

Questions and Answers

Certificates of Insurance “Pushback” Webinar

October 27, 2010

The following pages include questions that were asked during this webinar. Some of them were answered fully and others partially during the program. A link to a recording of the webinar was provided to participants on November 3 and the presentation answers many of these questions and others. Other than correction of a few typos, the following are the unedited questions we received and our summary responses. If you have any further questions, please email bill.wilson@iiaba.net.

We had numerous state-specific questions about certificate laws and regulations...answers can generally be found at the link below. With somewhere around 5,000 participants, we sold out all of the connections available for this program. As a result, we will be doing the same webinar live on December 8, 2010 and anyone who could not attend on October 27 can register at the link below.

Additional Information:

The Big “1” Virtual University Certificates of Insurance Resources Page
<http://www.iiaba.net/VU/NonMember/Certificates.htm>

Certificate of Insurance State Laws & Regulations
<http://www.iiaba.net/VU/NonMember/WilsonCertLawsRegs.htm>

Register for the December 8, 2010 encore webinar:
<http://tinyurl.com/23fa55e>

Q: In KY it is not unusual to have more than one worker's compensation policy. How should this be shown?

A: Just out of curiosity, why would you have multiple WC policies for the same entity? The only thing I can think of would be to issue a certificate for each WC policy or refer to the ACORD 101 and show the information there.

Q: Certificate holders are requiring a 30 day notice of cancellation including non payment most of my carriers are not willing to afford the cert holder more time than they would the insured. When I go back to the certificate holder and advise this is the case, they give me a list of carriers that will and these are ones I write through and I know they do not but there are still a lot of agents out there just typing in whatever they ask for on the certs to keep their clients from losing a job. How do you address this with the cert holders?

A: All you can do is explain the reality to the certificate requestor. If NONE of your carriers will bend on this, then the certificate holder will have to modify their requirements or your insured will have to decide whether to move their account to another agent/company that is more receptive...with the caveat that they'd better confirm that such notice is actually provided by the policy and not just shown on the certificate. What you don't want to do is cave to pressure and put something on the certificate that conflicts with what the policy actually does.

This is an opportunity to educate the certificate holder. The need to understand that cancellation can only be extended by the policy, not by a statement on the certificate. There are still many thousands of agencies that are still learning this, so such certificate statements could be out of ignorance rather than outright misrepresentation. A lot of agencies also think that the agency can provide notice. That's not what the policy says and it's impossible to give 30 days notice for nonpayment or cancellation by the insured. Agents need to be educated on this as well, so lead the way!

Q: If blanket additional insured is in the policy is it still necessary to specifically add an additional insured before issuing a certificate?

A: Below the surface, this could be a very complex question. Big I members and paid VU subscribers can check out this article for an example of one issue:

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

Another issue is that most blanket AI endorsements or policy provisions trigger AI coverage only if required under a written agreement? Have you confirmed that this is the case? If so, then you can indicate AI status on the ACORD form.

Q: What do we tell our clients when they receive certificates from their vendors or subcontractors that are done incorrectly from another agency? If it is to their advantage do we advise our client to just accept the certificate?

A: Do you have examples of what you mean by “incorrectly”? Is coverage misrepresented? If, for example, a sub’s certificate does not show WC coverage, your insured could end up paying additional premium and/or getting stuck with a claim because of this. So, it probably depends on the nature of the “incorrectness” as to what you might want to do with regard to counseling your insured.

Q: We have already seen incorrect certificates from large brokerage firms across the United States. Who will be monitoring this and will there be repercussions for those agencies that refuse to follow the new standard?

A: What do you mean by “incorrect” certificates, using older ACORD versions, violating your state’s law(s), or other things? If someone is violating ACORD’s licensing agreement, you’re free to report them to ACORD or report them to your insurance department on the basis that this could be an unfair trade practice or otherwise an insurance law violation. If it’s clearly something that violates your law(s), then again you could report it to the DOI.

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

Q: We were advised by IIAV NOT to attach the AI endorsement to the same email containing the certificate. We send in a separate email per their suggestion. Do you agree?

A: My guess is that this could be because the ACORD Forms Instruction Guide says:

“ACORD recommends that the Certificate NOT be used in the following situations...To attach to an endorsement.”

What this means is that an endorsement should not be attached to a certificate in a manner that leads the certificate holder to think that the certificate is a surrogate policy that is being modified by the endorsement. As long as it is clear that the endorsement is being provided on its own merits, there shouldn’t be a problem sending the documents together. However, if you think there’s some chance the certificate holder might think the endorsement applies to the certificate, you could send them separately or simply add a clarifying comment in the email.

Q: What do you send when there is an endorsement that provides AI status? For example, broad form endorsement?

A: AI status is usually provided by endorsement. Are you referring to a “broad form endorsement” that provides other bells and whistles other than AI status or do you mean “blanket AI endorsement” that only requires that the AI status be provided by written agreement and not actually show the name of the AI? Regardless, in both cases, I’d be inclined to simply provide a copy of the endorsement.

Q: When the cancellation date is filled out , who is responsible for mailing the cert holder out the cancellation notice (agent or Insurer)?

A: Cancellation notice is a policy right. You can't create a policy right simply by making an entry on a certificate of insurance. The policy must provide such notice, typically by endorsement. That policy form will spell out who is responsible. For standard policy forms, I've never seen one that says the agent is responsible...they usually say the insurer is responsible. The current ACORD form has no place to enter any kind of cancellation information. If cancellation is provided by a policy form, I would simply send the certificate holder the form.

Q: Some municipalities require the special wording to show the additional insured and waiver in the DOO and if not they will not accept the cert even if the Add'l insured and waiver boxes are marked. What do we do then?

A: Their position is probably due to custom, inertia, and ignorance. They ask for this because they've always asked for this. It's on their "list." Try asking them WHY they need this language in that spot. Chances are they will have no reason. Tell them you are reticent to put any language on the certificate that might mislead someone as to what the policy does or doesn't do and that you'd prefer to simply give them a copy of the endorsement(s). That might require going to someone other than the person who has the "list" in order to reach a decision maker. This is an opportunity to educate them.

Of course, some people aren't interested in being educated. The primary consideration is, exactly what wording do they want? If the wording they request is in line with the policy and doesn't in any way imply that AI status or subro waiver is granted by the certificate, and there are no statutory or regulatory restrictions, then you aren't prohibited from doing this...it just isn't a very good idea from an E&O standpoint. It's not in keeping with the ACORD Forms Instruction Guide and it brings in an element of inconsistency in your policies and procedures if you make exceptions for some certificate requestors that aren't reflected in your written procedures.

But, at the end of the day, absent any legal restrictions, it's a business decision.

Q: With having to mark AI/Subro Waiver on the main one, you will have to have many different sets of certs for ones that are neither or only 1 of these, correct?

A: I don't follow the question. You have a column for AI status and one for WOS status. You simply indicate if one or both apply to each policy listed.

Q: Some carriers required "Additional Insured per written contract" be put on a certificate. Where would you indicate the "per written contract"?

