

# Certificates of Insurance:

Where They Fit Into the Risk Management Process

### **Acknowledgements**

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### **Resources**

All ACORD forms referred in this document are available for download at [www.ACORD.org/standards/forms](http://www.ACORD.org/standards/forms).

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# Contents

# Foreword

Our ability to function and excel within our professional work environment is directly associated with the knowledge we gain and use. This manual was developed with this idea in mind, as a means to help us expand our knowledge and critical understanding of certificates of insurance.

This publication cannot answer all questions regarding the subject of certificates of insurance. However, it will be of benefit in providing some answers, and it will give the reader a foundation of knowledge from which to ask the right questions. Our ultimate goal is to become better educated and more effective risk and insurance management professionals.

## Disclaimer

The information supplied in this manual is intended solely as a guide on matters of general interest and the reader accepts full responsibility for its use. The information is provided with the understanding that the authors and publishers are not engaged in rendering professional advice or service. The reader is encouraged to consult with an insurance professional or an attorney before finalizing any language in any of the documents discussed herein.

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# CHAPTER 1:

## *Certificates of Insurance Defined*

The certificate of insurance is a document that evidences for one party the insurance coverage(s) held by another party. It evidences the coverages in place at the time of issuance of the certificate. Certificates of insurance are crucial to the transacting of business and are used in a multitude of situations, which will be discussed and further explained in later chapters.

It is important to note that a certificate of insurance is only evidence of insurance coverage in effect at the time of issuance of the certificate; it is not an insurance policy nor does it convey any rights to the certificate holder. It is not foolproof and is provided as information only. Some have referred to the certificate as providing “the illusion of protection.”

### **About ACORD Forms**

There are five standard forms of insurance certificates promulgated by ACORD, the industry-supported organization charged with standardizing applications, binders, loss notices and certificates of insurance. The ACORD forms are primarily used in the United States and are available at [www.ACORD.org](http://www.ACORD.org). Although only five of ACORD's 500+ forms are certificates of insurance, they represent more than 10% of the millions of printed and electronic forms issued. Millions more are issued by agents and brokers through on-site computers, licensed by ACORD. Additionally, there are numerous forms proprietary to brokers and insurance carriers. Many municipalities have their own forms that incorporate more contractual terms and conditions. Memorandums of coverage, which are posted on an insured's corporate website, are becoming more common. These memorandums do not provide anything other than information as to what coverage is in place at the time the certificate is issued or posted.

The five standard ACORD insurance certificate forms are:

- ACORD 23—Leased Auto Certificate of Insurance
- ACORD 24—Certificate of Property Insurance
- ACORD 25—Certificate of Liability Insurance
- ACORD 27—Evidence of Personal Property Insurance
- ACORD 28—Evidence of Commercial Property Insurance

**ACORD 23** provides a coverage statement (information) with respect to physical damage and/or liability insurance coverage to lessors of leased vehicles, but only when the insurance policy covering the subject motor vehicle includes an “additional insured-lessor” endorsement or “loss payee” endorsement containing a statement that the insurance company will send a notice to the lessor or loss payee in the event of policy termination.

**ACORD 24** is used as evidence that appropriate or required property coverage is in place. ACORD 24 might be used by a building tenant required to maintain property coverage on leased premises.

**ACORD 25** evidences casualty (liability and workers compensation) coverage, and is used to show a concerned party that another party has liability insurance in place (at the time of issuance) in the appropriate or required amounts. A simple example of the use of this form is a building owner needing to verify the liability coverage of a contractor prior to the contractor beginning remodeling or renovation work. Note that this ACORD form was modified in September 2009 and the changes will be discussed later.

(Note that ACORD 24 and ACORD 25 convey no rights to the certificate holder and are for information purposes only.)

**ACORD 27** is designed to provide information about physical damage coverage to loss payees in connection with an auto loan when the vehicle is purchased and coverage is being provided under a personal lines policy.

**ACORD 28** provides coverage statements for mortgagees, additional insureds and loss payees who provide mortgages or loans on real property or business personal property insured under commercial lines policies. Often the form replaces the need to send a complete copy of the policy to banks, savings and loans, and other lenders, as well as other additional insureds named in the policy. ACORD 28 provides check boxes and pre-printed text to clarify important insurance details in addition to providing a summary of coverages. ACORD 28 conveys to the certificate holder all rights that go with the policy, including notice of cancellation. These rights apply only to individuals identified on the policy. This form is used when the certificate holder has an interest in the covered property, such as a lien holder or mortgagee, and it provides an assurance for mortgagees, additional insureds and loss payees that the property is insured as required. The American Bankers Association, Mortgage Bankers Association of America, the Home Loan Bank Board and the Federal National Mortgage Association provided input in the development of this form.

There is a substantial difference between ACORD 28 and ACORD 24 and 25. ACORD 28 conveys policy rights to the certificate holder, including the right to be given prior notice of cancellation, whereas ACORD 24 and 25 do not.

Note that there are many manuscript forms utilized by carriers and brokers and their provisions vary.

### **A Matter of Information Only**

The biggest challenge for risk professionals regarding the use of insurance certificates is that both certificates of liability insurance and property insurance are what was referred to earlier as “...illusions of protection” (cf., “Certificates of Insurance: The Illusion of Protection,” by Alfred S. Joseph III and Arthur E. Pape, *Probate & Property*, January/February 1995 [American Bar Association]). The certificate of insurance is not insurance, rather it is a snapshot of coverage in place at the time of certificate issuance. However, it can provide good, if somewhat limited information about the other party as to what insurance they carry, whether their limits meet your contractual minimums, the policy terms, who provides the coverage(s) and the identity of both the broker and the insurance carrier. This means many insurance certificates are, as is clearly stated on the forms, “a matter of information only.” For instance, ACORD forms have lead-in language that states, “This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.”

### **Trust**

There should be a trust relationship between the certificate holder and the entity providing the certificate. If the entity providing the certificate cancels the coverage the day after the certificate is issued, the certificate holder may have no recourse against the insurance company. Other language on the insurance certificate is also very relevant. The Coverages section of the ACORD certificate is introduced with the following statement: “This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.” This reiterates the certificate's information only status.

### The Cancellation Problem

A concern with ACORD forms 24 and 25 involves cancellation of the insured's coverage. In previous versions, the cancellation clause read: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail \_\_\_\_ days written notice to the certificate holder named, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives." The updated version of the cancellation clause reads: "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions."

The challenge for the risk professional is the insurance company's only obligation is to provide notice as outlined in the insured's policy. Although some insurance companies have cancellation notice processes in place, others make no attempt to provide notice of cancellation to anyone other than the named insured. There is no recourse for the certificate holder against the insurance company in the event such notice is not provided and the insured's coverage(s) are cancelled after issuance of the certificate.

In 1974, the U.S. Court of Appeals, Fifth District, ruled that a certificate is not a contract between the certificate holder and the insurer. It only provides information to an interested third party that insurance is in force at the time of issuance. The court stated, "The provision regarding notification in the event of cancellation is a mere promise, unsupported by any consideration."

