the insurance requirements of a contract. Include (with the insured's permission, of course) the policy forms and let the other party determine if they meet their needs.

---

#### **49. What should we do if insurers return certificate copies we send them?**

**Q:** You said that we should always send copies to our companies even though they have asked that we not send them. We have found that they send them back. Have you had any luck in this endeavor?

**A:** Many companies are adamant about agencies not sending copies of certificates. Some may destroy them and others may return them. Our E&O carrier still recommends they be sent. You may recall two court cases cited during the webinar, one discussed at length on our certificate case law page in the COI resources area of the VU. An insurer may try to get out of a lawsuit by claiming they never got the certificate.

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#### **50. Can we show 30 days cancellation notice with a note in the Description of Operations that 10 days is permissible for nonpayment?**

**Q:** Indicating a 30 day notice of cancellation in the cancellation box but mandating each certificate in the descriptions of operations box state that a 10 day notice of cancellation can be sent for non payment of premiums...is this viable and accepted?

**A:** We suggest not providing ANY notice of cancellation not provided for by the policy itself. Is the insurer giving

the notice or is the agency voluntarily doing this. In some states, it's illegal for the agency or anyone else voluntarily to provide notice not authorized by the policy. Since 10 days notice is typically permitted for nonpayment and perhaps other cancellation grounds, anything more than that certainly wouldn't be appropriate.

But what if the INSURED cancels? Under most policies, the insured can cancel immediately by providing written notice or surrendering the policy. If that happens, how can any extended notice be provided to a certificate holder? Does the certificate holder or agency intend to pay the additional premium for the extended coverage period or is the insurer willing to absorb that?

Another point...the Description of Operations is not designed to be a catch-all field for everything the certificate holder wants to know. The name of the field is self-explanatory and cancellation information has nothing to do with the insured's operations. Remember, too, that the ACORD Form Instructions Guide recommends that the certificate not be used to include information required by a contract.

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## 51. Should we show additional insureds in the Description of Operations block?

**Q:** In the description of operations box – we get requests to add the certificate holder as an additional insured (which we do so long as it is in our authority, on the policy and/or blanket applies) but they also want, the owner, and their affiliates and subsidiaries, partners, officers, etc, etc, etc. Here is where I argue the point that we should NOT be adding anyone other than who our insured has signed or is under contract with and we should not be including everyone else as an additional insured

**A:** I agree with you on not naming all of the extraneous parties. My understanding is that many, if not most, insurers won't do this. As I recall, not long ago IRMI published an article where a court would not recognize all of these additional parties as insureds, only the one(s) directly contracting with the insured. Check out this example:

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

An underwriter would have to be nuts to approve an AI like this. We also do not recommend using the Description of Operations box for making statements like this. Our E&O carrier has paid claims of up to a half million dollars for statements on the certificate about additional insureds that were not backed up by policy forms. Rather than make a notation on the certificate, I'd simply include a copy of the endorsement to the certificate holder.

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## 52. Why shouldn't we put language in the Description block?

**Q:** Why shouldn't we put language in the Description block?

**A:** The ACORD Forms Instruction Guide (FIG) explains how each field should be completed. Certificate holders may request all sorts of extraneous information be shown in this space that has nothing to do with the basic purpose and function of a certificate: to provide a snapshot of policies and limits. The FIG explicitly suggests that the certificate not be used to quote wording from a contract this insured has signed, which is often exactly what is being requested.

---

## 53. Is it OK to quote policy language on the certificate?

**Q:** There was a mention of attaching forms to a certificate rather than quoting policy language. Would you advise

attaching the complete form or endorsement or simply the requested page? Due to the fact that policies often give coverage in one area and remove it elsewhere. I am thinking attaching the complete endorsement may be prudent.

**A:** It is probably better to include the complete form, particularly with endorsements. We suggest avoiding the quoting of policy language because it may give the impression that the certificate is serving as a surrogate to the policy. In addition, if you quote on part of a policy and a loss arises from a provision you didn't quote, the certificate holder might point to that omission.

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#### **54. Where on the certificate do we find the sequencing feature you discussed?**

**Q:** Where on the certificate do we find the sequencing feature you discussed?

**A:** It's about a third of the way down the page on the certificate. This enables the use of a certificate or edition number, as explained in the webinar on the ACORD 24/25 changes..

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#### **55. How do we respond to impossible certificate requests?**

**Q:** Here's our response to a request for an impossible certificate: (1) explain to our client why it's impossible and recommend that the insured walk away from the job; (2) if client insists on taking the job despite the impossible insurance requirement, we provide a certificate in compliance with insurance company and ACORD guidelines; (3) recommend that the insured deliver this to the job owner along with a clear notice that they are unable to meet the letter of the insurance requirement and ask that the job owner confirm that the provided certificate is acceptable; (4) stress that this is a legal matter and recommend that the insured consult with his or her attorney; (5) further stress to the insured that their reaction to the job owner's answer (or lack of an answer) should be discussed with insured's attorney. Any problem with that approach?

**A:** Sounds reasonable to us. The important thing is to not add anything to the certificate that is illegal or might lead someone to think they have coverages or rights under the policy that really don't exist. This takes courage, knowing that there are agents who will put almost anything on a certificate they're requested to, to resist the "if you don't do it, I know agents who will" threat.

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#### **56. What is the difference between boiler and machinery and equipment breakdown?**

**Q:** You mentioned that the certificate now says "Boiler and machinery / equipment breakdown" What are the differences?

**A:** You'd have to review specific policy forms to determine all of the nuances. In many cases, it's simply a matter of semantics. One person's B&M policy is another person's equipment breakdown policy. There seems to be a movement in the industry, particularly given the increasing incorporation of electronic/DP controls, to refer to this is equipment breakdown insurance.