A: Presumably that's just for AI status granted by a blanket AI endorsement? Or do you have carriers that only provide AI status, even for named entities, if required by written contract? Proprietary insurer AI endorsements vary substantially and OFTEN do not comply with contracts your insureds have signed. Some of these endorsements only provide vicarious liability. I've even seen one or two that say they are excess coverage. One I saw said it didn't respond if the AI was in any way liable. Some say they're primary and noncontributory (one even defined "noncontributory") and others are silent.

That's why we suggest that you not place ANY broad statement on the ACORD 25 that is not already pre-printed. How might someone interpret your statement, "Additional insured per written contract"? If the written contract requires AI status with coverage on a direct (not vicarious) and on a primary and noncontributory basis, and the insurer's endorsement provides vicarious coverage on an excess basis, you're in trouble because you are not providing AI status "per written contract." Have you even reviewed this part of the contract in detail? Do you fully understand what the contract requires?

We suggest that it is much better to simply give the AI a copy of the actual endorsement. Then, if it's later discovered that the AI coverage did not conform with the contract requirements (that you might not even have seen), your response is that the AI was provided with a copy of the actual endorsement and had an obligation to review it to make sure it met their contractual requirements.

Explain this to your insurers and see if they might not want to rethink their requirement about adding superfluous verbiage to the certificate.

Q: How do you get to the Acord 101?

A: It should be in your agency management system. If not, you can access all ACORD forms for free, including the ACORD Forms Instruction Guide for each, at www.acord.org. If you are not already an ACORD subscriber, click the "register" link in the upper right corner of the ACORD home page and provide the requested information, advising that you would like access to static ACORD forms and the FIG for each. If you want electronic fillable forms, you can become an ACORD Advantage subscriber.

Q: If we must list the AIs on the cert and need room, is it ok to use Desc of Ops area for this?

A: Unless there is a statutory or regulatory prohibition, you are free to enter anything in any field on the ACORD 25 that doesn't amend, extend, or alter the policy(ies). But, while you may legally do something, that doesn't mean it's a good idea. We suggest incorporating the ACORD Forms Instruction Guide within your agency procedures, at least by reference. Then you may follow them consistently. Why not simply give them the actual AI endorsement showing contractually how the AIs are listed? If you issue a certificate with a list of AIs that differs from the list on the AI endorsement, you are opening yourself up for an E&O claim if they do not match exactly. A major source of E&O claims is information that isn't consistent from application to binder to certificate to policy forms, including any changes made along the way. Performing QC checks is critical and, as we mentioned in the webinar, one agency that did an internal study found a certificate error ratio of 90%. Any time you duplicate information from one document to another, you are inviting an error and potentially a lawsuit. This is a procedural/E&O recommendation, not a legal requirement in most states. What you actually choose to do is a business decision but the consensus is that doing this increases your E&O exposure.

Q: Can we list the name and/or description of the project on the certificate?

A: We can't think of a reason why that would be inappropriate. This sounds like a legitimate use of the "Description of Operations" field.

Q: What about the government cancellation clause that requires we x out the cancellation wording on the cert and amend it?

A: The September 2009 and May 2010 ACORD 25 forms have no cancellation wording to x out, so this problem should be solved.

Q: Do you predict an increase in request for certified copies of policies to entities, rather than certificates, since the disclaimers & cancel notices have been amended?

A: I think you'll see more of this, particularly from astute risk managers when the risks are great. I participate in a Yahoo Group called RiskList and most of the top risk managers won't accept certificates anyway due to the inaccuracies, mistakes, and, frankly, fraud. On the positive side, I think with the proper education, more certificate

holders will accept an actual copy of the cancellation notice in lieu of a statement on the certificate, particularly when they understand that what's on the certificate means nothing unless it's reflected in the policy.

Q: What do we do when the municipality states they will not accept the certificate unless the additional insured and wavier wording is typed in the DOO

A: It depends on exactly what wording they insist on. For the most part, there is nothing "illegal" about putting wording in the DOO field...it's simply not what the ACORD FIG calls for. You can do it, but it's not a good idea from a procedural and E&O standpoint. This is particularly true when they want you to include a list of AIs by name or description that may or may not actually have AI status under the AI endorsement or where you might make a typo or omission on what's on the certificate vs. endorsement. Then you have an E&O problem. This bigger problem most often occurs when they want specific language that might be in conflict with what the policy says. Without looking at exact examples of certificate entries and the corresponding AI endorsement, it's impossible to provide any more guidance.

Q: Re: Cancellation Notice -- Can the agent notify Cert Holder of cancellation by insurer even though they are not obligated to do so? Pros/Cons?

A: Notice of cancellation is a policy right. If the policy says the agency will give notice to a certificate holder, then you can. If it doesn't, then you can't show on the certificate that the agency will provide notice because it would not accurately reflect the policy.

Q: How do we handle certholder that demands 30/10 cancellation specifically written on the cert if the insurance company does not endorse?

A: If the certificate holder insists on cancellation notice and the insurer won't do it, there's nothing you can do. Either the certificate holder accepts that or:

1. You must move the account to an insurer that will provide notice, or
2. The insured will not get (paid for) a job, or
3. The insured will have to find another agent and insurer that is willing to do what the certificate holder requires.

Q: What do you do if they are asking for more than 1 person as an additional insured? Do we have to issue a separate one for each additional insured if it cannot be fit into the certificate holder box?

A: The certificate is designed to show the name of the certificate holder, not AIs. The AIs are either shown on an AI endorsement or automatically covered by a blanket AI endorsement, usually if AI status is required by written agreement. If you have multiple AIs, I would provide them with the endorsement listing them exactly as insured.

Q: With new check marks for Addl Insd or Subro Waiver - there is no place to 'condition' where required by written contract. In many blanket endorsements there is a proviso for it tying back to a contractual requirement. Where do you suggest we qualify the Addl Insd/Subro waiver position?

A: If you simply give them a copy of the blanket AI or waiver endorsements, they can see how coverage is provided and if there are any limitations.

Q: What if Cert Holder wants 'For Information Only' wording removed?

A: Refuse. There is ample case law that removing language like this implies that the certificate is not just for

information only. At least one state mandates this sentence. About 20 or so states require the “does not amend, extend or alter” language. Any inference that the certificate is more than an information form – i.e., that it can grant policy rights – is probably illegal in every state. The E&O graveyard is full of agents who removed disclaimers from certificates or issued certificates without disclaimers.

Q: The new Acord forms are not available in our Agency Management System (Prime) what do we do?

A: All we can tell you is what ACORD tells us. Their licensing agreement does not permit the issuance of an ACORD 25 with an edition date earlier than September 2009. Vendors have now had a full year to update their systems. Presumably issuing prior form editions breaches the licensing agreement. I can tell you that agents in other states where ACORD forms are filed with the insurance department have had to issue certificates manually or using ACORD’s fillable forms until their vendors completed the changes.

Q: Are we OK to use the older ACORD Cert form until the account renews?

A: No, the ACORD licensing agreement isn’t tied to the terms of the policy. It’s based on the date you actually issue a certificate. Any ACORD 25 certificate issued today, regardless of when the policy renews, would have to be on the September 2009 or later edition.

Q: What are the consequences if we continue to use the Acord 25 (2001/08) form? When do we need to start using the new form to be compliant? Have the majority of agents already switched to the new certificate?

