

## The Simple Made Complicated: Certificates of Insurance


A certificate of insurance is a document generally provided to a third-party as a snapshot of the insurance carried by a particular insured at a specific point in time. It is nothing more than that. It confers no rights on the holder. It does not alter the terms and conditions of the policies listed on it. Nonetheless, a significant number of professional liability claims are asserted against insurance agencies based on certificates of insurance they have issued. This is the first article in a two-part series examining some of the evolving issues surrounding the issuance of certificates of insurance.

At the outset, certificates are most commonly issued on ACORD forms. There are different ACORD forms to reflect different types of insurance, and agents should take care to use the proper form. The majority of E&O claims arise from ACORD 25 forms for liability insurance. The certificates topics that you should discuss with your agency staff include:

**Inaccurate information in a certificate of insurance.** While it is often said that a certificate of insurance is not a contract, liability claims are frequently made against insurance agents on the basis that the certificate holder relied to its detriment on the information shown by the certificate. Say an insurance agent provides a general contractor with a certificate of insurance stating that a subcontractor has a liability policy. If the contractor experiences a loss attributable to the subcontractor's negligence, and it turns out the subcontractor did not actually have coverage in force at the time the certificate was issued, the general contractor might allege liability against the agent on a theory that it would not have used the subcontractor if it had not been led to believe there was coverage in force. These inaccuracies can simply be the result of a typographical error regarding limits or policy period; however, certificate holders are generally entitled to rely on the certificate's accuracy. Agents should never issue certificates in anticipation of a policy's issuance—the policy does not exist until the carrier says it exists, and any certificate showing otherwise is inaccurate. Claims arise where a contractor, typically new to the business, requires coverage and a certificate to bid on its first job, but doesn't have the means to pay the initial premium and asks the agent for a "favor." The agent issues the certificate (usually with a bogus policy number), and the contractor gets the job. The carrier ends up rejecting the application, and the agency is left holding the bag for any claims that would have been covered by the policy had it been issued.

Agents should take greater precautions when issuing certificates reflecting coverage placed through an intermediary because there is an extra layer of opportunity for inaccuracies to arise, much like inaccuracies arise in the children's game of "telephone." Thus, policy numbers, limits and other information should be compared against the policy itself, or double checked directly with the carrier if possible, to reduce the chance that a mistake by the broker ends up on a certificate issued by the agency. Unfortunately, there have been claims where unscrupulous brokers have fabricated policy numbers for coverage that didn't exist, and the innocent agencies (and their E&O carriers) that issued certificates with the bogus information have been left to defend the claims by the certificate holders. Checking the information directly with the carrier also guards against such predicaments.

**Using certificates to change the policy.** The ACORD 25 form clearly states that the "certificate does not amend, extend or alter the coverage afforded by the policies" shown on the certificate. However, agencies have attempted to use the certificate as a vehicle to change the policy's coverage, most commonly to add additional insureds to the policy. There are several problems with this. First, the agent may or may not have the carrier's authorization to add additional insureds—or, a particular additional insured may require some underwriting attention (and perhaps an additional premium) beyond what the carrier authorized the agency to do. Second, issuing the certificate does not endorse the policy to add the additional insured. Therefore, the certificate would inaccurately indicate to the certificate holder that a party is an additional insured when that party has not been endorsed as an additional insured on the policy. Certificates should be used to show the state of the policy; if a party has been endorsed as an additional insured, then a certificate is the proper vehicle to provide a certificate holder a document reflecting the additional insured's status. Certificates of insurance should never be used to alter the terms and conditions of the policy.

Look for more issues surrounding certificates of insurance in next month's "E&O Angle." 

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