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#### **57. Would contractual liability coverage trigger notice of cancellation?**

**Q:** On the cancellation provision, would contractual coverage be triggered if the signed Contract requires 30 days notice of cancellation?

**A:** The contractual liability coverage in a CGL policy is still subject to the other terms and conditions of the policy. Here's a VU article about this:

<http://www.iiaba.net/VU/Lib/Ins/CL/CGL/FacultyOverride.htm>

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## **58. How do we respond to government entities that demand changes we can't provide?**

**Q:** Our city government requires the changing of language. Any suggestions for fighting city hall?

**A:** Seek the assistance of your state Big "I" association and, if necessary, your insurance department. If what the city is asking is illegal under your insurance laws and regulations, you can't comply with their request. It may not be illegal for them to ask, but it might be for you to comply. The city of Atlanta, Georgia has stopped asking for notice of cancellation. Here is a PowerPoint presentation PDF that explains their position and provides some very interesting statistics to back them up:

<http://www.aci-na.org/static/entransit/Caput--Legal%20Aspects%20of%20Airport%20Insurance.pdf>

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## **59. How can we avoid losing clients by refusing to do illegal things other agents will do?**

**Q:** How can we avoid these legal ramifications without losing our clients??? They will just switch to an agent who will comply with the certificate request.

**A:** If you are truly being asked to do something illegal, something that could cause you to lose your license, be fined, or be imprisoned, the response to such requests seems pretty obvious. If another agent complies with an illegal request, it is probably either out of ignorance or a deliberate violation of the law. If the latter, why not report them to the DOI? If the former, perhaps they can be educated. If you can demonstrate to your insured that compliance with their request would be illegal, then they have the choice of doing business with you or someone dishonest. Depending on the nature of their request and how compliance is effected, it's possible that the insured can be held legally culpable...e.g., distributing a certificate they know to be fraudulent.

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## **60. What do we do if our AMS doesn't have the latest edition of the ACORD 25?**

**Q:** What do we do if our agency management system doesn't yet have the updated version of the ACORD 25?

**A:** Agents in South Dakota have faced this problem for months. In states where ACORD forms are filed and approved, the new form might be required to be used. The only way we know to accomplish this is to do so manually or considering using an online service that has already implemented the new form. If your agency does not have the latest edition of your AMS, you might never be able to get the newest version of the form. This is a huge problem for many agencies who have not upgraded their systems in a long time, given ACORD's licensing agreement prohibiting the use of form editions over a year old.

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## **61. When is the ACORD 24 used?**

**Q:** You explained the "evidence" of property forms and to whom they should be issued. What and to whom is the "certificate" of property insurance for?

**A:** Two examples would be use by tenants to provide evidence of contents insurance to landlords or condo unit owners to provide evidence to an HO association.

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## **62. Why should we start using the new certificate forms?**

**Q:** How many agents are already using new editions of the certificates? We do not yet have them on our AMS. We have been told to use blank templates and complete manually. No one is asking, is there a reason we should move to their use prior to when they are available on our management system? Are we legally obligated to use the

most current versions of ACORD certificate forms? Have received mixed information.

**A:** If you're in a state that requires the filing of certificates, then you may be required to use the latest edition of the forms now. Check with your state association or DOI to confirm this. Otherwise, the ACORD licensing agreement allows the use of a form that has been replaced for up to one year from the time the newest version has been implemented. That doesn't mean you have to wait to use the new form. Most of the ACORD 24/25 changes are positive from the agency's perspective, particularly the cancellation provision, though we recognize that there will be push-back from third parties.

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### **63. What is the ACORD 101 form?**

**Q:** Please advise what the ACORD 101 form is.

**A:** It's basically a blank supplemental form that allows you to add additional information that won't fit on the certificate. It should be used sparingly and certainly not used to add all kinds of supplementary information that certificate holders want shown on a certificate.

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### **64. What are the current ACORD certificate and evidence form dates?**

**Q:** Can you confirm the newest ACORD revision dates?

**A:** The ACORD 24 and ACORD 25 are dated September 2009. The remaining forms – ACORD 20, 21, 22, 23, 27, and 28 – are dated December 2009. That's as of the date of this document.

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### **65. Are the subrogation waiver boxes checked only if an endorsement is attached?**

**Q:** Do you need a specific subrogation waiver endorsement to place an X in the box if provided by the policy?

**A:** The ACORD Forms Instruction Guide is silent on this:

Enter Y for a "Yes" response. Input N for "No" response. Indicates subrogation has been waived on the policy.

Often the contract will specify how evidence of subrogation is to be provided. For most standard lines of insurance, you can waive subrogation prior to loss without an endorsement. In fact, there may not be an endorsement available. If there is, you can usually attach it without a premium charge for many lines other than workers compensation. Here is an article:

<http://www.iiaba.net/VU/Lib/Ins/CL/CGL/WilsonSubrogationWaivers.htm>

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### **66. How should we show "primary and noncontributory" wording for AIs on the certificate?**

**Q:** How should we show "primary and noncontributory" wording for additional insureds on the certificate?

**A:** You shouldn't. For example, primacy of coverage is governed by the Other Insurance clause in the ISO CGL policy. If an insured is covered as an additional insured on a policy, that insured's own policy says that it is excess over the AI coverage. However, you would have to read the CGL policy of the additional insured (or know they have an unmodified ISO form) in order to know that this the AI coverage you're providing is primary coverage. Therefore, it is impossible to say that the AI coverage you're providing is primary without knowing what the AI's CGL policy says.

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## **67. Should we get a hold harmless from insurers who won't mail cancellation notice?**

**Q:** On the old versions of the certificates, I wanted to find out more about the use of hold harmless and indemnity agreements with those carriers who have no intention of endeavoring to mail notice of cancellation. Are carriers agreeing to do this? My partner thinks it is a waste of time and I need data to support a reason to do so.