A: If you continue to use the 2001 edition of the ACORD 25, you will be in breach of ACORD’s licensing agreement, or so they tell us. The September 2009 form must be used now. The May 2010 form, we believe, is not mandatory until at least June 2011. I believe the poll we did during the webinar indicated that around 80% of participants said they were using the September 2009 or later form.

Q: Did you have any discourse with AGC, AIA, ABC - any of the significant construction organizations - about the changes you made to the cancellation language and other changes?

A: ACORD has pretty much an open door policy in populating its Working Groups who review form change proposals. For example, while a consensus was not reached, over a year was spent by the ACORD 27/28 working group which included a large number of lenders. As far as we know representatives of AGC, AIA, and others are free to participate if they so desire. In addition, large brokers and agencies who write a lot of construction business and are in tune with the construction industry marketplace commonly participate in these groups. However, in the case of the cancellation language, that was pushed by insurance regulators especially, according to ACORD, South Dakota, New Hampshire, and New York. In cases where regulators mandate certain things, ACORD has little choice but to respond or be in noncompliance in those states. The fact of the matter is that, for years, cancellation notice has been placed on certificates when no such notice was ever afforded by the policy. Regulators are now cracking down on that and any other certificate provisions that conflict with the terms of the policies.

Q: Companies still suggest that we do not send them certificates!!! Your thoughts?

A: Send them anyway. Below is an article that cites two court cases where insurers attempted to dismiss lawsuits on the basis that they never saw the certificate. It’s a little dated in that it was originally written prior to the change in the ACORD cancellation wording, but the premise is still valid.

<http://www.iiaba.net/VU/Lib/Bus/AM/EOLossControl/WilsonInsurerCerts.htm>

Q: If an insured signs a contract and agrees which states 60 days cancellation and we decline to endorse the policy does the signed contract take precedence?

A: The contract the insured signs and the contract (policy) between you and the insured are separate and distinct. The insured's signing of a contract obligating to procure insurance providing 60 days cancellation notice does not bind you into providing such notice. It may place him, though, in default on the contract he's signed so he might not get a job or get paid for a job. Such a financial loss might incite him to sue you and/or the agent but that's where E&O coverage comes in. The alternative is to issue an endorsement providing the required notice, perhaps on a premium-bearing basis. However, some cancellation notice requirements are all but impossible to comply with.

Q: Please advise who the authorized representative that is signing the certificate should be.

This is what the ACORD FIG says:

Sign here: Accommodates the signature of the authorized representative (e.g. producer, agent, broker, etc.) by all companies to issue Certificates. This is required in most states. As used here, the authorized representative by all companies to issue Certificates.

Q: I BELIEVE THAT SOMEONE SAID THAT ON THE WEBSITE ARE THE RULES FOR COMPLETION THAT ACORD PUTS OUT. I HAVENT READ THOSE YET, BUT WHAT IF THE ADDITIONAL INSURED WONT BACK DOWN ON THEIR INSURANCE REQUIREMENTS SUCH AS 30 DAY CANCEL, WHO THEY WANT TO BE ADDITIONALLY INSURED AND THE COMPANY DECIDES THEY ARENT WILLING TO ACCEPT THE WORDING REQUESTED. THIS LEAVES OUT INSURED IN A POSITION OF NOT GETTING THE JOB AND PUTS US IN THE POSITION OF LOSING AN INSURED.

A: If the insurer refuses to do it, then you'll have to move him to another insurer who will. If you don't have one, then he'll have to negotiate an exception from the other party, decline the job, or find another agent/company who will do it. Hopefully he'll be cautioned that if he goes the latter route, he'd better make sure that the agent does more than simply show compliance on the certificate. Without the policy actually providing this, he's going to be in breach of contract or otherwise heavily embroiled in a lawsuit, along with the agent most likely.

The moral is that insureds need to be cautioned up front that they need to actually READ the contracts they sign. Better yet, have their attorneys read the contract, then tell YOU what the insurance requirements are. Insureds need to be educated that there are often contract provisions (e.g., indemnity agreements) for which NO insurance policy is a solution. They need to get these answers BEFORE they sign these contracts and not expect you to do the impractical or impossible. The key word is service, not servitude. I know an agency that developed an explanatory document that they sent to all of their commercial clients and that they send to new customers. It puts them on notice that they need to resolve these issues before contractually obligating themselves.

Q: Do you know which states require cert forms be filed with Ins Dept & should you go by where Insd is domiciled or where cert holder is?

A: This is what the ACORD Forms Instruction Guide says:

IMPORTANT

Kansas, Kentucky, Minnesota, Missouri, North Carolina, Oklahoma and Wisconsin require the filing of certificate of insurance forms. ACORD has filed all of its certificates in these states. In these states, the text of ACORD's certificates cannot be modified, unless the modified form is filed for approval by the respective state Department of Insurance.

Additionally, virtually every other state will not allow any change in a certificate of insurance that would attempt to modify a policy unless the revised certificate is filed and approved. In these states, this form can only be changed to reflect the terms and conditions of the policy on which it is reporting. Such change(s) must be approved in advance by the insurance carrier that issued such policy.

My understanding is that **Alabama, Iowa, and Mississippi** require the filing of non-ACORD, non-ISO certificates. There are two other states that I believe require certificate filing, though ACORD does not include them on their list: **North Dakota** (Bulletin 2010-01) and **Utah** (Bulletin 2010-4). For more info, go here:

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

As for what jurisdiction applies, that's a legal/regulatory issue and we are simply not sure of a definitive answer, though we're looking into it. The consensus opinion is where you have multiple jurisdictions, follow the most stringent statutory or regulatory guidelines.

Q: What do we do if we have an insured trying to obtain a permit and the Road Commission is asking for everyone and their brother to be named and won't give them a permit unless this is on the certificate? Impossible to have the carrier endorse immediately and provide the endorsement. What do we do so our client can obtain his permit?

A: I don't see how they can start work if the required insurance isn't in force. You can't show on the certificate that they have AI status until the carrier actually confirms it. Knowing how long this takes, the key is the insured providing the information as early as possible.

Q: Is it legal to put the property coverage information on an accord 25 under the other section to save time?

A: It's not a matter of being "illegal" per se. The ACORD 25 simply isn't intended for this...it's a liability form. The proper form is likely the ACORD 24 unless the other party has an insurable interest and the ACORD 27 or ACORD 28 is more appropriate. We're aware that this is done, particularly for things like contractor's equipment, but it isn't the proper use of the forms.

Q: If the certificate holder is requiring a copy of the actual additional insured endorsement, what about the timeliness of issuing the certificate? If we have to have a copy of the actual endorsement to attach, it will take a couple weeks.

A: Is coverage bound under a specific endorsement? If so, then why not provide a copy of that endorsement? If coverage isn't bound, then you can't say they have AI status on the certificate.

Q: Has anyone contacted AIA re: changing their standard contract forms used for many building contracts?

A: With so many agencies attesting that their customer's insurance program is in compliance with the construction contract, why should AIA change their contracts? It's only when they realize that agents realize that some of their requirements are impossible to comply with that they'll consider revising their contracts to recognize the reality of the marketplace.

Q: What do you mean by "push back?"

A: Certificate holders resisting acceptance of the current ACORD 25.

Q: If certificate is issued on a federal job, do the federal regulations (requirements) override the State regulations? We were told what the fed gov wanted was what we had to put on a certificate.

