

# the E&O angle

E&O issues and advice  
By David Hulcher

## A Certified E&O Exposure

### Is your agency at risk for certificates of insurance claims?

It's a simple concept: somebody wants proof of another person's insurance. But if not handled appropriately, certificates of insurance can create an exposure for an E&O claim against your agency. With customers requesting large numbers of certificates, often at critical times in the operation of their business, fulfilling certificate requests quickly and accurately can be the core of your customer service relationship with your client. When handling certificates of insurance, make sure you are using the appropriate and most recent certificate forms, understand the language they use, and follow appropriate agency procedures.

Does everyone in your agency understand the purpose of a certificate of insurance or cert? A certificate of insurance is used to provide proof to a third party that an insured has a specific type of insurance. There are several types of certificates of insurance that can be used, depending on the underlying type of insurance being verified. These ACORD® forms are the Certificate of Property Insurance and Certificate of Liability Insurance, with the latter the most frequently used.

It is important to use the correct certificate of insurance for the underlying insurance being verified. For example, you would not want to use the Certificate of Liability Insurance to verify the existence of property insurance. Over time, the language on the ACORD® forms has changed, so make sure your agency is using the current form edition: Certificate of Liability – 25 (8/2001) and Certificate of Property – 24 (1/95). If your agency is not using the most up-to-date certificates, start immediately.

Certificates of insurance should always exactly reflect the terms and conditions of the policy. Understanding the language used on the certificate will help demonstrate the E&O exposure of deviating from the original text of the certificate. Consider these provisions of the Certificate of Liability:

1. "This certificate is issued as a matter of information only and confers no rights upon the certificate holder. The certificate does not amend, extend or alter the coverage afforded by the policies below."

This drives home the purpose of the certificate: to show a third party proof of insurance. The certificate holder has no rights under the certificate. It also emphasizes that the certificate does not modify the terms and conditions of the policy.

2. "Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions of such policies."

This statement goes further, indicating that the insurance afforded is subject to the terms and conditions of the policy even if it is referenced or part of another contract between the insured and the third party. These statements emphasize the

need for the certificate of insurance to accurately reflect coverage. Also, don't use the certificate as a vehicle to communicate policy changes to the insurer and assume it will make the changes. For example, don't show the certificate holder as an additional insured when they have not been added to the policy by endorsement.

3. "Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail \_\_\_ days written

notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives."

This statement has been the subject of much discussion because of frequent requests to be modified. Often, a certificate holder requests specific notification language as opposed to "the issuing insurer will endeavor to" language. Under the standard language, the insurer doesn't have an obligation to notify the certificate holder. However, if this language is modified or deleted, you may be creating an obligation, for you or the insurer. **IA**

Hulcher ([david.hulcher@iiaba.net](mailto:david.hulcher@iiaba.net)) is Big "I" director of E&O Operations.

### Minimize E&O Cert Situations

What can your agency do to minimize E&O claims exposure from the issuance of a certificate? First, make sure that you are using the proper edition of the forms and that your staff understands the purpose and standard language of certificates. This standard language, and the court precedents interpreting them, can help insulate you from liability. Any requests to alter the standardized form language should be approved by the insurer. Forward both the front and back of the certificate, since both pages include disclaimer language. Certificate accuracy is critical. Make sure that the coverage in-force at the time the cert is requested appears exactly on the form as exists in the policy. You should have a written procedure in place to verify the existence of coverage when completing the certificate. Finally, send copies of the certificates to the carriers, even though they often say they don't want them. Also, keep a consolidated list of certificate holders that is periodically forwarded to insurers, accompanied with a letter reminding the insurer to notify certificate holders at cancellation.