**A:** Unfortunately, we don't have access to information that specific about various companies. Certainly this is something advisable to have.

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## **68. Can we show policy form numbers on the certificate?**

**Q:** Many of our contractor clients are requesting that we show the form numbers for the AI, Comp Ops, Waiver & P/NC endorsements on the certificate. Is this appropriate?

**A:** We can think of no reason why this information can't be provided. The ACORD Forms Instruction Guide appears to be silent and, our first impression, is that this might not be a bad idea as long as the information is accurate. Providing ISO form numbers enables the other party to confirm for themselves whether these forms and edition dates meet their insurance requirements. This saves you from having to make some sort of agent attestation that this is the case.

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## **69. Do you foresee resistance to the new certificate?**

**Q:** In reading the IRMI blogs, I see much resistance from risk managers to the new certificate. Do you think there is any chance the new version will not be accepted by those outside of our industry?

**A:** We anticipate significant push-back but how this will all fall out is unknown since there has not been a rush to use the new forms. The fact of the matter is that, for years, certificates have been issued with an "endeavor to" cancellation notice when the reality was that no one really intended to notify anyone. Or, an agency might have voluntarily agreed to provide notice, knowing that it would be impossible to do so under certain circumstances. We believe it's better to acknowledge the reality of the marketplace and work towards a solution that all parties can live with and rely on.

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## **70. What if a lender will not accept the new versions of the ACORD 27 and 28?**

**Q:** What are we supposed to do if a bank/lender will not accept the new ACORD 27 or 28 and insists on the older form due to not conferring rights?

**A:** We have a detailed article on this and a "one-pager" IIABA members can download to give to lenders. A number of our member agencies have been successful in getting lenders to accept the new forms. Here is the VU article and a link to the download:

<http://www.iiaba.net/VU/Lib/Bus/AM/Procedures/WilsonCertificatesLenders.htm>

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## **71. Who do we notify if we see CG 20 10 11 85 forms from other agents?**

**Q:** Who do we notify when we are seeing CG 20 10 11 85 editions from other agents?

**A:** Sometimes when ISO issues a new edition of a form, they'll officially withdraw the older version and that is clearly stated in the filing to insurance departments. However, more often they do not withdraw prior editions and leave it up to the insurer whether to use them or not, if permitted by regulators. So, use of older editions of ISO (as opposed to ACORD) policy forms is not necessarily "illegal." Some states may prohibit this, but others might not. In

many cases, it is a company decision. Some insurers will issue an older form such as a CG 20 10 11 85 (if not prohibited by the state) for selected agents and/or insureds; other insurers will not issue out of date forms. One of the problems is that, as policies are revised, the endorsements used with those policies are revised so that they still work with the newer policies. Therefore, in some cases, if you use an outdated endorsement with a current policy, you could have dire unintended consequences. It is recommended that the current edition dates of policies and their endorsements be used.

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## **72. We would lose all of our clients if we didn't comply with their requests!**

**Q:** We would lose all of our clients if we didn't comply with their requests! Why are the larger general contractors kicking Insureds off projects when they aren't meeting the requirements regardless of what we tell them? How can an agency retain business if all of their Insureds are getting kicked off the job site due to the required verbiage?

**A:** Some agents are doing things they should be doing. When you refuse to do something that is illegal or implies coverages or rights that don't exist, there are often agents who will do this out of ignorance or malfeasance. We suggest working with your state association to address this through education and/or regulatory action. Alabama has had success in curtailing this problem by creating a specific fine. Louisiana implemented criminal penalties. However, another possibility is that the agent who does comply with a request does so because s/he can. For example, you may not represent a carrier that is willing to give 30 days notice of cancellation but the other agent has a carrier that can do this. If that's a deal breaker, then you will probably lose that customer. The solution is to lobby your carriers to respond to the realities of the competitive marketplace by creating a cancellation endorsement, even if it's premium bearing.

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## **73. How do we change our procedures without upsetting our insureds?**

**Q:** So how would an agency go about changing our certificate procedures when we have been issuing them the same way for years? Do you have any suggestions about how to streamline the transfer so we don't upset our insureds?

**A:** You might consider sending a letter to your insureds explaining the new certificate forms and why you must comply (e.g., state law, ACORD licensing agreement). As outlined earlier, we have developed a "one-pager" for the ACORD 27/28 that explains to lenders why the latest edition date is being used. We are considering developing a similar document for the ACORD 24/25. If so, we'll announce its availability in our VU newsletter:

<http://www.iiaba.net/VU/NonMember/newsletter.htm>

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## **74. After the new COIs are a year old, do we have to start using them on all certificates or only after a client's renewal?**

**Q:** With regard to the September 2010 cut-off date, will we have to issue the new edition for ALL certificates after that date or can you update them at the client's renewal. We have a LARGE book.

**A:** Our understanding is that ACORD's licensing agreement applies to any certificate you issue. So, after the year-long grace period has expired, you would need to issue the latest edition of the form on all subsequent certificates. For the most part, after the year is up, you will issue under the updated forms for renewals and any new request made after the ACORD anniversary date.

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## **75. What about agency management systems that have several certificate edition dates?**

**Q:** It seems that various agency management systems allow for different versions of the ACORD forms to be used which can add to the problem being discussed right now where some agents can access the older ACORD

versions and others will be using the new versions. Is there any way to level that out?

**A:** Our understanding of ACORD's licensing agreement is that an AMS cannot provide a certificate that has been replaced for more than one year by a newer version. The problem is that some agencies have not upgraded their systems in years. Therefore, they do not have access to the latest edition dates of ACORD forms. In one recent court case, the agency had issued a 1997 ACORD form. Again, it is our understanding that this is a violation of ACORD's licensing agreement and just another example (in addition to security and other issues) of why it is important to maintain your AMS on the most current release or upgrade.