A: If your state law says it is illegal for you to put something on a certificate, that law still applies to YOU. A federal contract your customer has signed is not binding on you.

Q: If a policy has a blanket additional insured endorsement that includes all additional insureds "as required by contract", and the holder MUST have it typed on the certificate, we have been adding the verbiage but stating "as required by written contract". Right or wrong, it is what we have been adding.

A: Such a broad, vague statement could be misinterpreted. One interpretation is that, if the contract requires AI status, then the blanket AI endorsement provides AI status. That may or may not be true...as we mentioned, IRMI cites a trial court decision that examined the ISO blanket AI endorsement language and found that not all AIs listed were entitled to AI status. Another interpretation could be that "as required by contract" means that the AI status provided by the endorsement complies with all insurance-related provisions of the contract. Some proprietary company AI endorsements only provide vicarious AI liability or even excess liability in conflict with "primary and noncontributory" requirements. As is often the case, it is better to avoid adding "clarifying" wording to the certificate...the more you add, the longer the rope the certificate holder has given you to hang yourself.

Q: Is this another Y2K issue?

A: No, it is very real, and growing like an alien fungus.

Q: Pushback in the oil/gas contractor business is not medium, it is extreme.

A: We feel your pain. Two industries we get the most feedback from are oil/gas and transportation/railroads. The bottom line is that, if what you are being asked to do is illegal, then you can't do it. If not, then you face a business decision.

Q: When you polled for push back, I think the response was not representative. Those agencies that continue to use the old forms get no push back. Only those that actively issue these to municipalities are getting medium to high pushback.

A: I believe the poll we did later indicated that about 80% of the participants were using the September 2009 or later ACORD 25. The poll you refer to was almost certainly not 100% accurate, but it does indicate that MANY agencies are having success in getting acceptance of the new forms. We gave examples later, such as the Connecticut DMV. Gaining acceptance isn't necessarily easy...it may require a considerable educational effort and negotiation.

Q: Ok, if a company will not do a notice of can endorsement, how about getting the ins company to put in writing why they will not issue such an endorsement and provide that to the requestor?

A: Sometimes it boils down to that and sometimes that works. The alternative may be to move the account to another carrier you represent who is more willing and able to comply with these requests. In some cases, the insured may have to forego a job or move their own account to another agency or insurer that is willing to comply or at least state that they will comply. We're aware of one case where an AI would not bend and insisted on completed operations coverage under the AI endorsement for a retail furniture store. The account was written on a market-specific BOP with excellent coverages at an affordable premium. However, the insurer didn't have an AI endorsement that would do this. The agency was forced to move the account from the BOP to a Commercial Package Policy. Some coverages could not be duplicated and others were more costly but the insured felt it had no choice since the AI was its biggest customer. Sadly, this can be the impact of this problem...third parties may

require a complete restructuring of someone's insurance program just to suit that third party's perceived needs.

Q: If coverage cancels and we, as agents, know the insurer will not notify cert holder, should we notify the cert holders?

A: Our E&O carrier believes that agents should not be sending notices of cancellation to anyone. Not insureds and certainly not third parties. An increasing number of insurance regulators agree. Notice of cancellation is a policy right. Unless the policy provides for notice to certificate holders by the agency, then notice should not be provided. The insured is getting notice and was the party who signed the contract with the other entity...let the insured forward the cancellation notice.

Q: Is ISO working on an AI form that carriers will adopt to include notice of cancellation?

A: Not that we are aware of. But ISO already has cancellation notice endorsements in one or more states that we would like to see extended on a countrywide basis.

Q: Is entering "30 day notice of cancellation as allowed by state law" an acceptable entry in the description of operations section of the Acord 25?

A: Only if that is actually what state law says and what the insurer plans to do. Will your insurer give 30 days notice for any reason following cancellation by either insurer or insured? Very very few will.

Q: I have an insured that the certificate holder wants AI forms CG 20 10 and CG 20 37 to apply. Many companies do not use these forms any more. How do we get around that?

A: This is news to us. As of this writing, the CG 20 10 07 04 and CG 20 37 07 04 are the primary ISO AI endorsements used for ongoing operations and completed operations, respectively.

Q: Regarding indemnification question on contractors, I don't believe an endorsement would be necessary as it would likely be covered under contractual liability rather than the AI endorsement? Would rather be hearing how you are working with the AGC et al to solve this problem rather than just showing a couple of onerous examples so that we are shake our heads at that - not helpful.

A: The contractual liability coverage provided by the ISO CGL policy as an exception to the exclusion does not override the policy's insuring agreement and exclusions. Indemnity agreements typically make the indemnitor responsible for many types of claims other than BI and PD. They also often include language that implies that "any and all" claims "without limitation" are the responsibility of that party. No CGL policy extends coverage without exclusions or limits and the contractual liability coverage doesn't change that. Check out these articles for more information on this:

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

<http://www.iaba.net/VU/Lib/Ins/CL/CGL/FacultyContractualAI.htm>

As for working with the AGC to solve this problem, groups like the American Subcontractors Association have been working on many of these issues for years without success. On top of that, we have scores of agents who are issuing certificates indicating that insurance programs are in compliance with construction contracts when they really aren't. As long as the project owners, contractors, and risk managers believe they are getting what they want, why should they stop asking for it? It's only when these parties realize that their requests are often illegal or impossible to comply with that they will be motivated to be more reasonable. This will be a long-term educational process and we have to begin within our own industry.

Q: We were just advised today by a city attorney that they want the Cert of Ins with the wording as the agent has the deeper pockets than the contractor they are using. I am changing my pants to ones with smaller pockets.

A: They know you have E&O insurance, so that's not an unusual perspective. Most of them, though, think you otherwise have more assets than you really do aside from E&O coverage. I heard the same thing from lenders during the ACORD 27/28 working group negotiations. What they fail to realize is that the INSURER probably has BILLIONS and it's much more in their interest to ensure that the INSURER addresses their requests with policy forms.

Q: Vendor doesn't have new edition ACORD 25.

A: ACORD's licensing agreement prohibits you from issuing the older edition. Some agencies have been issuing the newer version manually or using ACORD's fillable forms.

Q: How can we find out if SC is requiring that we use the new form?

A: Go to our Certificates Resource area of the VU web site and click on the Laws and Regulations link.

Q: Will the architects and engineers be educated somehow on these changes?

A: If you're aware of a means to reach them, let us know. We have run articles in several contractor and transportation magazines. One version of that article is posted in our Certificates Resources section of the VU web site. Big "I" members are free to publish this article in local publications of industry groups or use it and the PowerPoint included in presentations to these groups. This requires a countrywide grassroots educational program...no one person in the national office can reach all of these people.

Q: Is there anything we can do to start cracking down on the large GCs and Owners that are requiring and pushing back on these items that we are unable to do?

A: If what they are asking is illegal, work with your state association to get the insurance commissioner's office to approach these individuals and/or the regulatory agencies that govern them.

Q: When will the Acord 27 and 28, be updated with the cancellation wording deleted?

A: That was done last December. The December 2009 forms must begin to be used by January 2011. Expect pushback from lenders. We have already seen the Mortgage Bankers Association introduce their own evidence of insurance form and are working on this already.