### Legal Implications

*USF&G v. U.S. Pipe*, [505 F.2d 88, 89 (5th Cir. 1974)], is the defining court decision with respect to the concept that an insurance policy is a contract between an insurer and an insured, and no one else. Certificates in and of themselves do not alter the insurance contract, and are not part of the policy (contract) in any event. Therefore, they are basically informational. Another supporting case is *Empire Fire & Marine v. Bell* (64 Cal. Rpt.2d at 757 n.25, Cal. App. 1997). Other cases supporting the position that certificates of insurance are not contracts between the insurance company and the certificate holder include: *National Mar., Inc. v. Glencore Ltd.* [No. 95-268, 1998 WL 204734, at \*3 (E.D. La. Apr. 23, 1998)]; *Becks v. Emery-Richardson, Inc.* [No. 86-6866, 1990 WL 303548, at \*26 (S.D. Fla. Dec. 21, 1990)]; *Postlewait Construction v. Great American Ins. Co.* [720 P.2d 805, 807 n.7 (Wash. 1986)]; *Lezak & Levy Wholesale Meats, Inc. v. Illinois Empl. Ins. Co.*, [460 N.E.2d 475, 477 (Ill. App. 1984)]. Additionally, *Citgo Petroleum Corp. v. Yeargin, Inc.*, [690 So.2d 154, 164 (La.App. 1997)] supports the position that a certificate of insurance cannot amplify, extend, or modify the coverage(s) afforded under the insurance policy.

If an insurance company or its agent issues a certificate of insurance the doctrine of estoppel may bind the insurance company. *Criterion Leasing Group v. Gulf Coast Plastering & Drywall*, [582 So.2d 799, 800 (Fla. App. 1991)], illustrates the difference in the court's opinion when the certificate is issued by the insurer itself. The reason the court found that the insurer should pay the claim was that the insurer made a promise when it issued the certificate, therefore, the doctrine of estoppel may bind the insurance company to the terms cited on the certificate. However, *National Mar.* [1998 WL 204737 at \*3-4] held that estoppel was not available because reliance was unjustified, given the disclaimer in the certificate of insurance.

*Dummenic v. Union Oil*, [606 N.E.2d 230 (Ill. App. 1992)], illustrates situations where the agent is representing the company because the agent had the (apparent) authority to do so.

### Attempts to Modify the Standard Forms

On occasion, risk professionals are dissatisfied with the information-only nature of the certificate of insurance and attempt to fashion forms that create legal obligations regarding the evidence-only nature of the certificate or create an actual obligation on the insurer's part to provide notice of cancellation. Although there are some corporations that can force these modifications, the changes are outside the industry standard and are generally resisted by underwriters, insurance agents and brokers.

Unless the modified certificates are filed, many state insurance regulators will not recognize the form. The states of Kentucky, Minnesota, North Carolina and Wisconsin require the filing of certificates of insurance forms. ACORD has filed their forms in these states. The text of ACORD's forms in these states cannot be modified unless the modified form is filed for approval by the respective state Department of Insurance. Some issues as to the binding effect of the modified form will be questions of consideration and of mutual agreement between the parties.

### Summation

In summary, a certificate of insurance:

- IS evidence of insurance
- IS a reflection of coverage at the time of issue
- IS NOT an insurance policy
- IS NOT any type of insurance
- IS NOT a place to quote wording from a contract
- IS NOT a place to waive subrogation rights (unless the policy itself has been so amended)
- IS NOT a place to replace or supplement wording or conditions of the policies listed
- IS NOT legally binding
- IS NOT a place to amend or alter coverage of listed policies
- IS NOT a conferee of rights on the certificate holder

### Non-U.S. Certificates of Insurance

Certificates of insurance outside of the United States do not seem to have the standardization apparent in that the U.S. brokers outside the country may issue letters or memorandums of coverage on behalf of their customers as a business courtesy and ACORD certificates may be used, but they are not the standard.

U.S.-based companies providing evidence of coverage in a foreign country may want to coordinate the effort using a local broker to avoid problems over differences in coverage, currency, language and customs. These factors will affect the appropriateness and acceptability of an ACORD certificate of insurance.

# CHAPTER 2:

## Drafting Insurance Requirements

Insurance requirements are established to request evidence that an organization maintains what the certificate holder views as appropriate types and levels of insurance related to the business transaction. For this reason, many organizations often create a single set of standard insurance requirements. While each transaction or business venture could warrant the drafting of a unique set of insurance requirements, a core set—that can be modified as needed—should be used as a cornerstone. Note that the laws governing the contract being drafted should be carefully considered in these transactions.

When there is already a written agreement in place that details the requirements of the parties, drafting insurance requirements becomes less complicated. While a certificate of insurance can be requested whether or not there is a contract, a valid certificate of insurance can be a prerequisite to being on an approved vendor list or a condition of entering onto a premises to provide services.

### Liability Certificates

Every organization should carry liability insurance for its premises operations, completed operations and/or products. Anyone providing services or doing work at your premises should have insurance for injuries their employees suffer in the course of doing work for their employer or persons acting as their employer (workers compensation). Every business should have liability insurance on their company's vehicles, those vehicles that their employees use in their business and on vehicles that they may borrow or hire used to use in the performance of their work. These three coverages—commercial general liability, automobile liability and workers compensation and employers liability—should be included in agreed insurance requirements, regardless of what services or goods are to be provided. Here is the proper way to ask for these coverages:

*YOU shall maintain or cause to be maintained for not less than the duration of the contract between YOU and US, at least the following types and amounts of insurance for claims that may arise from or in connection with the {contract, premises, performance of the work, work, products provided, services provided, etc.}:*

It is prudent to request evidence of insurance before purchasing any goods or services from an organization or permitting them to enter your premises to perform work. Every entity should be able to provide a certificate of insurance evidencing these requirements prior to commencement of the performance of the business transaction.

### Workers Compensation and Employers Liability Insurance

There are provisions that can be altered to modify the standard certificate request. Below are basic requirements.

1. Workers compensation insurance in compliance with appropriate federal and state laws, and employers liability insurance with limits of not less than \$500,000 per person or \$1,000,000 per accident or disease in the relevant jurisdiction
2. Commercial general liability insurance with limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate
3. Automobile liability insurance covering owned, non-owned and hired vehicles with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per accident
4. Umbrella or excess liability insurance may be appropriate to extend coverage limits to \$5,000,000 or higher, depending on the business transaction
5. Other insurance as may be reasonable and prudent in light of the organization's operations, products and services

The contract should require that evidence of the above insurance policies shall be provided on a continuous basis and insured shall provide not less than 30-days notice of cancellation, except 10-days notice for non-payment of premium or material alteration in the terms or conditions of coverage. It should be noted that the September 2009 new ACORD version of this certificate no longer specifies this condition.

Previous versions of the cancellation provisions of ACORD 25 read: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail \_\_\_ days written notice to the certificate holder named to the left, a failure to do so shall impose no obligation or liability of any kind on the insurer, its agents or representatives."

The updated version of the cancellation provisions reads: "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions."

You may not request or be requested to modify the language in the cancellation clause.

### Additional Insured

An organization may need to be named as an additional insured on commercial general liability and automobile liability policies to ensure liability protection has been extended. Request that your organization be named as an additional insured in the liability requirements of the contract and obtain copies of the actual endorsements.

In addition to requesting a certificate of insurance naming the organization as additional insured be aware that additional insured status does not provide cancellation notice provisions. Here is a list of a few of the more commonly used Insurance Services Office (ISO) endorsements that may be inserted into the request (endorsement explanation provided in Chapter 3: Special Language and Endorsements):

- Designated Person or Organization - Form CG 2026 (a general form)
- Lessor of Leased Equipment - Form CG 2028
- Managers or Lessors of Premises - Form CG 2011
- Owners, Lessors or Contractors - Form CG 2010
- Owners, Lessors or Contractors - Form CG 2009
- Owners, Lessors or Contractors - Form CG 2037
- Vendors Endorsement - Form CG 2015 (product liability for vendors)

Be sure to use the most current edition of these forms. Many insurance carriers have filed their own endorsements with state insurance regulators and use their own forms in lieu of ISO forms.