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## **76. Are ACORD forms filed with the state insurance department?**

**Q:** Does ACORD file their current certificates with the state insurance department?

**A:** A few states require ACORD to file their certificates. Other states require certificates to be filed but exempt ACORD and ISO from the filing requirement.

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## **77. Should we provide a copy of the actual AI endorsement?**

**Q:** Does a certificate holder have any right to assume that the additional insured endorsement indicated on the certificate is appropriate to his needs (e.g., operations? products? etc.)? Aren't we better off to give him the actual endorsement to let him figure it out?

**A:** One thing we often hear from astute risk managers is that they want a copy of the AI endorsement. Many company AI endorsements provide inferior coverage to the ISO forms and would not comply with the contracts your insureds have signed. We see no problem in providing them with a copy of the actual endorsement, with the permission of your insured, of course.

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## **78. Is there a problem if our agency management system still uses the August 2001 form?**

**Q:** What was the Certificate of Liability Insurance edition date that was prior to 01/2009? Our management system is still utilizing the 08/2001 form.

**A:** It sounds like your AMS has not been upgraded to include the latest edition of the ACORD 25. Here is a complete listing of all of the ACORD 25 edition dates:

11/77, 01/79, 02/84, 08/84, 11/85, 03/88, 11/89, 07/90, 03/93, 01/95, 07/97, 08/01, 01/09, 09/09

Your AMS should have been using the 01/09 version earlier this year if not sooner. The 09/09 version would be required later this year. You should check with your vendor to see about upgrading your system to include the latest forms.

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## **79. Where is the "Case Law" section?**

**Q:** Where is the "Case Law" section?

**A:** Here is the article on certificate case law:

<http://www.iiaba.net/VU/NonMember/WilsonCertCourtCases.htm>

This is a listing of state laws, regulations, and DOI directives involving certificates:

<http://www.iiaba.net/VU/NonMember/WilsonCertLawsRegs.htm>

This is the menu of all of the COI resources:

<http://www.iiaba.net/VU/NonMember/Certificates.htm>

These resources are in the public area of the VU and available to your customers as well as your agency staff.

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## **80. Should we type in a 30-day cancellation notice in the description section of the new certificate like a general contractor's insurer's legal department says we should?**

**Q:** We have a general contractor whose insurance carrier requires they obtain certificates from their subs evidencing 30 days NOC. We've questioned the carrier's legal department regarding how they will view the new 9-2009 ACORD 25 form. They responded yesterday that they suggest the 30-day notice be typed in the description section of the certificate now. What are your thoughts on this practice?

**A:** Is there an endorsement on the policy that provides 30 days notice of cancellation for any reason and by either the insurer or insured? If so, then simply provide a copy of that endorsement. If not, they showing anything to that effect on the certificate could result in the loss of your license, a fine of up to \$25,000 in some states, or imprisonment in at least one state for the issuance of a false or fraudulent insurance document. It is not the general contractor's legal department that is at risk of losing their livelihoods, being fined, or being imprisoned, so they have no downside to asking for this.

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## **81. Is there a quick way to determine which states have adopted the new ACORD form?**

**Q:** Is there a quick way to determine which states have adopted the new ACORD form?

**A:** Not really. Most states do not require ACORD forms to be filed. The new certificates are countrywide forms so they're effective everywhere they don't have to be filed as soon as they are released. If there are no filing laws that govern, then ACORD's licensing agreement applies.

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## **82. How do we show that the blanket AI endorsement only applies to written requirements?**

**Q:** A couple of the situations that we have faced involve Blanket Additional Insured forms that give the broad coverage of additional insured as long as the insured has a written contract requiring the status. The problem comes up when a request comes in to the contractor to add someone as an additional insured and certificate holder and unless the agency is reviewing the contract (which we tell them not to if to do), the Blanket Additional Insured form is not going to cut the mustard. How do we show "only by written contract" on the new certificate?

**A:** First of all, I wouldn't provide that on the certificate. Once you start providing qualifying information about various aspects of the coverage, if an uncovered loss occurs where you didn't outline on the certificate the limiting features, the other party is far more likely to file a lawsuit because you didn't report it as well. One E&O carrier had a half-million dollar claim where someone stated on the certificate that AI status was provided because there was a blanket AI endorsement. Like you say, it had a written contract requirement and, of course, there was in reality no requirement for AI status in the contract. The Mid-America Technical Conference has an agenda item asking ISO to include the "in writing" caveat in the title of their blanket AI form and they've indicated that they'll consider this. Our suggestion is to provide a copy of the AI endorsement which, if the certificate holder reads it, will clearly indicate that coverage attaches only if required in writing by the contract.

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## **83. How do we respond to requests to complete online questionnaires?**

**Q:** I have received a request to complete an online questionnaire from a certificate management center that in essence replaces the certificate. How are others handling this type of request?

**A:** I would be VERY wary of such questionnaires. I've seen 40+ question "affidavits" that are so vague that any answer to some of the questions could be challenged as a misrepresentation. These questionnaires often ask for responses that are impossible or illegal. Too often, someone in a clerical position in the agency is left to complete these documents and they simply lack the experience and training to understand the implications of what they're doing. Check out this VU article on this:

<http://www.iiaba.net/VU/Lib/Bus/AM/Procedures/WilsonAffidavits.htm>

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#### **84. How is cancellation notice provided for blanket AIs?**

**Q:** What about the use of Blanket Additional Insured provisions so common for contractors now? How will this work with the policy notice requirements?

**A:** The servicing of some insureds requires the issuance of hundreds or even thousands of certificates a year. Many of these are accompanied by requests for AI status. Needless to say, it would not be practical or economical to constantly request and issue endorsements so ISO and most insurers have blanket AI endorsements where coverage is triggered by a WRITTEN request in a contract. When you have hundreds or thousands of AIs, it is not practical to provide cancellation notice. Therefore, the best recommendation is to not state or imply that such notice is forthcoming. If you side with the premise that notice of cancellation is a policy right, then with the insured and insurer being the parties to the policy/contract, only the insurer should provide cancellation notice. Given that they're probably not aware of who these AIs are, it's impossible for notice to be provided.