Q: Are we in violation of ACORD regulations if we are still issuing an older version of a certificate on an account that has not renewed & does not until after 10/1/10?

A: Yes. The ACORD form edition date has NOTHING to do with the renewal date of your insureds. As of October 1, 2010 you would need to issue the September 2009 or later ACORD 25 any time a certificate is requested on any account, regardless of its renewal status.

Q: how do i get the requestor of coi to understand that the columns for ai and waiver or to keep us from typing in

the description box? what if they insist i type it?

A: Tell them that the reason for the columns is to eliminate the extra effort and potential for misleading wording in the Description field. Tell them that you will gladly give them a copy of the endorsements to ensure that they meet their needs. IF they insist, you have a business decision to make...as long as what you put on the certificate is not illegal or otherwise implies that there may be policy coverages or rights extended that don't exist (and we find that many agencies think what they show is all right, but it really isn't), you can do that. But it is not a good idea from an E&O standpoint and what you are doing should be clearly delineated in your agency procedures as to when and how you do this.

Q: Please discuss the NY Certificate issues.

A: Unfortunately, in a countrywide webinar, we can't spend a lot of time on each state's unique situations. In your case, our NY state association has done an extensive amount of education, including webinars and seminars, on certificate issues in NY. I'm sure they can assist you beyond the information we show on the Laws & Regulations page of our Certificate Resources section of the VU.

Q: Is there anything we can do to start cracking down on the large GCs and Owners that are requiring and pushing back on these items that we are unable to do?

A: Work with your state association and your local boards to address the issues with them. Education is an important key. If what they are asking violates your laws, then you may want to seek regulatory relief.

Q: Some states (CA) seem to require attachments to certs. Some agents have told me they would never attach anything to a Cert because it materially changes the legal document. Does attaching an endorsement to the Cert 25 create an E&O exposure?

A: A certificate is not a "legal document" in most states, it's an informational form. As discussed earlier, an endorsement should not be attached to a certificate in a manner that leads the certificate holder to think that the certificate is a surrogate policy that is being modified by the endorsement. As long as it is clear that the endorsement is being provided on its own merits, there shouldn't be a problem sending the documents together. However, if you think there's some chance the certificate holder might think the endorsement applies to the certificate, you could send them separately or simply add a clarifying comment to the transmittal.

Q: Define what is meant by "altering."

A: If you state anything on a certificate that implies that it provides coverage or rights not provided by the policy itself, then the certificate effectively purports to "amend, extend or alter" the policy. Only policy forms can amend, extend or alter policies.

Q: We are running low on time - most of presentation has been discussing the problem which we well know exists. Can we move on to practical solutions?

A: It's comforting to know that you are familiar with the problems we have been discussing but we can assure you many/most agents are not familiar with them all. So we have to appeal to as many participants as possible. Hopefully by the end of the session when we discuss the portion of the agenda devoted exclusively to "solutions," things will come together for you.

Q: Sorry, altering certificates? Strike thru's do alter, but add a cancellation notice if the actual endorsement has been obtained?

A: Many certificate requestors want the certificate to show that 30 days notice will be given for cancellation. They do not specify reasons or cancellation by whom. A tiny minority of insurers will issue a certificate that provides a blanket 30 day cancellation notice, including cancellation by the insured. That's why a very broad cancellation statement should not be added to the certificate.

Q: I've seen some contractors send out copies of an accord COI to their customers (cert holders)---copies the contractor made from an original COI I presume they received from an agent or insurance company. What should we tell our insured's who ask to do something similar?

A: As long as they have not modified the certificates, I'm not sure there's a problem, though it's surprising that the certificate holder would accept a certificate dates days, weeks, or months earlier.

Q: Do you have an opinion/advice regarding agents reading contracts. How can we properly complete a certificate without reading the contract and yet we are not legal advisors?

A: Download our white paper on certificates from the VU Certificates Resources page. It has a section on whether agents should read contracts. It also includes sample disclaimer language for those that do. I can tell you, from discussing this with risk management consultants and expert witnesses, that many agents have little in the way of experience, education and qualifications to read contracts that can be over 200 pages long. One consultant says he routinely sees small mall tenants who have six-figure uninsured exposures presented by lease provisions their agents never found because they examined only the "insurance requirements" section of the lease and missed other indemnification provisions and D&D clauses.

Any time you offer services beyond simply the sale and service of insurance policies, you are opening yourself up for an E&O exposure for which you may not be well trained. Customers need to be educated that you are not an expert in all things even peripherally related to insurance. In one case, an agency consultant I know passed by a CSR's desk where she was explaining a vacation rental agreement to a customer...not for insurance purposes, but to explain what the agreement meant in general terms. Insureds should seek competent legal advice from attorneys who are highly educated in contract law.

Q: Why can't we do away with the COI and start sending the entire policy? All docs are electronic anyway. Let someone else be responsible for ascertaining whether the policy covers their need!!!!!!

A: As the Beach Boys said, "Wouldn't it be nice...." The reality is that most certificate holders aren't qualified to review policy forms and don't want any part of it. A compliance vendor just told me yesterday that they refuse to accept any policy forms or endorsements because they don't have the time to review them. Keep in mind that a certificate is being provided usually for the sole benefit of the certificate holder, yet they demand that the agent effectively warrant the accuracy of the certificate and compliance with a contract their insured has signed, with the agent assuming all of the risk, time and effort, AND doing all of this entirely for free. Sometimes you have to "Just say no."

Q: On the primary non-contributory wording, we missed why it's important what the additional insured's policy reads. How would that come in to play? Siry@millenniumag.com.

A: Once again, go to the Certificates Resources page:

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

There are two articles that explain all of this. It's also addressed in our white paper that can be downloaded from the same page. Many of the questions we get over and over and over are all answered by the documents referenced from this page.

Q: If we add for "work performed for the named insured" is that acceptable on the certificate?

A: Once again, truncated, vague, broad statements on a certificate serve no useful purpose other than to potentially create ambiguity and increase the likelihood that someone will try to use that language to nail you in an E&O lawsuit.

Q: Can we ask the company to complete those annoying check lists?

A: Sure. Let us know what responses you get.

Q: If I am understanding, also send a copy of additional insured endorsement. Blanket or otherwise? or waiver of subro endorsement

A: We suggest doing that in lieu of adding summary information on the certificate.

Q: Many certificate requestors insist on specific language on the certificate or the client cannot work for them. If an insurer doesn't allow such notations, are agents being asked to shop their coverages with an insurer that will comply and the client get the work?

A: Yes.

Q: Very often wording such as primary and non-contributory, 30 days notice of cancellation are required, with a take or leave it situation. Either the agency does it or it does not do it. Is the advice don't do it and let the chips fall? or is there some middle ground? Agencies must consider economics as well as legal exposure in these decisions.

A: If what they are asking is illegal or impossible, then how CAN you do it? Putting that language on a certificate when you KNOW it is not backed up by the policy is, at best, unethical and, at worst, potentially a civil or criminal offense in many/most states. Is the insurer providing 30 days notice of cancellation for ANY reason and even if the INSURED cancels? If not, then how can you put an unrestricted 30-day notice statement on the certificate? If it IS true, why not just provide the forms as evidence? However, IF it is true (meaning 100% accurate) AND the certificate holder insists on the language then, as you say, you have a business decision to make, weighing the value of the account against your E&O exposure.