Always seek advice and review all currently available forms if a specific endorsement is required. In addition to new forms becoming available, courts reinterpret the meaning of existing forms on a regular basis, and what may be the best form in one situation may not be the best for another.

A lender, landlord or other party with interest in real or personal property to be insured by another organization will require evidence of property insurance. This additional request may be worded in the following manner:

*Direct property damage insurance providing coverage for [building, equipment, tenant improvements and betterments, stock and finished goods, etc.] for not less than the property's replacement cost value for real and personal property or cost for stock or selling price for finished goods. The replacement cost value insured must be sufficient so as to prevent the policy*

holder from being co-insured for any loss sustained for which the insurance is applicable.

*Business interruption coverage (rents, loss of income, royalties, extra expense, etc.) for a period of time relevant to the duration of the contract.*

*Such property insurance shall be provided in a so-called “all risk” or “special risk” form, (including the perils of flood and/or earthquake). The contract should require that evidence of such property insurance shall be provided on a continuous basis ACORD 24, or an equivalent, providing not less than 30-days notice of cancellation or material alteration.*

### Named Insured Vs. Additional Insured

In almost all situations, the certificate holder should be certain they are not added as a named insured. An organization with this status may have responsibility for paying the policy premium, premium audits, deductibles, premium taxes, etc.

When determining whether to be a named insured versus an additional insured, consider the exposures involved. In a lease situation where one party is providing a policy for the common area covering all parties' interests, it may be necessary to be listed as a named insured. When coverage is purchased that is intended to cover the sole negligence of an organization, that organization should be a named insured. In all other cases, additional insured status should be adequate but be aware additional insured status does not provide cancellation notice provisions.

### Limits

Policy limits were suggested for certain types of insurance at the beginning of this chapter. What follows is a review of some of the sub-limits in those policies:

#### Commercial General Liability

**1. General aggregate limit.** This limit is the amount available for the total of all paid claims under the policy including bodily injury, property damage, personal injury and advertising injury, during a policy year. When this amount has been paid by the insurer, the policy limits are said to be exhausted and no more claims will be paid. A separate aggregate limit is applicable to products or completed operations.

If there is a concern that an organization's liability limits may be depleted or exhausted by other claims, a separate limit applicable per location or per project may be required. However, for contractors, this limit extends coverage only while the work is in progress. To require this, simply add a sentence to the general liability section of the contract requirements, stating that, “the general aggregate shall apply separately to this project/location.” If higher limits are required, simply include your required limits and the phrase “including umbrella/excess.”

**2. Products and completed operations aggregate.** This limit is the total amount the company will pay for all bodily injury and property damage claims arising from products and completed operations hazards during a policy year. When this amount has been paid by the insurer, the policy limits are said to be exhausted.

**3. Personal and advertising injury limit.** This is the per person limit for individual claims arising from personal and advertising injury, subject to the general aggregate limit.

**4. Each occurrence limit.** This limit is for all covered bodily injury and property damage claims incurred in any one occurrence. Each occurrence limit reduces the specified aggregate limit.

**5. Fire damage limit (formerly fire legal liability).** This limit covers the insured's liability for damage to property of others in the insured's care, custody and control arising out of the peril of fire for real property. The limit is usually \$100,000, but may be increased. The limit is the amount available for any one fire and reduces the general aggregate limit.

**6. Medical expense limit.** This limit is per person for all medical expenses incurred from any one accident without regard to liability. This is a no-fault coverage and reduces the general aggregate limit.

#### Workers Compensation & Employers Liability

Workers compensation is regulated by various state and federal agencies; therefore a request for statutory limits applicable to the worksite is generally sufficient, as many workers compensation jurisdictions do not allow a specific dollar limit. Absent a dollar limit, the insurer would be responsible for all amounts claimed as required under the applicable state or federal statute.

Employers liability insurance is subject to specific dollar limits. As of this writing, only New York requires that employers liability be written with no limits of liability. Employers liability with limits of \$500,000 or \$1,000,000 are most commonly used

Employers liability policies include three separate limits:

**1. Bodily injury by accident—each accident.** This limit is the most the insurer will pay for all damages covered by the policy because of bodily injury to one or more employees in any one accident. Disease is not considered bodily injury unless it stems directly from a bodily injury by accident.

**2. Bodily injury by disease—each employee limit.** This limit is the most the insurer will pay for all damages covered by the policy and arising out of bodily injury by disease for each employee, regardless of the number of employees who sustain bodily injury by disease.

**3. Bodily injury by disease—policy limit.** This limit is the most the insurer will pay for claims of bodily injury by disease, regardless of how many employees present a claim.

#### Non-U.S. Liability

There are many considerations when developing non-U.S. requirements for limits of insurance, including exchange rates, inflation, costs of litigation, statutes and availability of coverage. Coverage and limits required in a non U.S. contract should reflect, at a minimum, the limits required in a domestic contract if the other party is a domestic organization. If the other party is a foreign company, it is important to determine the local industry standards. It should be noted a U.S. company has exposure to both the U.S. and foreign legal systems when operating internationally.

#### Claims Made Vs. Occurrence Form Policies

Certain policies (commercial general liability, professional liability, errors & omissions and others) are sometimes available in two versions: occurrence and claims made forms. The claims trigger is the difference between these two forms. The acceptability of either policy form is dependent on the exposure for which coverage is sought.

An occurrence form policy is triggered by the date of the occurrence of injury or damage. Claims may be filed after the expiration date of the policy, provided the event (i.e., the injury or damage) giving rise to the claim occurred during the policy period. With occurrence form insurance, a valid certificate for all periods of time during which a claim might occur should be obtained. If a claim is presented in the fifth year of a contract for an injury that occurred during year

one, the policy that was in force during year one will respond. Therefore, it is necessary to request a certificate for subsequent periods of time.

Under the claims made form, the claim must be made against the insured and reported to the insurer during the policy period to trigger the coverage. The Insurance Service Office (ISO) states that the claims made commercial general liability policy is triggered when a claim is received and recorded.

The claims made policy has two characteristics not found in the occurrence form: a retroactive date and an extended reporting period endorsement. The claims made policy will not respond to any claim that occurred prior to the retroactive date of the policy. A claim must occur after the retroactive date in order for the policy to be triggered. Once the policy expires, it will no longer respond to claims unless (1) a new claims made policy is purchased with a retroactive date going back to the start of the last policy, or (2) an extended reporting period is activated, which will allow claims that occurred while the policy was in force to be reported for a specified time period after it has expired.

If coverage is provided under a claims made form, it is important that the retroactive date on the policy be the earliest date a claim can occur (examples: the date the contract was signed, the date the work was begun, the date the product was purchased). If the retroactive date does not go back far enough and/or the expired policy's extended reporting provision was not enacted (or the extended reporting period has expired), there is no coverage under the current claims made policy for a claim that occurred prior to the inception date of the policy. If accepting claims made coverage, it is important to obtain certificates of insurance evidencing renewals for the entire contract term. The retroactive date of the policy should be shown on the certificate.

### Other Insurance Clauses in Liability Policies

The "other insurance" section of a liability policy specifies how damages and defense costs are to be shared when a loss is covered by more than one insurer. When individuals or organizations are added as additional insured to another party's commercial general liability policy, problems may arise as to how a loss is apportioned, since both policies could be considered primary. A solution is to endorse the additional insured's policy to be excess if the contract agreement requires that the insured's policy be primary. The certificate should clearly state whose policy is intended to be primary.