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#### **85. Should the AI endorsement be "attached" to the certificate?**

**Q:** One of the comments you made is that in the case of additional insured situation that the endorsement should not be attached to the certificate. That is opposite advice that we received from E&O defense counsel. He advises that the endorsement should always be attached

**A:** Interesting. We got a question from someone saying their state E&O people said the endorsement should NOT be attached to the certificate. The ACORD FIG says not to attach it. The key word is "attach." I think the most important thing is to not lead the other party to believe that the certificate is a policy form and the endorsement is being provided to modify the certificate. I believe that, rather than add comments to the certificate about additional insured status or cancellation notice, it's better to provide the actual endorsements for AI coverage and cancellation and just refer them to those policy exhibits.

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#### **86. What about AI endorsements that don't meet the contract requirements?**

**Q:** An issue that we have seen come up in E&O claims is the additional insured endorsement being added by the company allows for ongoing operations, but does not allow for products and completed operations that the contractor has on their policy. Our E&O attorney suggests that the endorsement be attached to the certificate.

**A:** I agree. Again, the thing to be wary of is not leading the certificate holder to believe that the enclosed endorsement modifies the certificate. Believe me, if it's in their best interest to claim that, they will. Agents need to CAREFULLY review proprietary company AI endorsements. MANY of the ones I've seen provide inferior coverage to the ISO forms. I think I mentioned some that only cover vicarious liability. In one case, that form accompanied a certificate where the CSR had printed "primary and noncontributory" on the certificate. I'm all for providing, with the insured's permission, copies of policy forms and endorsements, particularly when the requesting party wants the agent to provide some sort of attestation that coverage meets the requirements of the contract the insured signed. Give the other party the policy forms and let THEM determine if they meet their needs...it's THEIR contract.

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## **87. Where do I get a copy of the ACORD Forms Instruction Guide?**

**Q:** Where do I get a copy of the ACORD Forms Instruction Guide?

**A:** The FIG has now been integrated into the electronic versions of the forms themselves. If your AMS doesn't include this integration, talk to your AMS rep or check out [www.acord.org](http://www.acord.org).

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## **88. Can we issue a certificate for an AI who has coverage under our insured's policy?**

**Q:** A policy is written in XYZ company's name. They have an additional named insured ABC company that was accepted by the underwriter and added on. There is common ownership between XYZ and ABC. We are asked to produce a certificate in ABC's name, but we are not sure whether we can do it or not, and how. Should we treat the certificate request for ABC (the additional named insured) the same way we would a certificate for the named insured XYZ, or should we take certain precautions?

**A:** There's a lot of missing information. Does ABC have ANY insurance of its own? What additional insured endorsement has been added to XYZ's policy...is it ISO or a company form? If ABC's only source of liability insurance is their identification as an additional insured on XYZ's policies, then I don't think a certificate can be issued at all (and the AI has more problems than they realize). There isn't enough information to give a definitive answer. I'd run this by the insurer since the certificate is issued on behalf of the insurer. My guess is the insurer will say "no way." Does the certificate have a cancellation notice? If so, how likely is the insurer to give cancellation notice to the certificate holder of an additional insured?

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## **89. Should we still send copies of COIs to the insurer even if there is no longer a notice of cancellation?**

**Q:** We've always been told to send a copy of every certificate of liability we issue to our carriers. The prior language read that the carrier would "endeavor to" send a notice to the certificate holder in case the policy cancelled. Based upon the new language, do you recommend that we send a copy of the certificate to our carriers? The new language states that notice will be delivered in accordance with the policy provisions. Are there any policy provisions regarding certificate holders in the standard ISO form policies?

**A:** No ISO policy I've ever seen grants cancellation notice to certificate holders. Except for two Texas-specific ISO CGL and BAP endorsements, ISO has no cancellation notice form and their commercial policies only afford notice to the First Named Insured or mortgagees or, by endorsement, loss payees. None of ISO's 30+ additional insured endorsements provide cancellation notice.

Still, our E&O carrier recommends copying the insurer. A certificate is issued on behalf of an insurer, so their feeling is that the insurer should be made aware of what their legal representative is telling the other party to the insurance contract. If the insurer doesn't want a copy, they are free to discard it.

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## **90. How should we respond to demands for a 30-day notice of cancellation?**

**Q:** I attended your certificate of insurance webinar. The information provided was interesting but I have some real concerns about the resistance we will get from the parties requesting certificates.

Attached is a copy of excerpts from the AIA A201 2007 contract. It is interesting to note that this contract which is being signed daily by our contractors states "these certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverage afforded under the policy will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the owner." AIA Sub-contracts contain pretty much the same verbiage stating notice be given to the "contractor."

They are requiring the policies be endorsed. ISO does not have such an endorsement and neither do most of the companies. I've checked with several of our companies, only a couple are able to comply with this request and have drafted endorsements to meet the obligation. They state the problem is how to trigger their systems to actually provide notices to other than the First Named Insured.

These contracts are usually signed before we are even asked to do a certificate, any suggestions how to address this?

**A:** As someone famous once said, "I feel your pain." It's damned if you do, damned if you don't. Some insurers will endorse the policy to provide 30 days notice of cancellation. Most won't. Some that do will only do it for select agents or customers. I've personally never seen one that gave a blanket 30-day notice of cancellation or material change by either insurer or insured. They almost always allow a 10-day notice for nonpayment. I've seen some that don't mention cancellation by the insured. Most policies allow the insured to cancel immediately with written notice or by surrendering the policy. The AIA 201 and other construction contracts never, as far as I've seen, make this distinction.

