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Many contractors give little thought to their insurance certificates until they become central to starting or getting payment on a project. Insurance certificates were one of the key issues addressed at the 28th IRMI Construction Risk Conference both in a session devoted to insurance certificates and as part of the contractual risk transfer session. Terry Galganski, director of insurance and risk programs for the Weitz Co., and **Bill Wilson, CPCU, ARM, director of the Independent Insurance Agents and Brokers of America, presented the session "Certificates of Insurance: Sure Bet or Bluff?"**

Wilson and Galganski highlighted the inherent tension between what project owners want in the certificate versus what insurance brokers are permitted to give. Owners have extraordinary leverage in the bargaining process to make whatever insurance demands they want. Unfortunately, the contractor policyholder gets stuck in the middle of wanting to give the owner what it wants versus what is possible. Sometimes the divide the contractor needs to bridge is great.

You have certainly been on the receiving end of insurance requirements that you could not meet because either coverage does not exist or for some reason, you can't procure the coverage given the current policy package you have. Being forewarned about what the certificate is and is not is being forearmed with information that you may be able to address with your project owner or broker before a problem arises.

Limitations of the certificate. The first step in understanding why insurance certificates can be such a vexatious problem is knowing that the ACORD 25 form Certificate of Liability Insurance is designed only to provide a snapshot of coverage at a point in time. We are all accustomed to seeing the ACORD 25. Galganski pointed out that the form itself contains six disclaimers written into it. It says that the certificate is for information only; that the certificate does not amend the policy; what the policy terms control (not the parties' contract); that for additional insured status, you need an endorsement, you need an endorsement for a waiver of subrogation; and that the certificate is not a contract with the certificate holder.

So how do you deal with an owner that wants:

Items to be stricken out of the ACORD form. Your broker is not going to be willing to change the ACORD form for at least three reasons. The first reason has to do with the agency agreement the broker has. It may be unable to change components on the form because of its agreement with the insurer. The second reason is that ACORD has a copyright on the form and prosecutes people who represent the form as an ACORD form with modifications. Perhaps the most compelling reason is the third one, that state law might prohibit your broker from doing so. Galganski pointed out that in some states, such as California and Illinois, disclaimer language must be in the certificate that states, in essence, that it cannot alter or amend the policy. Galganski also noted that in Wisconsin and Iowa, the issuing broker's license may be revoked if the certificate is altered. Other states may not permit a non-ACORD certificate to be issued unless it has been filed with the state's insurance department.

Notification of policy cancellation within 30 days. The ACORD form uses the language that the insurer will endeavor to provide notice within 30 days. The ACORD form does not provide a mechanism for notice to an additional insured within 30 days. For the reasons described above, the broker will be unwilling to cross out the "endeavor" language in the certificate. Wilson pointed out that most policies only provide the insured with 10 days' notice of cancellation, and the additional insured endorsement

forms from the Insurance Service Organization (ISO) do not provide for notice to additional insureds. Any indication on the certificate to provide notice would likely be contrary to the terms of the policy.

Completed operations coverage to be reflected for the period of the statute of limitations. Often owners ask for the certificate to show that completed operations will be maintained for the period of the statute of limitations. Your broker is not ever going to represent to anyone that you will maintain coverage for any length of time. The certificate is only meant to show at a point in time what the coverage is and offers no guarantees for future coverage.

Confirmation that the contractor's policy is "primary and noncontributory." Wilson said that the question of whether a policy will be primary depends not on the insured's policy but on how the additional insured's own general liability policy addresses other insurance. If an ISO form (or equivalent language) is used, the additional insured's own policy should enable the contractor's policy to be primary. As for the noncontributory language, Wilson asserts that the term is not typically included in the policy or in the additional insured endorsement. Further, some additional insured endorsements define noncontributory as meaning that the insured's insurance is primary and the additional insured's insurance will be considered excess, which is what "primary" is generally meant to be.

To be listed as an additional insured. Listing the owner as an additional insured does not in and of itself make it so. The owner may request that you provide an endorsement that reflects its status as additional insured or a copy of your blanket additional insured endorsement.

A broker's opinion letter. These letters are designed to provide information on an insured's policy. Sometimes the information requested is beyond what the broker can reasonably be expected to assure someone. Some examples of requests beyond a broker's ability to assure include a promise to provide certified policy copies for a certain number of years or that the insured will maintain coverage for a certain number of years. Look at the form and see for yourself whether the requests being made are reasonable. Your broker may be unwilling to provide an opinion letter that provides anything more than the certificate provides.

In light of the enactment of harsher state penalties for misrepresentations made in insurance certificates, your broker is going to be careful about what he or she puts in the certificate and may not be flexible about it.

Moreover, recent litigation has focused on language written into the certificate that has inaccurately described the coverage it was intended to summarize. In some cases, the brokerage has been held responsible for the loss incurred that the certificate purported to cover as a result of the misrepresentation in the certificate. This is another reason your broker will be very careful as to what will be written in the insurance certificate.