A preferable solution, if possible, is to educate the certificate holder as to why what they are asking is a bad idea. It will work with some and not others. When you start adding out-of-context statements about policy terms on a certificate, you might as well put a "Sue me" sign on your back because if something adverse happens where there is an uncovered loss, their attorney will examine every single syllable you've added in order to find something to hang you on.

Q: Often times we receive a request that the Certificate shows Additional Insured status on all policies including the Umbrella. Since the Umbrella typically follows form of the primary, what is your recommended action to make the Certificate acceptable to the Holder?

A: You'll have to run this by your carriers. Just because someone is named as an AI on the underlying policies does not mean that this status will extend to the umbrella. "Following form" typically refers to coverages, not insureds, but you'll have to review each umbrella/excess policy and confirm with your carriers.

Q: Those 26% that answered yes to using the old accord form when the new accord is not accepted are causing

a lot of problems for everyone!

A: Hopefully, after the webinar, this percentage will drop dramatically.

Q: Some of our companies allow insured's to go onto their website and issue certs...are we then "off the hook" if that is happening and anything is altered?

A: If you have no involvement in the completion and issuance of these certificates, you are in an ideal situation. From a practical E&O standpoint, I'm not sure it could get any better for you.

Q: What about situations where an insured has blanket additional insured status with requirements (such as day notice of cancellation) which is not provided by the policy?

A: The certificate reflects what the policy(ies) provide. If they don't provide such notice, then the certificate shouldn't either.

Q: What are your thoughts of having the Insurance Companies issue certificates?

A: From an E&O and expense standpoint, it makes sense. In most states where agents must absorb these expenses in their commission structure, they have no way to pass these increasing costs to insureds or requesting parties other than the occasional bone thrown their way from the commission on a premium-bearing AI or cancellation endorsement. The financial brunt is compounded by the soft market and depressed commissions and contingencies. This is a BILLION dollar problem for the American agency system with many agents having been totally abandoned by their carriers, many of whom don't even want a copy of the certificates. There was a time when INSURERS issued certificates (I have copies dating back to 1922) and those were the days of typewriters, mimeograph machines and snail mail. We believe that insurers MUST step up to the plate and work with agents to address the proliferation of certificates and the explosion of peripheral issues such as affidavits and compliance checklists, not to mention the real marketplace need for things like cancellation notice.

Q: It is an intentional act to decide to trigger your E&O coverage with an ERROR which you know is wrong. E&O is for NEGLIGENCE not for intentional acts. An intentional violation of a regulation or other law will not trigger E&O coverage. It's an intentional act at that point.

A: You are most likely correct. Every E&O policy I've seen excludes coverage for intentional acts or knowingly violating a law. It is only a matter of time, if it hasn't happened already, where an agent is going to get sued for a certificate that was knowingly misrepresentative and the E&O carrier is going to deny the claim.

Q: It seems like you're basically saying nothing should be on the certificate, in the description box except, description of operations, locations or vehicles. We shouldn't be putting any other wording requested on the certificate. Is this correct?

A: That's what the ACORD Forms Instruction Guide says. From an E&O/procedural standpoint, if you incorporate the ACORD FIG into your certificate procedures, you would not want to stray from the invariable practice of following those procedures. Certificate requestors ask for information on the certificate that they shouldn't be asking for and they want it in that field because they've been asking for it for years and agents have been complying. With tightening regulatory and legal restrictions, this is impossible in many states and not a recommended practice otherwise.

Q: Is it acceptable to put property coverage on a certificate of insurance for purposes of mortgagee or loss payee requirements?

A: No, the ACORD 24, 27, or 28 should be used for that. The ACORD 25 is strictly for liability policies, including WC.

Q: We haven't discussed the ACORD 28 at all; how would you propose to provide evidence of property insurance for insureds who are borrowing from a Freddie Mac lending source at closing and renewals?

A: We have addressed the ACORD 27/28 in earlier webinars. In addition, we published this article and "one-pager" download when the issue was the 2003 vs. 2006 edition of the ACORD 27 and 28:

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

We will see pushback on this escalating in January when the December 2009 editions of these forms must begin to be used. As mentioned earlier, the Mortgage Bankers Association has come out with their own form and we will be working on this and following developments. As conditions warrant, we might possibly do a countrywide webinar on this issue next year. We appreciate everyone keeping us posted about what is going on with lenders in the marketplace.

Q: If the cert is not a form filed in your state, what recourse do you have against competitors that continue to use the old form or modify the new form?

A: Using the old form is a violation of the ACORD licensing agreement. You can report violations to ACORD, but if violating a private contract would be deemed by your insurance department to be a regulatory violation such as an unfair trade practice, then you could go that route. A better initial solution might be to simply contact the competitor. They may be using the old form out of ignorance and it's an opportunity for you to enlighten them before there is an adverse action. As for modifying forms, if that could be a copyright infringement issue that you'd have to take up with ACORD or, if such modification results in a certificate that conflicts with the policy, then you probably have a regulatory violation.

Q: I have a cc of a bulletin sent out by a national broker to their offices which says they are going to get the ins companies to issue a notice of cancel endorsement on large accts...if they won't do it they will get another ins company to write the risk. Are we going to have a situation where a national carrier does deals on big accts for big brokers but will not do the same for us small guys?

A: That situation already exists and has for years. There are carriers that will do things for certain agencies/brokers or insureds that they won't do for others. A few years ago at the Mid-America Technical Conference, one of the agents mentioned that one of her carriers often provided cancellation notice upon request. Another agent who represented the same company and branch office said his repeated requests for this were denied.

Q: Have you thought of developing a webinar for CLIENTS that we as agents could direct our clients for education either Live or On-Demand?

A: This is a TERRIFIC idea. We've written articles for other industry publications, but an archived webinar that highlights the main issues might be a valuable resource. Someone else suggested developing a standalone website for certificate of insurance issues. If others agree, email bill.wilson@iiaba.net and we'll pursue it.

Q: Arguably old 28 covered cancellation by insured. agreed to give notice of "any" cancellation. I know of no cases.

A: The 2003 edition of the ACORD 28 said cancellation notice would be provided but only in accordance with the policy:

THE POLICY IS SUBJECT TO THE PREMIUMS, FORMS, AND RULES IN EFFECT FOR EACH POLICY PERIOD. SHOULD THE POLICY BE TERMINATED, THE COMPANY WILL GIVE THE ADDITIONAL INTEREST IDENTIFIED BELOW DAYS WRITTEN NOTICE, AND WILL SEND NOTIFICATION OF ANY CHANGES TO THE POLICY THAT WOULD AFFECT THAT INTEREST, IN ACCORDANCE WITH THE POLICY PROVISIONS OR AS REQUIRED BY LAW.

As I read this, it couldn't provide any notice greater than what the policy permitted if the insured cancelled. But, as you say, this is all arguable. That's why it's better NOT to have such interpretive language and rely exclusively on the policy language.

Q: I understand it is not advisable but if everything is true and honest in the statement can it be listed under descriptions of operations or no? For example can we note: Please see attached end # ____.

A: Yes.

Q: What is Acord 101 and where can we get it?