**Suggested wording:** *This insurance is primary, noncontributory, and not in excess of any other valid and collectible insurance of certificate holder.*

Refer to the "Other Insurance" section in Chapter 3: Special Language and Endorsements for more in-depth information.

### Subrogation and Waivers of Subrogation

In many situations insurance carriers have the right to recover losses paid from the parties responsible for causing the loss. This right is known as subrogation.

#### Subrogation: Property

Prudent business practices dictate that each party carries sufficient insurance to protect its own property. At times parties may wish to avoid the difficulties that can arise from trying to recover from each other for damage to their property. Subrogation can be waived under a property policy as long as the agreement is made before the loss. This is a common request and insurers do not usually charge additional premium to add this endorsement. Some policies will contain a blanket waiver of subrogation and a copy of that provision of the policy may be provided in lieu of wording on the certificate or an endorsement in your favor.

**Suggested wording:** *Each party hereby agrees to waive its right of recovery*

*and subrogation against the other party for loss or damage to its property or the property of others under its control.*

#### Subrogation: Liability

Subrogation requirements affecting a liability policy should be avoided. Emphasis should be placed on the drafting of indemnity and additional insured requirements, which will allow you to recover the loss from the legally liable party.

#### Subrogation: Workers Compensation

When an insurer pays benefit payments to an injured employee, the insurer assumes the rights of the employer and the employee to recover the benefits they have paid. State statutes will govern whether waivers of subrogation are legal in that particular state. If the contract requires a waiver of subrogation for workers compensation, request that the other party use National Council on Compensation Insurance (NCCI) endorsement WC 00 03 13 or its equivalent. This endorsement may require the insurance company's prior authorization and an additional premium. A detailed discussion of waivers of subrogation is included in Chapter 3: Special Language and Endorsements.

### Self-Insurance and Large Deductible Plans

There are two important factors to consider when drafting requirements for parties who self-insure or utilize large deductible plans. First, it is important to ensure that the other party is still contractually liable for all losses that would have otherwise been paid. Second, a financial test should be conducted to ensure the other party has the financial ability to pay for losses.

**Suggested wording:** *"Coverage may be provided under a plan of self-insurance, provided that any party self-insuring notifies the other parties of its intent to self-insure and agrees that, upon request, it shall deliver to such other parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such party has acceptable net worth and net current assets. To the extent any deductible is permitted or approved as part of any insurance policy carried by a party in compliance with Section \_\_\_\_\_, such party shall be responsible for that deductible and be deemed to be covering the amount thereof under an informal plan of self-insurance."*

### Insurer Acceptability

The management and financial stability of the insurance companies providing coverage is very important. The simplest standards to use are those promulgated by A.M. Best Company. Generally speaking, a rating of not less than A- VII should be requested.

**Suggested wording:** *Insurance shall be placed with insurers with a current Best's rating of not less than \_\_\_\_.*

Some entities will request the other party purchase insurance from carriers admitted in the appropriate state. Admitted and nonadmitted carriers can legally provide insurance in most states. Nonadmitted carriers are not covered by state guaranteed funds.

**Suggested wording:** *Insurance companies providing coverage must be lawfully authorized to do business in the jurisdiction in which the project/premises is located.*

Note that care should be taken to ensure that any analysis of carrier acceptability is done on the correct legal entity. There are many insurance companies with similar names but significantly differing financial strength. Also, it is not necessarily prudent to accept an insurance company based on the financial strength of its parent company. Additional research should be done on any fi-

nancial guarantees in place.

### Endorsements and Extensions of Coverage

**Liquor liability.** Except for host liquor liability, liquor liability is excluded in most standard general liability coverage forms. If evidence of liability is requested from an organization who manufactures, sells or dispenses liquor, add “liquor liability” into the certificate request (i.e., request evidence of “commercial general liability and liquor liability”).

**Products and completed operations.** If evidence of coverage for products and completed operations is needed, be sure to add “products and completed operations” to the request (i.e., “commercial general liability and products liability”).

**Watercraft/aircraft.** The commercial general liability policy does not cover losses arising from aircraft or certain watercraft. If evidence from an organization relating to their use of watercraft (over 26 feet in length) or aircraft is required, be aware that a specific request for evidence of aviation and marine liability policies is needed.

**Workers compensation and employers liability.** A request for one of the following endorsements to a standard workers compensation policy may be needed for specific risk exposures:

- **Federal Employers Liability Act (WC 00 01 04)—(Railroad)**

The Federal Employers Liability Act allows interstate railroad workers to sue for negligence at the same time they receive benefits provided by the Railroad Retirement Board. The endorsement effectively removes common law defenses from the employer regarding interstate railroad workers.

- **The U.S. Longshore and Harbor Workers Compensation Act (WC 00 02 06A)—(Marine)**

Also known as LHWCA or USL&H, this endorsement provides benefits to longshoremen, harbor workers, ship builders or ship breakers, and for others employed on or immediately adjacent to the navigable waters of the United States. The exact determination of which employees might be covered under the LHWCA is highly complex and very fact specific, and certain employees may have the option of filing under a state workers compensation act or LHWCA, or for some benefits under both. LHWCA may be provided by a free-standing policy or by addition of NCCI endorsement WC 00 02 01A.

- **Outer Continental Shelf Lands Act (WC 00 01 09A)—(Marine)**

This endorsement extends the benefits of USL&H coverage to employees of firms conducting operations on the outer continental shelf of the United States for the purpose of exploration, development or removal of natural resources of the subsoil and seabed. Coverage may be provided by either a free-standing policy or by addition of endorsement WC 00 01 09A to a workers compensation policy. The endorsement covers injuries due to operations conducted on outer continental shelf lands for the purpose of exploring or developing natural resources. The endorsement extends coverage to areas outside the three-mile limit or to areas under U.S. jurisdiction. (Texas and Florida both have a 10.5-mile limit.)

- **Defense Base Act (WC 00 01 01)—(Non-Marine)**

This endorsement provides for coverage under the Defense Base Act, which extends longshore and harbor workers coverage to civilian employees working on foreign U.S. bases. It further covers employees working on military bases located in or acquired from foreign countries after January 1, 1940; on lands occupied or used by the United States for military purposes in any U. S. territory or possession outside the continental United States; and to those employees engaged in public work projects outside the conti-

mental United States. The act extends the benefits of the USL&H Act to those employees. It does not apply to employees engaged in agriculture, domestic service, casual employment, employment not in the usual course of the employer’s business, masters or crew of any vessel, or employees entitled to Federal Employees Compensation Act benefits. It may be provided by either a free-standing policy or by addition of endorsement WC 00 01 01 to a workers compensation policy.

- **Nonappropriated Funds Instrumentalities Act (WC 00 01 08A)**

—(Non-Marine)

This endorsement provides for coverage under the Nonappropriated Funds Instrumentalities Act, which extends longshore and harbor workers coverage to employees working at nonappropriated funds instrumentalities, which generally provide non-military services on or adjacent to military bases; such as military exchanges (PX, NavEx, etc.). This extends the benefits of the USL&H Act to civilian employees of “instrumentalities” of the United States (services under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment and mental and physical improvement of the armed forces) who are compensated from funds not appropriated by Congress. It can be provided by either a free-standing policy or by addition of endorsement WC 00 01 08A to a workers compensation policy.

