

Certificates of Insurance

Summer 2004:

At any moment someone somewhere is asking for a certificate of liability insurance. Have you ever considered a certificate request as a risk management tool and not just routine insurance paperwork? This *EMERGING RISK ISSUE* will look at certificates of liability insurance as risk management tools from the perspective of the requester and provider. Our comments are based on the ACORD 25 (2001/08) "Certificate of Liability Insurance" for commercial general liability ("CGL") insurance which for the remainder of the newsletter will be referenced as "certificate".

What is a certificate? It's a means to demonstrate the existence of insurance at the date of certificate issue without providing any rights to the certificate holder. In this newsletter we examine ways to get more than the obvious from a certificate whether you are the requester or provider.

The Requester

There are several issues for you to consider when you require a certificate from another party.

1. *What prompted the need for the certificate?*

The request for a certificate should be thought of as an exposure identification tool, the first step in the risk management process. It may indicate a new vendor relationship, use of a sub-contractor, a change in lease, or other change in exposure that should prompt an exposure review.

Are your concerns about the other party's risk such that you need to consider changes in your own risk management program? Obtaining a certificate from another party may be only a partial risk management solution. Remember, the fifth step of the risk management process is to monitor and improve the risk management program.

2. *Is there an underlying document (i.e. contract) that requires a certificate? If so, has risk management been part of the document due diligence process?*

Many business relationships are built on written contracts. Risk and insurance clauses used in these documents may be deficient without appropriate oversight from risk management staff.

Use the request for certificate as a means to verify that risk management has reviewed the underlying document and signed off on the risk and insurance

clauses. If not, then work with the contract drafters to ensure timely risk management input in future documents. You will be limited in what you can require in the certificate based on what you require of the other party in the underlying document.

3. *What do you need from the other party's insurance program?*

Ideally the underlying document has clearly specified the insurance responsibilities of the other party. Compliance with these responsibilities must be demonstrated in the certificate. While there is no standard contract wording the usual insurance requirements from a certificate requester are:

- Identification of CGL insurer, policy dates, limits and coverage trigger.
- Additional insured status for your organization on the other party's CGL policy.
- Identification of your organization as certificate holder including the name of appropriate person at your organization to receive any notices sent by the other party's insurer.
- Advance written notice to your organization by the other party's insurer if the required CGL insurance is to be cancelled or non-renewed. Ideally the advance notice is at least 60 days. (Insurers may balk at providing your organization with advance notice of non-renewal. Even so, it is still worth requesting).

4. *Does the other party's CGL insurance properly protect your organization as an additional insured and limit that party's right of recovery against your organization?*

These are two areas that are often misunderstood. Simply asking to be an additional insured may not accomplish your goal to use the other party's CGL insurance as your organization's first line of coverage. Further discussion on this topic is beyond the scope of this newsletter.

Craig Stanovich, Principal of Austin & Stanovich Risk Managers LLC, summarized "additional insured" issues in a recent article published by *International Risk Management Institute Inc. ("IRMI")*. Please refer to <http://www.irmi.com/Expert/Articles/2004/Stanovich05.aspx>. This link is with the permission of IRMI.

(Continued on next page)

AN EMERGING RISK ISSUE

CERTIFICATES OF INSURANCE SUMMER 2004

Subrogation is the right of an insurer to recover the amount of loss paid by it by assuming any right of recovery of its insured. You can not ask your contracting party to "waive its right of subrogation". You can ask the other party to waive its rights of recovery against your organization.

An insurer using Insurance Services Office ("ISO") CGL policy form CG 00 01 1001 allows its insured to waive its right of recovery prior to loss. The insurer can only take (i.e. subrogate) the insured's right of recovery. If the insured waives those rights the insurer can not recover from the third party.

5. *Who is monitoring the certificate when it is received by your organization?*

Certificates are not always issued correctly. To optimize the use of a certificate will require review by an appropriate person to ensure the certificate is issued correctly and in compliance with the underlying contract.

The use of a certificate log will allow timely follow up for a new certificate when contracts run beyond the other party's insurance coverage period.

The Provider

There are several issues for you to consider as you prepare to provide a certificate to the requesting party.

1. *What is prompting this request?*

The request for a certificate should be thought of as an exposure identification tool similar to that of the requester. The request may indicate a new client relationship, a new product line, a new service, a new location or other change in exposure that should prompt you to do an exposure review.

Do these new exposures require any changes to your current your risk management program?

2. *What insurance information are you required to provide?*

Review the underlying document. What does it require you to do? Determine if a certificate is actually required or is your organization simply to maintain insurance. A certificate should be issued only if required.

Your organization's insurance program is confidential and details should be made available to others on a strict "need to know basis". In any event, the certificate should properly reflect your

CGL insurance and the insurance requirements of the underlying document.

3. *Do all CGL certificate requests mean that additional insured status is required of the other party?*

No. Refer back to the underlying document. A request for a certificate of insurance is not the same as providing another party additional insured status. You may not want to add another entity or person to your policy as an additional insured unless required to do so.

4. *Does an issued certificate mean the CGL policy has all necessary coverage amendments?*

No. It should but you need to have your insurance representative (i.e. agent or broker) confirm that the policy has been endorsed as needed and effective the date of requirement. The certificate does not change the policy. Only policy amendments change the policy. This issue needs to be confirmed to ensure your organization has truly satisfied its insurance responsibility as defined in the underlying document.

5. *Has risk management been part of the underlying document due diligence process?*

If you were not part of the document due diligence then work with the drafters to ensure risk management input for subsequent documents.

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