So the question is, what do you do? If you issue a certificate that says the certificate holder will get 30 days notice of cancellation and there is no policy provision to back that up, what happens if the insured cancels? What if cancellation is for nonpayment? Sometimes agencies issue these certificates with the intent that they will unilaterally and voluntarily provide the notice. However, it is IMPOSSIBLE to do so under the circumstances cited. Does that make the certificate inaccurate? Unquestionably. Does it make it misleading? Almost certainly. Is it a misrepresentation? Is it fraud? You can almost bet that's what the certificate holder will say if there is an uncovered loss following a cancellation.

If the certificate is deemed to be a misrepresentation or a fraudulent document, then laws have probably been broken in most states. In Alabama, there is a specific \$10,000 fine for each certificate issued. In Ohio, the fine can be \$25,000. In Louisiana, issuing a fraudulent certificate can result in a fine and five (5) years in prison at hard labor. In that state, the loss of an insurance license will seem insignificant to a prison sentence. This is what Nebraska's fraud law says:

- 44-6604. Fraudulent insurance acts; enumerated. For purposes of the Insurance Fraud Act, a person or entity commits a fraudulent insurance act if he or she:
- (4) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;
  - (7) Knowingly and with intent to defraud or deceive issues or possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;
  - (8) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the department;

In states like South Dakota, it is patently illegal, by insurance department directive, for a certificate to provide for notice of cancellation that isn't afforded by the policy itself. The problem is, everyone has been looking the other way while this has been going on for years. Now, many regulators and others are focusing on the accuracy of the documents and transactions we're involved in. Insurance, first and foremost, is founded on the principle of good faith. When we're issuing documents that others rely on that are based on inaccurate information, the question is whether we are conducting ourselves in a good faith manner.

I actually had an agent tell me that he puts anything on the certificate he's asked to do, whether it's accurate or not. He said, "That's why I buy E&O insurance." I believe the bottom line is that we've got to provide the notice that is being requested by policy endorsement, refuse to provide a certificate that isn't backed up by a policy right, or convince the requesting parties that what they are asking for is impractical and most often impossible. The alternative is to conduct ourselves dishonestly or unethically.

Our Mid-America Technical Conference has asked ISO to produce a standard cancellation notice endorsement. So far, they have resisted, but we continue to push this. Many insurers do not want to manuscript or otherwise draft a notice of their own but they might be willing to use an industry standard form.

On the other side, many risk managers, government entities, and others are seeing the light and recognizing reality. I've been told by a number of risk managers that they don't even bother with certificates as "proof" of insurance anymore because of the extent of inaccuracies or outright falsifications. The city of Atlanta, Georgia has

stopped asking for notice of cancellation. Here is a PowerPoint presentation PDF that explains their position and provides some very interesting statistics to back them up:

<http://www.aci-na.org/static/entransit/Caput--Legal%20Aspects%20of%20Airport%20Insurance.pdf>

I know this doesn't give you the clear-cut, definitive course of action you'd like, but hopefully you can use this information to evaluate your agency's business practices with regard to certificates. Let me know if you have further questions or comments.

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## **91. Where do we find the ACORD Forms Instruction Guide (FIG)?**

**Q:** Where do we find the ACORD Forms Instruction Guide (FIG)?

**A:** The FIG is no longer, to our knowledge, published as a complete document, but is rather accessible on a form by form basis. Go to [www.acord.org](http://www.acord.org) and click on the FORMS tab. Then on either the small red rectangle to the right that says "Already Registered? Click here to download forms" or, just beneath it, to the screen that creates one's registration for downloads. (Anyone can register...it is not restricted to members.) Once you have selected which form you wish to download, there is a place on the actual forms download page under the heading "Figs" with the letter "I" in a circle. That's where you click to access the FIGS, on a form by form basis.

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## **92. Should we add indemnity language from a contract to a certificate?**

**Q:** We have a lot of public utilities that are questioning our decision not to add hold harmless wording to a certificate of insurance. Here is an example:

"The insurer agrees to defend, indemnify and hold harmless the City of \_\_\_\_\_, \_\_, its agents, servants and administrator from any and all complaints claiming liability and damages for injuries arising out of work and/or duties to be performed under entire contract."

I have always been taught that the hold harmless is between the client and the customer and is something between them on a written contract between the two. How would you respond to this?

**A:** We've already pointed out that the ACORD FIG suggests not to include contract language on a certificate. In this case, that's especially true. My (probably really, really good) guess is that your agency/company agreement does not give you the authority to commit your insurer to legal indemnity agreements. Ask the insurer what they think about this, though I bet I can give you an answer in advance. Your insured can sign any kind of indemnity agreement they want, but there are two things they shouldn't expect: (1) that their insurance policy(ies) will comply with this agreement, and (2) that they (or you) can commit the other policy to the insurance contract to an indemnity agreement between two other parties.

Unless the insurer offers a policy with no limits or exclusions and a very broad definition of "PD," no insurance policy in the world will cover "any and all" claims for liability and damage. Any certificate that purports to do this could very likely constitute a fraudulent insurance document and result, depending on the state, in penalties ranging from loss of insurance license to fines to imprisonment. It's hard to believe that the risk manager for a large city could expect such language to be acceptable.

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## **93. How should we handle certificate requests if there is a pending cancellation?**

**Q:** I am in the process of updating our policies and procedures manual and am now on the cancellation section and I have a few questions regarding certificates. Can we refuse to issue a certificate of insurance if the policy is pending cancellation? Are we obliged to issue the certificate? If we do issue a certificate, do we show the full policy term or should we enter the pending cancellation date?