- **Maritime Coverage—The Merchant Marine Act of 1920 (WC 00 02 01A)**

—(Marine)

The Merchant Marine Act of 1920 (Jones Act) pertains to the master and crew of ocean going vessels. The act provides tort remedy to seamen for injury or disease caused by the negligence of the employer or someone under the employer’s control. The endorsement is used to comply with the act on inland coastal vessels.

- **Alternate Employer (WC 00 03 01A)—(Non-Marine)**

This endorsement allows the employees of a related entity access to benefits under the workers compensation policy of the insured (i.e., client of the leasing firm, owner of a managed building or operation). It specifically allows workers compensation and employers liability coverage to the related entity. (See Chapter 3: Special Language and Endorsements for further information on employee leasing.)

- **Foreign Workers Compensation and Employer’s Liability (WC 00 03 03B)—(Non-Marine)**

This endorsement provides coverage to U.S. citizens working abroad on permanent assignment. Coverage provided may be provided by a separate, stand-alone policy or addition of endorsement WC 00 03 03B.

- **Voluntary Compensation and Employers Liability (WC 00 03 11A)**

—(Non-Marine)

The endorsement extends workers compensation and employers liability coverage to excluded groups of workers or to workers not subject to state statutes (i.e., farmers, domestic help and volunteers).

- **Waiver of Our Right To Recover From Others (WC 00 03 13)**

—(Non-Marine)

The purpose of this endorsement is to waive the recovery rights of the insurer against specifically named third parties who could be responsible for bodily injuries or disease. (This endorsement will be discussed further in Chapter 3: Special Language and Endorsements.)

### • **Employers Liability (WC 00 03 03B)**

This endorsement extends employers liability coverage to those policies where it is not already provided. Employers liability can be extended to any state named on the information page of the schedule, including the monopolistic states.

**Property insurance—lenders loss payable.** There is no endorsement to create additional insured status on a property policy. However, the ACORD 28 form grants mortgagee and loss payee status and may be used when a party asks to be named as an additional insured on a property policy.

### **Environmental Insurance**

Prior to contracting with a vendor to provide any environmental consulting or remediation service, a review of their professional liability and environmental insurance should be performed.

When contracting for environmental services to determine the scope of property pollution, it will be necessary to obtain evidence of the vendor's consultants professional liability insurance. This policy provides protection against claims resulting from the vendor's errors and omissions. The limit required depends upon the scope of work being performed. A standard minimum limit of \$1,000,000 is sufficient for most jobs, but larger contracts may require more insurance.

Insurance policies often contain an aggregate that can be depleted by claims arising from other projects on which the contractor is working. To ensure coverage for your contract, request a per project or per location aggregate depending on market conditions. If the contractor is working under a master services agreement, you may want to consider higher limits with a minimum of \$5,000,000. If a contractor is doing remediation work, they will also need to have pollution insurance covering the release of any hazardous substance. Several carriers actually provide a combination of errors & omissions and pollution insurance under one policy. The limits required will vary depending upon the scope of the project. Risk professionals should also determine whether the costs of defense are paid inside the policy limits, or are paid in addition to the policy limits.

When specifying the coverage required, be clear about the type of insurance desired. Various contractors and consultants will have differing insurance needs. There may also be some exposures that cannot be insured.

### **Sample Language**

**Commercial general liability:** *Commercial general liability insurance, including contractual coverage to cover the indemnity provisions of the contract, covering all operations by or on behalf of the consultant whether such operations are performed by the consultant or by any of its subcontractors, or by anyone directly or indirectly employed by any thereof, or by anyone acting on behalf of any thereof, in an amount not less than \$5,000,000 per occurrence and in the aggregate. Such commercial general liability insurance or equivalent coverage thereof shall include pollution liability coverage for all phases of the work to be performed.*

*Professional liability insurance with respect to all work performed by or on behalf of consultant (or, with respect to insurance maintained by a subcontractor, by or on behalf of such subcontractor) under or in connection with this agreement, covering claims arising from any act, error or omission committed in connection with consultant's (or subcontractor's, as the case may be) performance of any such work. Such policy shall not contain any exclusions or limitations regarding the release of asbestos or other recognized pollutants. The limits of liability shall not be less than \$2,000,000 per claim and in the aggregate. If coverage is written on a claims-made basis, coverage with respect to work*

*performed shall be maintained for a period of three 3 years after the date of final payment and shall provide for an extended reporting period of not less than 12 months.*

### **Automobile Liability Requirements for Transport of Hazardous Materials:**

*If a contractor is transporting hazardous materials or waste, the contractor's policy shall be endorsed to include the ICC Form MSC90 (Motor Carrier Act of 1980 as amended) and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Covered Autos-Business Auto and Truckers) coverage form.*

**Abatement Contractor Requirements:** *The general liability policy will be endorsed to include, or a separate abatement policy should contain, the following provisions:*

- 1. Coverage for pollution abatement operations as described by the contract*
- 2. Pollution coverage as respects contaminants for all phases of the abatement process;*
- 3. Coverage for the placement and movement of hazardous materials from the project site to the final disposal location(s)*
- 4. Bodily injury coverage for employees of the owner, general contractor, lessee, real estate manager and subcontractors so long as their designated job duties do not require them to be in the regulated abatement area*
- 5. Waiver of subrogation in favor of the owner*

**Architects & Engineers Errors and Omissions:** *With respect to design services provided by the designer/builder, the designer/builder shall maintain professional liability insurance covering claims arising from real or alleged errors, omissions or negligent acts committed in the performance of design services. The limits of liability shall not be less than \$1,000,000 per claim, and contractor will endeavor to maintain said coverage for a period of three years after the date of the final payment hereunder. The designer/builder shall furnish certificates of insurance at the beginning of each year following final payment as evidence of this required insurance. If design services are being provided by a subcontractor, the designer/builder shall cause the subcontractor to maintain such insurance and to include the owner as an additional insured. The designer/builder shall provide the owner a certificate of insurance from the subcontractor evidencing such insurance is in effect and will be responsible for obtaining and furnishing evidence of coverage from the subcontractor for each of the three years following final payment.*

### **Contract Review Checklist**

#### **General**

- What are the legal considerations, scope of services and/or products to be provided?
- What is the governing law of the agreement?
- Does the contract stipulate that you provide insurance? If so, what types and limits?
- Does the contract require evidence of insurance policies be provided on a continuous basis? Is self-insurance or blanket coverage allowed?
- To whom does the contract assign liability for negligence?
- Does the contract address punitive damages?
- Are there limitations of liability?

#### **Building Leases**

- Do the contract terms clearly delineate responsibility for any kind of damage?
- Does the lease stipulate who will provide insurance for the building, contents or tenant improvements?
- Is the building value stated at “replacement cost” or “actual cash value”?
- Does each party grant a waiver of subrogation?
- Are you assuming responsibility for more perils than your own policy will cover?
- Does the lease agreement call for a damage waiver? If so, what are the costs?
- Who is responsible for routine maintenance?
- Does the lease stipulate that you provide insurance?
- Does the contract require evidence of insurance policies be provided on a continuous basis?
- Are you required to provide extra expense, loss of rents or business interruption coverage?

#### **Purchase Orders**

- When does the title and risk of loss pass from the vendor to the purchaser?
- Does the purchase order stipulate who provides insurance?
- To whom does the purchase order assign liability for negligence?
- Does the purchase order address punitive damages?

#### **Contractors/Vendors**

- Does the contract require specific types and limits of insurance?
- Are the contractors and subcontractors required to provide the same coverages and limits?
- Does the contract require a per project aggregate for general liability?
- Is completed operations coverage extended to the additional insured?
- Does the request to be an additional insured name the proper legal entity?
- Is there a requirement for the contractor’s insurance to be primary and noncontributory?