A: It's a supplemental "blank page" similar to the "Notes" page produced by most agency management systems. You can access this and all other ACORD forms for free, including the ACORD Forms Instruction Guide, at www.acord.org. You have to set up an account if you don't already have one, but there is no charge for this. Click on the "Register" link in the upper right of ACORD's home page to get started.

Q: Where can we get a copy of this recorded program?

A: A link was emailed to all participants on November 3, 2010.

Q: If a carrier says do not send copies of certificates because they will be discarded, would you still recommend that the agent send a copy to the insurer?

A: Yes.

Q: When using a blanket endorsement rather than a specific endorsement adding an entity to the policy as an additional insured should we still indicate on the certificate that the additional insured status is granted with a "Y"?

A: Only if the endorsement requires AI status be requested by written contract and you know for a fact that this is true.

Q: You may have answered this already, but do you recommend NOT entering any cancellation provision wording (ie: # of days) in the Description section, even if it does comply with the policy terms?

A: We suggest that you don't do that.

Q: We get a lot of request's to add a Unit Owner's Mortgagee to a certificate on a condo Associations policy.

A: Here's a VU article on that:

<http://www.iiaba.net/VU/Lib/Ins/PL/Homeowners/FacultyCondoAIs.htm>

Q: If you have a Blanket Additional Insured endorsement on your CGL coverage am I correct to say no one other than the 1st named insured gets 30 days notice of cancellation - do you have to have an endorsement to list that holder individually & also have the notice of cancellation form listing that holder as well?

A: Under the ISO BOP and CPP programs, only the First Named Insured gets notice of cancellation. You could insure a law firm with 700 named insured, but only the first one gets notice. For AIs, you would have to have a separate cancellation notice endorsement. A blanket AI endorsement, by definition, includes no specific names, so the insurer has no idea who to notify...you would have to provide those names specifically.

Q: What about the question on your list "What are the legal ramifications if we don't comply with the specs of a contract when issuing a cert"?

A: It depends on the specific requirements. If you are not providing the types of coverages, limits, policy rights, etc. required by the contract your insured has signed, then your insured could be in breach of contract. That could result in them not getting a job, getting removed from the job site, or not being paid for work performed. If you cost your insured money by not complying with a request or by providing erroneous information, you could be sued. That doesn't mean you would be sued successfully, but you could still be sued.

Q: Why was the 30 day cancellation clause removed?

A: Initially it was at the request of one or more state regulators who found that often the notice on a certificate was not backed up by notice under the policy.

Q: I hear you asking yourselves why can't insurance companies issue canc notice endorsement for at least for contractors? What is their answer to this question or have you not asked them?

A: Some insurers do and some don't. It's a matter of underwriting preference.

Q: Our agency has a centralized certificate unit and the account managers set up the master certificates and then the unit issues individual certificate requests that are received and they leave the account managers name as the signature on that certificate, should those individuals in that unit be licensed with all insurers and sign their own name when they issue a certificate?

A: According to the ACORD FIG, the signature on the certificate is that of whomever is authorized by the insurer to authorize the issuance of the certificate. I would confirm this with your carriers, but I would think that as long as nothing is changed on the certificate, the signature would be of whomever set up the master form. If the processors are tailoring that master for each request, that's another matter.

Q: If the carrier attaches a cross liability endorsement as a result of multiple AIs is an agent responsible for notifying the AI of the cross liability endorsement?

A: Good question. Do you notify the insured of any other endorsements? From the standpoint of E&O consistency, it's probably better to simply provide a standard cover letter that advises the insured to carefully read all of the policy forms and endorsements and contact you if they have any questions.

Q: Can you please add: All insurance policies shall be endorsed to provide at least 60 days prior written notice of cancellation to Whiting-Turner in accordance with the subcontract - in the description box. This is our new wording since the cancellation box was removed. We do have the endorsements on each policy that gives them 60 days notice, so can we type in the blurb they want?

A: The question is, do these endorsements give them 60 days notice for ANY reason, including nonpayment? Also, do the endorsements give them 60 days notice if the INSURED cancels? I've seen few if any that do.

If the policies don't grant this notice, then you've issued a certificate at odds with the policy, something that is quite possibly illegal. If the policies DO grant this notice, for any reason by either insurer or insured, then why do you need to add the statement at all? Simply give them a copy of the endorsements.

Any time you add broad, generalized language that expresses a policy right without using the exact wording from the policy/endorsement, you're potentially violating the law or setting yourself up for an E&O claim. But as long as it's not illegal, it's a business decision you have to make.

Q: So if a certificate holder is listed as an additional insured on a certificate and then endorsed on to the policy, there is still no guarantee of notification of cancellation from the carrier? Thanks.

A: Not unless the AI endorsement provides for such notice.

Q: Our question is, when an insured sends us a request for a certificate and they have 10+ additional insureds that need to be listed on the cert, where do we put them? We understand that this would not go in the description box but then where SHOULD they be listed???????

A: Our suggestion is to provide them with a copy of the actual AI endorsement so they can see exactly how they are listed on the form that grants them coverage. That way they can see exactly what coverage they have and how the names are shown. If there are any typos, they can make sure they're corrected.

Q: Following up on the previous Q&A, so what you're saying is, they wouldn't be added ANYWHERE on the Acord 25 or Acord 101 and the ends in the policy are the only way to show any requestor for additional insured status that this coverage is or isn't available?

A: The reason for the AI and WOS columns is so that status can be indicated on the certificate without having to make separate entries on the certificate. There are no fields on the certificate designed to otherwise show AI information. If the other party insists, you could add that on the ACORD 101 but what is better evidence of AI status than a copy of the endorsement with the names of the AIs shown exactly as they are insured? One of our faculty members is a consultant who examined a number of certificates in a client agent. He routinely found discrepancies between AIs as shown on the certificate and what was shown on the endorsement (if there was one). Any time you duplicate information, you increase the likelihood of some of that information being inaccurate.

But as long as entering the names of additional insureds on a certificate is not illegal in your state, what you enter and how you enter it is a business decision. But, for example, if you show an additional insured on the certificate that is not on the endorsement, you're potentially looking at a claim of misrepresentation if the insurer won't honor the certificate. And I can tell you this happens. But, that's why you have E&O insurance.

Q: That was a very informative seminar, our office has already been doing this pretty much already.....We do have a question, we know not to show in the description area "Certificate holder is named as additional insured" However, what we have been doing is putting the name of the form @ # in the description of the additional insured endorsement or any coverage forms that apply. Is this acceptable?

A: If you can get away with it, I'd try to not put anything on the certificate and just give them a copy of the form(s). But if you must, then I don't see much harm in simply identifying the forms by name and number. Obviously, the less extraneous verbiage, the better. You never know when someone might try to find coverage based on a form title. For example, the "Business Income Coverage (Without Extra Expense)" CP 00 32 doesn't actually not have

any EE...it has EE that is limited to the amount that it reduces the BI loss. Someone looking at the title alone might reach a different conclusion, though the actual form, if included, should be by the defense.

Q: What about filling out someone else's certificate. Client needs it for a bid for the City of Laredo. Is this a no-no? It's the city's certificate and it has no disclaimers.

A: As I understand it in Texas, this certificate could not be used. For one thing, it does not include the "does not amend, extend or alter" language required of a certificate in Texas:

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

For another, it has no disclaimers, something that is very bad from an E&O standpoint. Check your agency/company agreement or related documents...it's quite likely that your carriers prohibit you from issuing non-ACORD certificates.