**A:** The agency and carrier can refuse to issue a certificate for any reason. Pending cancellation is certainly a

good one. The agency doesn't have to honor a certificate request from anyone. There's nothing in the insurance contract that requires compliance to a request from a third party or even the insured. Of course, failure to do so may result in the loss of the account, but there's no contractual or moral obligation unless provided for by the policy (e.g., a mortgagee) or endorsement (e.g., loss payable clause). The certificate is a snapshot in time of coverages and policy terms at the instance of issuance. I don't think the agency has an obligation to a third party to provide anything more than what is on the certificate...i.e., no explanations not indicated on the certificate itself are necessary. If a cancellation is pending and unlikely to be withdrawn, I'd be inclined to not mislead anyone and politely decline the request to issue one since, if anyone pays any attention to the "will endeavor to" cancellation language on the certificate, notice of cancellation would be forthcoming. By making this a formal procedure and applying it without exception by all agency staff, the agency has something to fall back on.

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#### **94. Should we show on the certificate what the endorsement exclusions are?**

**Q:** Waivers and additional insureds are going to be different wording based on the company writing the coverage. It has been our agency practice for years to insert on the ACORD certificate and oil company certificates what the endorsement restrictions/exclusions are. Is this a good practice? What are your recommendations?

**A:** Our suggestion is, with the insured's permission, to provide the requesting party with a copy of the endorsement(s). It should be clear that these are the endorsements modifying the policy (not the certificate). I would not add any explanatory verbiage on the certificate in an attempt to explain or confirm what these endorsements do or don't do.

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#### **95. Can we issue E&S certificates and how do we handle pending cancellations?**

**Q:** If our agreement with a wholesaler/E&S broker states that we can issue a certificate, can we do so even if we are not the agent for the carrier? When there is a pending cancellation, is it correct to make the expiration date the date of cancellation? Consider a certificate 2/15/10 with the 30 days cancellation notice, a certificate is issued and then a cancellation is issued that day or the following date...how are we providing 30 day notice? We are in New York.

**A:** To our knowledge, New York insurance statutes and regulations do not address the question of who may issue a certificate of insurance. This is a contractual matter between the retail agent, the wholesaler, and the insurer. The only restriction the insurance department has stated about certificates is that they can't be used to change a policy. For information on New York (and other state) laws and regulations on insurance, go here:

<http://www.iiaba.net/VU/NonMember/WilsonCertLawsRegs.htm>

The laws and regulations governing excess line brokers do not mention certificates at all. In general, you can issue certificates only if the wholesaler has the right to issue certificates and delegate that to you. Be very careful and get authorization in writing from the wholesaler (and preferably the carrier) before doing so — it won't protect you but might give you a right to indemnity back against the wholesaler.

Regarding notice of cancellation. A certificate is a snapshot in time, so you should provide the information that is accurate at that point in time. Even if written permission is obtained, the retailer should not issue notices of cancellation or nonrenewal. The retailer's sole role would be to issue certificates solely for informational purposes and nothing else. If you go beyond that role, you can expect problems.

An agent lost a case regarding a certificate expiration date when the policy expiration date was entered (12/31) instead of the pending cancellation date (8/7). The loss occurred 9/10, after the policy cancelled. The property carrier of the certificate holder paid the claim and the subrogation action then followed. The risk manager of the certificate holder testified that the insured would not have been allowed to come on the premises if the 8/7 date was known. The agent stated that the insured always paid the premium and that is why 12/31 was put in. The agent also stated that it would cost the agency \$\$ to reissue the certificate after the premium was paid. The agent and their E&O carrier settled with certificate holder property carrier far in excess of what it would have cost to reissue the certificate.

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## 96. Should we copy insurers on certificates?

**Q:** One of our companies doesn't want us to send them copies of the certificate of liability insurance. The certificate of liability form states the "issuing INSURER will endeavor...how can the agency be held responsible for notification for what is stated clearly the carrier's responsibility? If the company doesn't want a copy of the certificate, why should the agency start notifying certificate holders? Should agencies assume the responsibility of what is the carrier's duty? Does the agency have a legal exposure? If yes, then how do you suggest agencies respond?

**A:** The short answer is that the agency should continue to send the certificates to the carrier. Even if they say they don't want them, send them anyway. The agency should not be sending anyone notice of cancellation. You don't send your own insureds cancellation notice (the insurer does), so why should you send a third party something you don't send your own insured? There could be a privity of contract issue as well. Advise the insurance company that your internal procedures, as well as your E&O carrier, require that you send a copy of each certificate issued and that they insurer should NOT return them to your office.

For more information on this, check out this article:

<http://www.iiaba.net/VU/NonMember/WilsonInsurerCerts.htm>

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## 97. Is it OK to give out copies of the Declarations page with a certificate?

**Q:** When small contractors request certificates for the general contractor, I give them extra copies of their declarations page to give to the general or I fax to the general a copy of the declarations page. What do you think of this practice? Small contractors have a bad habit of not paying premiums.

**A:** There is information on a declarations page that is, frankly, none of the certificate holder's (or anyone else's) business, e.g., premium information and possibly rating detail. In addition, the declarations page is only valid at the time it's issued. Coverages or limits could have changed months later. Otherwise, if the insured doesn't care, there's nothing that prevents them from sharing this information if the other party is willing to accept it.

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## 98. Do we have an obligation to notify past certificate holders if an insured discontinues P/CO coverage?

**Q:** At an agency meeting this week, we discussed your white paper. We had a lively and interesting discussion afterwards and a question arose which I wanted to run by you and the experts. When we issue a certificate showing products and completed operations coverage in the current policy year and the insured either goes out of business or goes bare, do we have an ethical responsibility to notify prior certificate holders of the non-existence of continued products and completed operations coverage? Or should we assume the certificate holders will understand this coverage's features in such circumstances? If transparency and disclosure is the goal, where or when does it end?