# CHAPTER 3:

## Special Language and Endorsements

Contracts often require that various parties be added as additional insured. There are several reasons why the additional insured status might be required:

- It provides for direct funding of the risk transfer that is usually accomplished by the indemnification and hold harmless provisions.
- It can reinforce indemnification or hold harmless provisions which might otherwise be held invalid by statute or court decision.
- It may serve to prohibit the named insured's carrier from subrogating against the additional insured.
- It provides for direct payment of the defense costs of the additional insured by the named insured's insurer.
- It can serve to insulate the primary insurer of the additional insured from liabilities arising out of the named insured's operations.

An additional insured endorsement provides direct coverage under the named insured's commercial general liability policy for bodily injury and property damage arising out of the named insured's operations or work. Currently available additional insured endorsements do not typically include notice of cancellation provisions. Some insurance carriers use alternative or manuscript endorsements to meet contractual requirements. If any party in addition to the first named insured desires a copy of cancellation notice in the event the policy is cancelled, that party should be expressly endorsed onto the policy as a cancellation notice recipient (ISO endorsement IL 70 35 06 08). In recent years some insurance carriers have stopped or significantly reduced their willingness to issue the pre-1993 versions of additional insured endorsements. The use of the CG 2037 (either the 10 01 or the 07 04 version) should serve to provide the appropriate coverage, as this endorsement is specifically intended to provide completed operations coverage for the additional insured.

There are more than 30 versions of the ISO additional insured endorsement and which are intended to address specific situations. A listing of these forms is included at the end of this section (Table 1). In addition, specific forms can be found at [www.iso.com](http://www.iso.com). Some of the more common forms in use, or required under contracts, are:

### CG 20 07 (see also 20 32) Additional Insured—Engineers, Architects or Surveyors

**Purpose:** Affords coverage to design professionals to protect them from claims arising out of the work performed on a job site. Coverage is extended automatically without designating specific design professionals or firms.

**Limitations:** Coverage is limited to liability arising out of the named insured's premises or "ongoing operations." It is important to note that the professional liability exposure of the design professionals is not covered by this endorsement.

### CG 20 09 (see also 20 10) Additional Insured—Owners, Lessors or Contractors

**Purpose:** Affords coverage to those involved in a project for vicarious liability. The endorsement specifically addresses liability for the named insured's operations performed for the additional insured at a specified location, and any acts or omissions of the additional insured as connected with its "general supervision" of the named insured's operations.

**Limitations:** Coverage is limited to "ongoing operations" and is terminated once the project is complete. The form is used to extend contractual liability coverage under a commercial general liability policy when needed.

### CG 20 10 11 85 Additional Insured—Owners, Lessees or Contractors (Form B)

**Purpose:** Affords coverage to the person or organization shown on the endorsement under schedule, but only for liability arising out of the named insured's work ("your work") for the additional insured.

**Limitations:** This is the broadest of all additional insured endorsements and does not limit coverage to any time period except "your work." The endorsement covers the additional insured for as long as the named insured has coverage in force. This would also include coverage for the named insured for any contractual requirements for a warranty period.

### CG 20 10 10 93 (or later) Additional Insured—Owners, Lessees or Contractors (Form B)

**Purpose:** Affords coverage to the person or organization shown on the endorsement schedule, but only for liability arising out of the named insured's "ongoing operations" performed for the additional insured.

**Limitations:** Coverage is limited solely to the named insured's operations while in progress. The word "ongoing" excludes completed operations coverage to the additional insured.

### CG 20 15 Additional Insured—Vendors Form

**Purpose:** Affords coverage to those retailing or distributing the named insured's product. The endorsement will respond to claims arising out of property damage or bodily injury as specifically caused by the manufacturer's product.

**Limitations:** Coverage is not extended if the following criteria present themselves:

1. Vendor makes significant intentional physical or chemical product changes.
2. Vendor repackages the product (unless repackaging was done to inspect, demonstrate or test the product under the instruction of the manufacturer). Even if this is done, repackaging must be done in the original container.
3. Vendor, after distribution or sale by manufacturer, uses product as a container, part or ingredient of any other product or substance.
4. Vendor offers express warranty of the product. This restricts coverage for the vendor on the manufacturer's commercial general liability policy in the event of a misleading claim by the vendor.
5. The sole negligence of the vendor for its own acts or omissions or those of its employees.

### CG 20 26 Additional Insured—Designated Person or Organization

**Purpose:** Provides coverage to those individuals or organizations that cannot be classified into any other available category or endorsement.

**Limitations:** This endorsement has few limitations. It is limited by the condition that liability must arise out of the premises and operations of the named insured.

### CG 20 28 Additional Insured—Lessor of Leased Equipment

**Purpose:** Affords coverage to owners of equipment that is leased to the named insured.

**Limitations:** Coverage does not extend to the owners or lessors for bodily injury or property damage arising out of the additional insured's sole negligence.

### **CG 20 32 (see also 20 07) Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured**

**Purpose:** Affords insurance coverage to design professionals who have not been directly engaged by the named insured.

**Limitations:** Coverage is limited to liability arising out of the named insured's premises, or "ongoing operations." It is important to note the professional liability exposure of the design professionals is not covered by this endorsement.

### **CG 20 33 Blanket Additional Insured—Owners, Lessees or Contractors (Form B)**

**Purpose:** Affords coverage to the person or organization named in a written contract or agreement as the additional insured, but only for liability arising out of the named insured's "ongoing operations" for the additional insured.

**Limitations:** Coverage is limited solely to the named insured's operations, while in progress. This limitation is stated twice: once by stating "for whom you are performing operations," and again by stating, "A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed." The word "ongoing" excludes completed operations coverage for the additional insured. If there is a contractual requirement to provide completed operations coverage for a specified period of time, this endorsement would not apply.

### **CG 20 37 Owners, Lessees or Contractors—Completed Operations**

**Purpose:** Affords coverage to the person or organization named in a written contract or agreement as the additional insured, but only for liability arising out of the named insured's completed operations.

**Limitations:** Coverage is limited solely to the named insured's completed operations. This form was developed to provide a mechanism for including completed operations coverage when used in conjunction with additional insured endorsements. It does not provide additional insured status for ongoing operations or for premises liabilities.

### **Cancellation Modification**

The standard language on a certificate of insurance on previous versions (prior to September 2009) indicated the carrier will endeavor to notify the certificate holder if the policy is being cancelled, but the language does not guarantee the certificate holder will receive notification of any termination of the insurance coverage. Current versions (post September 2009) indicate: "should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions." If the certificate holder requires notice of cancellation, the contract should require evidence of insurance policies be provided on a continuous basis and require that the insured shall provide in writing, not less than 30-days notice of cancellation, except 10-days notice for nonpayment of premium or material alteration in the terms or conditions of coverage.

In many states, the text of the ACORD form cannot be modified, unless it is filed for approval by the respective state Department of Insurance (IA, KS, KY, LA, MN, MO, NC, ND, OK, UT and WI). Modification could be in violation of state regulatory laws and could be considered a Class 1 misdemeanor offense.

### **Other Insurance Clause**

One of the main reasons for requesting additional insured status is to obtain the protections afforded by the policy's primary and noncontributory language under the named insured's policies. The named insured's policies will then respond to any incidents before the additional insured's policies.