Q: Thanks for the webcast – It was interesting, but we needed more clarification on what specifically we should put in the description section of the Certificate. Are agents simply referencing the Project name and then "See Attached endorsements" – or are they typing in "Additional insured per contract requirements – see attached endorsements" or what? And what about if holder is requiring notice of cancellation and we have the cancellation endorsement on the policy- Do we just *attach* the endorsements and not type any reference to the endorsements in the description or do we put See attached endorsements for cancellation clause?

A: In short, I would try to avoid putting anything on the certificate that isn't expressly called for by the ACORD Forms Instruction Guide. Just attach the endorsements. However, if someone is nitpicky, I don't see a big problem just adding a "See attached endorsement" comment if that will make them happy.

On the AI, I would avoid saying "per contract requirements." Unless you're familiar with the entire contract the insured has signed, there could be AI-related provisions you're not aware of. In addition, it's a very broad statement. Who knows how someone might interpret the phrase "Additional insured per contract requirements"...they might think this means they have coverage as an AI under the indemnity clause or other provisions that are uninsurable.

Q: If you have an agency located in one state, an Insured located in a different state, the Certificate Holder/Additional interest is located in a third state, and a loss occurs in a fourth state, which state's laws and regulations apply?

A: Most likely this is something that would require legal (i.e., attorney) and/or regulatory advice, so all I can do is give you a layman's opinion. I ran this by the volunteer VU faculty and got the following comments:

Which state law will apply to a loss that occurs in one state, that's caused by an entity from another state, can be a complex legal question. Wikipedia has a good article on it at http://en.wikipedia.org/wiki/Choice_of_law. The law that most often applies is the law of the state where the injury occurred, but there are numerous exceptions.

This is, of course, a question of law. It is my experience that it is often the state in which the policy is negotiated (usually the state listed in item 1 of the Declarations) whose contract law would apply. Thus, considering the Certificate of Insurance is issued on behalf of the insurer to provide information on the policy (the contract) the state law governing the interpretation of the contract should also apply to the Certificate of Insurance. However, these issues are often hotly contested legally, so this is only meant as a guide and certainly not a definitive answer.

The answer, as always, is "it depends." Usually, the state whose citizen was harmed will probably take jurisdiction. There are several rules of thumb and hundreds of cases concerning the appropriate forum but it is usually limited to whose ox is being gored.

The choice of venue will be in that state where the law is most favorable to the plaintiff multiple state law can apply and the case would probably be filed in federal court due to jurisdictional issues and generally in the district where the loss occurred.

"Apply to" what? If you're talking about the laws that apply to the issuance of the certificate, I would worry about the agency's home state and the state where the insured is located. I think you're transacting insurance business in both states, so I think both would have jurisdiction. It's a legal question, of course, so the definitive answer needs to come from your lawyer. Where the certificateholder lives and where the loss takes place wouldn't seem to have anything to do with the act of issuing the certificate.

An attorney for one of the IIA states suggested that the only safe action is to use the strictest requirement of all of the states involved.

Uh, I'll take "Silly Guesses" for \$1,000, and the answer is, "All of the above, maybe, but mostly the state where the lawsuit is filed and decided. Also, there may be some contractual agreements that specify venue for litigation, or even which laws will apply, and those contracts may control the disposition."

The only answer I can provide is "it depends": please find attached the abstract and Table of Contents pages on the subject from the *New Appleman on Insurance Law* treatise.

My first reaction is to stay focused on the idea licensing, i.e. adhering to the requirements of where you are licensed. In my experience when I wrote coverage in other states I needed a non-resident license. I obtained the non-resident license after applying to the other state who commonly granted the non-resident license because I was an agent in good standing in my home state. The non-resident license allowed me to write coverage in that other state and in some cases, provide coverage unique to that other state in comparison to my home state. For instance, in Florida our UM coverage applies to uninsured and underinsured motorists; we make no distinction. In other states there is a distinction.

Using this as a reference point, my comment would be when operating on a multi-state basis with multiple licenses; the guideline to follow would be the state that has the most stringent requirement concerning certificates. For example, where states regulate the form vs. states that do not, the agency should abide by the state where their license (resident or non-resident) would have the highest standard. In this way you will have satisfied these highest standards despite this obligation in contrast with other states.

This puts a burden on the agent to know the rules of the other states. This is another reason why ACORD promotes using the latest edition of the form as they monitor changes in states laws and regulations concerning the certificate. It also underscores the fact the issuing of a certificate is not merely a clerical function and must be issued by someone who is competent and trained in their correct usage.

Good question – I have had similar questions raised in my classes on this subject. I'm not sure this is the correct way to analyze the question but I look at it as analogous to a venue question. The contract (insurance policy) is between the insured and the insurance company, so the agency location and the cert holder location have nothing to do with it. I would go with the regs in place in the state where the insured is located. For example, I'm an Iowa agent but if I issue a cert for an Illinois insured, I follow Illinois regs/rules on issuance of certs. Insurance Department Bulletins are sometimes less than clear on this question but the intent can be inferred. Furthering the analogy, as a non-resident licensed agent in Illinois, I am subject to Illinois regs on misrepresentation, unfair trade practices, etc. when dealing with my IL insureds, so why wouldn't I be subject to their cert rules/regs?

My immediate reaction is that the laws of the state where the insured has its principal place of business would apply to the certificate, since the certificate represents the policy and the policy would be regulated by the insured's home state.

I spoke with our DOI staff attorney and deputy commissioner. Gave him my Illinois example of an Iowa agent issuing a cert for an Illinois insured. The attorney didn't hesitate – said "Illinois rules would trump Iowa rules" in that situation. I still think following the most stringent rules/regs is the safest approach but the problem with that is it puts me at a potential competitive disadvantage if Iowa rules are more restrictive than Illinois and I don't/won't do something an Illinois agent legally could do for the same client. And what if the insured is domiciled in a state that doesn't have any rules/regs on certs yet? (I think we should go back to the days when the companies issued certs – let them deal with all!)

As you can see, there is no clear consensus on this. I've posed this to a couple of attorneys and got no clearer answer. Presumably the best advice is when you're dealing with multiple states, follow the most stringent certificate guidelines of any one of the states.

Q: "What is REALLY going to be the position of the insurance companies on the cancellation clause. I have some companies already agreeing to provide it to Additional Insureds and others saying NO. Some say NO then later when push comes to shove they have said YES."

A: We believe that insurers MUST step up to the plate and recognize marketplace realities. In this age of automation there seems to be no legitimate reason why this can't be done. A premium bearing cancellation notice endorsement could be provided. Failure to do so is not adequately servicing the needs of customers and it involves leaving a considerable amount of premium volume on the table for an activity that, in reality, is unlikely to occur.

Q: "With the change in the cancellation clause, many clients now find themselves in violation of the lease, through no intent of their own. How can we assist our clients in correcting this situation?"

A: Nothing has really changed other than no notice is shown on the certificate. Notice of cancellation has always been a policy right. A certificate is nothing more than a representation of what the policy says. If the policy never granted notice, then a certificate should never have been issued indicating that such notice would be provided.

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