**A:** Unless the contract between your insured and the certificate holder calls for keeping P/CO coverages in place for "X" numbers of years after the contract or projected expires, there's no need to provide notice of any kind that I can think of. If it does, that's the INSURED's obligation, not yours...assuming you didn't sign any kind of "agent affidavit" committing to this. Any mention of P/CO coverage on the certificate of insurance is for the one policy year shown on the certificate. There is no continuing obligation after the expiration date of the policies shown on the certificate. The E&O carrier would almost certainly prefer that agents minimize contact with other parties regarding cancellation or dropped coverages or, at a minimum, be consistent in how all such insureds or other parties are contacted. The greater the expectations created in the minds of others, the possibly greater exposure the agency has for an E&O claim based on detrimental reliance or some other noncontractual legal claim.

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## 99. Can we issue “blank” certificates?

**Q:** We sometimes get requests from insureds for a supply of "blank" certificates with everything completed except the certificate holder's name.

**A:** What's to keep these insureds from issuing these certificates after they've lowered their limits, reduced coverages, or cancelled their policies? In the immortal words of Mark Farner, "Don't do it. Don't do it."

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## 100. Can we issue certificates on assigned risk plan business if we use a disclaimer?

**Q:** Some of our clients are currently in the assigned risk/state fund for their workers' compensation coverage. We understand that we do not have the specific authority to issue certificates of insurance for these policies and that official certificates are available from the state fund or assigned risk carrier but their turnaround time can be extremely slow. Would it be a legitimate practice for our agency to issue a certificate showing this work comp coverage with a disclaimer stating that the information contained in the certificate is for information purposes only and that the state fund/assigned risk carrier should be contacted for an official certificate? Or is there a better practice we should adopt?"

**A:** Certificates are issued by agents on behalf of insurers. The account may not even be assigned yet. Even if it is, you can't issue a document with an "authorized signature" without authority. Your question is essentially a legal or regulatory one. If the ARP rules do not allow you to issue a certificate, you can't issue one of any kind. All certificates are for information only and that's clearly stated on the ACORD form...you shouldn't add any other kinds of "disclaimers." If you are experiencing service problems in the issuance of certificates, I'd take that up with your plan administrator, insurance department, or state association.

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## 101. What if an insured lowers his limits then a certificate is requested as evidence of work he did before lowering the limits?

**Q:** Scenario: GL policy with \$1,000,000/\$1,000,000 limits issued 01/01/10 to 01/01/11. Certificate issued on 03/01/10 to certificate holder. On 06/01/10 insured calls and requests to lower his limits to \$300,000/\$300,000. On 07/01/10 a contractor calls and requests a certificate on my insured for work that he had done in April 2010. Insured also requests certificate for work being done now. How do I issue these certificates and do I have a responsibility to advise the 03/01/10 certificate holder of the change?

**A:** This is a tough question and I'm not sure there is a "right" answer. Check out the musings of the VU faculty below for a consensus:

The certificate of insurance certifies limits as of the date the certificate is issued. The certificate indicates that limits may be reduced in the future. From April to June 1, the insured had \$1,000,000/\$1,000,000 limits, after that he had \$300,000. For the certificate issued in July for the April job, you can only certify the higher limits from the inception date of the policy (1-1) until the limits were changed on June 1. However, you show an annual policy period on the certificate. This means you are certifying the higher limits for the entire policy year.

You should send the certificate holder a letter advising that the insured reduced his limits on 6-1. If the April job required higher limits than \$300,000, the insured only had the higher limits for two months. This could be a problem if the certificate holder required higher limits to extend beyond 6-1. If the contractor signed a contract requiring higher limits for a job, especially for completed operations, then you need to send the prior certificate holders a revised certificate showing changed limits. It was probably a bad idea for the insured to reduce limits mid-term. You might want to ask the carrier how they want the certificates issued.

There is no easy answer. It depends on when the occurrence happens(ed). If someone is making a claim for an occurrence that happened before the change, they have one limit...for occurrences after the change, they have another limit. I'd think you'd need to tell them both. I would definitely not imply that there are limits higher than there might actually be. If anything, the certificate is a snapshot of the policy at the time the certificate is issued

and if you had to choose, it would be the limits at that time.

Since the certificate shows an annual period, you need to reflect the change. I would suggest two separate certificates to show each limit in its own time period.

A certificate, when issued, must be a true representation of the policy at the time it is issued. Any certificates you issued prior to 3/1/07 can have the higher limit. Anything issued after the change must reflect the new, lower limits.

If you're issuing a certificate today, even if it's for something that was done previously, it must show the lower (current) limits. You're not responsible to let any certificate holders know that the limit was lowered...as long as the certificate, when you issued it, properly stated what the limit was at the time. A certificate is a "snapshot"...it is not a representation that coverage will exist in the future, or at what limit.

I believe you have an ethical if not legal responsibility to make clear to the certificate holder the change in limits.

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## **102. Is it OK to back-date a certificate?**

**Q:** A former client has requested a certificate for a policy that expired in 2005. They do not require an additional insured endorsement, only proof of coverage. Should we have any concerns about doing this?

**A:** A certificate of insurance serves as evidence of insurance in force at the time the certificate is issued. We do not believe it is an appropriate use of a certificate to document past coverage. The NY insurance department appears to agree with us:

<http://www.ins.state.ny.us/ogco2001/rg111261.htm>

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## **“Ask an Expert” Service**

Questions like these and, in fact, general insurance coverage/claim questions, along with questions about agency management or technology issues can be submitted by Big “I” member agencies using our “Ask an Expert” service:

<http://www.iiaba.net/VU/Experts/ExpertsMain.htm>

You must log in to access the online form used for this. If you do not know your Big “I” user name or password, send an email to [logon@iiaba.net](mailto:logon@iiaba.net).

## **Updating This Document**

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**Last Updated: April 1, 2010**