When the additional insured is added to a named insured's policy, the additional insured has, in effect, two primary liability insurance policies. This duplication of coverage can create disputes as to which insurance policy is primary and which policy is excess. It is important for the additional insured to have their commercial general liability policy endorsed to be excess to avoid the sharing of losses. The CG 00 55 endorsement will eliminate the reduction of the additional insured's limits, should the named insured's limits be exhausted.

Some insurance carriers will not allow primary insurance language to be added to their commercial general liability policy, and will resist naming any other parties as additional insured. If available, an owners' and contractors' protective (OCP) policy can be purchased to provide the protection required in this situation. An OCP policy does not, however, include completed operations, personal injury or contractual liability coverages. To obtain completed operations coverage, request that either the CG 20 10 11 85 or the CG 20 26 11 85 endorsements be attached to the named insured's general liability policy, or that a CG 20 37 be attached in conjunction with the 1993 or later CG 20 10 or CG 20 09. If an OCP policy is obtained along with the attachment of the CG 20 37, or the CG 20 10 11 85 or CG 20 26 11 85, contractual requirements for the primary additional insured coverage may be fulfilled and completed operations coverage afforded to the additional insured.

### **Standard Mortgage Clause**

Mortgage clauses were developed to protect the special interests of mortgagees within an insurance policy. They are usually found in property, inland marine and boiler & machinery policies. A mortgage clause is a separate contract within an insurance policy between the insurer and the mortgagee. The term of the mortgage clause coincides with the term of the policy. The mortgage clause protects the mortgagee's interest in the event the named insured is not able to recover because of a breach of policy conditions. The mortgage clause requires the insurer to provide the mortgagee with the same notice of cancellation that is provided to the named insured.

In exchange for the additional rights, the mortgagee also assumes additional responsibilities under the mortgage clause. The mortgagee is required to notify the insurer if the property is vacant for more than 30 consecutive days, but only if they are aware of the vacancy. The mortgagee is also required to pay for any additional premium that is incurred because of a material change in the risk. The mortgagee may assume additional responsibilities, depending on the exact terms and conditions contained within the clause.

### **Loss Payee vs. First Mortgagee**

Any third party with an insurable property interest may be added as a loss payee to an insurance policy covering that property. In the event of a loss, the insurer will make the claim settlement check jointly payable to the loss payee and the named insured.

Lenders commonly require that they be named as loss payees on policies insuring the asset(s) that secure their loans. In these cases it is extremely important the lender be listed as mortgagee under the loss payable section of the policy. Being listed as mortgagee provides additional rights to the lender, including a provision that prevents them from being deleted from the policy without a written release of their interest. Also, if a mortgage clause is part of the policy, it does not apply to mortgagees unless their interest is specifically listed on the policy.

### **Subrogation and Waivers of Subrogation**

Subrogation means to put one party in the place of another, or to substitute the rights of recovery among the parties. In the context of insurance the term refers to an insurer's right to recover a loss from a legally responsible party. This right is inherent under common law but is typically expressed in insurance policy language as well.

The concept of subrogation eliminates the possibility of the insured being entitled to a duplicate recovery from parties causing or contributing to a loss. It also helps ensure that the party causing the loss will assume its proper financial responsibility for the economic effects of its actions. The policy will also require the insured to cooperate and assist the insurer in pursuing any recovery.

If the insurance policy has a deductible or self-insured retention, the policy will normally stipulate that the insured is entitled to share in the recovery after expenses have been deducted. The allocation is commonly handled proportionately based on the insured's loss (i.e., policy deductible) versus the insurer's loss (i.e., the loss paid to or on behalf of the insured). Because of the potential financial return from subrogation, the capability of an insurer in this area is sometimes an item of key importance. An insurance policy may state a differing arrangement for handling recovery, and the subrogation clause needs to be read carefully.

### **Waivers of Subrogation**

Many property and general liability policies permit an insured to waive the insurer's right of subrogation against a third party, but the waiver must be in writing and agreed to prior to the loss. In some insurance policies, including workers compensation, an endorsement to the policy may be required. Be aware that you may be required to provide evidence of waivers of subrogation on certificates of insurance.

There are situations when a waiver of subrogation can be seen as positive for all parties, such as when the parties to the agreement need to avoid the duplication of claims. Reciprocal waivers of subrogation are often granted so each party will be responsible for its own exposures. The language should be considered in conjunction with any indemnity and hold harmless clause or additional insured requirements. A waiver against a third party who has been named an additional insured may be unnecessary.

### **Workers Compensation Subrogation**

Workers compensation involves an employee's fundamental right to benefits provided by various state laws. In addition, an injured employee typically has the right to file a tort claim against a responsible third party who may be responsible for an injury. If the employer has indemnified a third party against the claims of its employees, or covers that third party as an additional insured, the employer's responsibility for an injury could well exceed the statutory workers compensation benefits. Under these agreements when an injured employee brings suit against an indemnified or additionally insured party the suit is typically tendered back to the employer. This is commonly referred to as a "third-party-over action" and may have financial consequences to the employer and its insurers.

A waiver of subrogation may require the employer to pay twice for an employee injury; through both workers compensation and a "third-party-over action." Case law produces little in the way of significant restrictions affecting the application of waivers of subrogation. There are a number of states that have statutes limiting waivers of subrogation in workers compensation.

## **TABLE 1**

### **List of ISO Additional Insured Endorsements, by Endorsement Number**

CG 20 02 – Club Members
CG 20 03 – Concessionaires
CG 20 04 – Condominium Owners
CG 20 05 – Controlling Interest
CG 20 07 – Engineers, Architects or Surveyors
CG 20 08 – Users of Golf mobiles
CG 20 09 – O. L. & C.*Scheduled Person or Organization when Coverage NOT provided in policy
CG 20 10 – O. L. & C. *Scheduled Person or Organization
CG 20 11 – Managers or Lessors of Premises
CG 20 12 – State or Political Subdivisions - Permits
CG 20 13 – Permits Relating to Premises
CG 20 14 – Users of Teams, Draft or Saddle Animals
CG 20 15 – Vendors
CG 20 17 – Townhouse Associations
CG 20 18 – Mortgagee, Assignee or Receiver
CG 20 20 – Charitable Institutions
CG 20 21 – Volunteer Workers
CG 20 22 – Church Members, Officers & Volunteer Workers
CG 20 23 – Executors, Administrators, Trustees or Beneficiaries
CG 20 24 – Others or Other Interests From Whom Land Has Been Leased
CG 20 25 – Elective or Appointive Executive Officers of Public Corporations
CG 20 26 – Designated Person or Organization—Ongoing Operations or Premises
CG 20 27 – Co-Owner of Insured Premises
CG 20 28 – Lessor of Leased Equipment
CG 20 29 – Additional Insured - Grantor of Franchise
CG 20 30 – Oil or Gas Operations – Non-operating Working Interests
CG 20 31 – Engineers, Architects, or Surveyors
CG 20 32 – Engineers, Architects, or Surveyors Not Engaged by the Named Insured
CG 20 33 – O. L. & C. *- Automatic Status When Required in Construction Agreement With You
CG 20 34 – O. L. & C.* - Automatic Status When Required in Lease Agreement With You
CG 20 35 – Grantor of Licenses - Automatic status When Required by Licensor
CG 20 36 – Grantor of Licenses
CG 20 37 – O. L. & C.*- Completed Operations

\*NOTE: "O. L. & C." = "Owners, Lessees or Contractors"

# CHAPTER 4:

## *Distribution and Management*

Managing the receipt and distribution of certificates of insurance is often a time consuming and inefficient process. Inadequate attention and insufficient resources are some of the biggest problems facing risk professionals in this area. The following sections explore methods used by companies to effectively deal with the administration of certificates of insurance.

### ***Distribution of Certificates***

Insurance brokers and agents are typically responsible for the issuance of certificates of insurance. As part of their overall risk management client service, they handle most requests for evidence of insurance. Normally, most requests are received and forwarded to the broker via phone, e-mail, fax or via the internet. When using a broker, issues may arise regarding the timelines of the distribution process and the difficulty of handling the continual change in certificate holders. A discussion with the broker should be arranged on these issues to define acceptable standards.

### ***Considerations for Issuing Your Own Certificates***

As part of renewal negotiations, many large companies have secured the right to issue their own certificates. The protocols for issuing certificates and the forms used will differ between carriers and lines of coverage. Most brokers and carriers will require that an insured issuing its own certificates indemnify them for any claims resulting from an error in issuing the certificate. This indemnification can be limited to a specified time frame. The broker and/or the carrier should review certificates for accuracy and notify the insured of any errors.

An insured issuing its own certificates may have the obligation to send certificate copies or data tapes to insurers and/or brokers annually, quarterly or more frequently. Copies of the certificates should be retained according to the terms and conditions negotiated between the carrier, broker and insured and the insured should give consideration to its own internal record retention policies.

The insured may wish to obtain a software package designed to produce certificates. Many risk management information systems have this capability, and many vendor or carrier packages are also available. It is also possible to design a system using database spreadsheet or word processing programs. If ACORD forms are used a license agreement and/or fee may be required. The insured should seek competent advice on this issue. An insured must always use caution when providing evidence of special provisions or endorsements on a certificate of insurance. The certificate language must match both the policy's terms and conditions and any contractual requirements. Additional insured or loss payee status should be limited to the relevant time frame, event, location or property. Some policies may require notice to the carrier in order for additional insured coverage to be in effect. A change in the cancellation notice provision may also be required.

Consult with a broker or carrier when unusual provisions or changes in standard certificate language are requested.

### ***Internet Applications***

Some companies send certificate requests directly to their broker's website. Requests may be handled through the insured's internal network. Designated employees can retrieve the request form from their individual location and type in the information required for a particular client or contract. When the form is completed the employee sends it electronically to the broker. The broker will then issue a signed certificate. Each time a request is sent to the broker, the risk professional is notified by e-mail. This process may eliminate the duplication of data entry, decrease the possibility of error, speed up the issuing process, and allow more direct contact between the broker and the employee requesting the certificate.

Some companies are satisfying third party requests for certificates by posting insurance information on a dedicated website. A company's website may be used to list standard limits for common coverages such as workers compensation, automobile liability, general and products liability, and property insurance. The party requesting the information can be directed to the website where they can immediately look up or print the information as often as desired. The advantages of this method include low service costs, no mailing or filing process, automatic updates for renewals or changes in coverages or carriers and efficient access to information. Disadvantages include possible limited Internet access, the absence of a signature on a certificate and concerns about confidentiality, security, and special provisions or endorsements. The absence of a signature may be problematic for some third parties.

### ***Management of Incoming Certificates***

Managing incoming certificates of insurance can be time consuming and costly. The consequences of not verifying insurance coverage may be more expensive if a claim cannot be tendered to a third party who has agreed to provide coverage.

Procedures should be established to determine who will be responsible for tracking the incoming certificates. Will there be one central contact within the organization to receive all certificates, or will a department who contracts with the outside third party be responsible for follow-up? Risk professionals are often responsible for certificates of insurance, but other departments may also share these duties. The risk professional should provide guidelines and education to the certificate of insurance process. It is important to provide adequate training to the individual(s) tracking the certificates so they can determine if the vendor is in compliance with the company's requirements.

Consideration of a database system, to assist in the management process, may be necessary if there are large volumes of certificates. There are a number of risk management vendors who offer products and services designed to manage certificates. If a customized system is developed the following features should be considered:

- Ability to download third party names, identification numbers and addresses from the accounts payable system
- Automatic downloads to a word processing system to generate follow up letters to third parties based on internal compliance standards
- Flexibility in report generation
- Built-in compliance standards that will generate noncompliance reports and letters to third parties who have not met company standards
- Online checklist to verify requirements are in place before approving the third party for business transactions
- A robust search feature to identify third parties by vendor number, policy number, name of company or any other identifying information
- Insurance company acceptability
- Portability and scalability of system

Another issue to be addressed is what consequence a noncompliant business partner will bear. Some companies withhold payment to noncompliant business partners, refuse to do further business with them and reject future purchase orders until they are compliant. Whatever method is chosen, support from the other operating units within the organization is needed. Controls, procedures and education of other departments regarding the consequences of noncompliance are needed, as well as guidelines detailing what exceptions may be granted.

### **Non-U.S. Certificates**

When obtaining evidence of coverage from non-U.S. business partners, the same rules apply. The main difference will be to make certain that the certificates evidence coverage that can be extended to claims filed in the United States.

### ***Outsourcing***

Brokers have traditionally issued certificates, with the cost of that service typically included in their fee or commission. There are many vendors who will issue outgoing certificates or track incoming ones for a fee. Several independent vendors have developed proprietary systems to track incoming client certificates. The vendor receives all incoming certificates directly from the client's business partners, and verifies the certificate received is in compliance with the client's internal standards. If not, the vendor works with the business partner to obtain proper documentation.

While the vendor handles the day-to-day administration of certificates, the client must make certain that proper controls are in place and in compliance with company standards. The client should determine what exceptions are agreeable and who has the authority to grant them. In addition, the vendor should be held accountable to follow-up with business partners until a satisfactory certificate is received. If the party requesting the certificate is unwilling to conduct business with the company prior to the receipt of acceptable insurance documentation, a notification system must be worked out to identify noncompliant business partners.

Minimum standards should be established regarding the length of time needed to process a certificate. These standards should include timing of renewal, non-compliance and cancellation notices. Many companies often renegotiate the standard insurance requirements contained in the written contract. The risk professional must be apprised of any exceptions that have been granted. Proper quality controls must always be in place to assure the full integrity of the data and establish record retention guidelines. Retention of certificates should remain consistent with the organization's standard document retention policies and constant in all areas of operations. If the company's certificate of insurance process is outsourced, it is also advisable to request evidence of the outside vendor's errors & omissions insurance.

**Certificate Review Checklist**

**General**

- Is a certificate of insurance required?
- Are the proper entities listed on the certificate?
- Does the policy term cover the anticipated exposure period?
- Is there a cancellation notification requirement?
- Are all deductibles and self-insured retentions disclosed?
- Are all special provisions addressed?
- Are insurer ratings required and/or minimums established?
- Are blanket limit placements acceptable?

**Workers Compensation**

- Is workers compensation coverage required?
- Is employers' liability coverage required?
- Is there an exposure requiring special endorsements? (e.g., alternate employer, maritime, Federal Employers Liability Act (FELA), etc.)
- Is a waiver of subrogation required?
- Does the work require worksites in multiple states?

**Commercial Automobile**

- Is coverage required for "any auto"?
- Is there an exposure requiring special endorsements?
- What are the required coverage limits?
- Is an additional insured or loss payee required?
- Is physical damage coverage required?
- Is non-owned and hired coverage required?

**Commercial General Liability**

- What are the required coverage limits?
- Is the general aggregate required to apply per job, location or contract?
- Is the coverage form occurrence or claims-made?
- Is an additional insurance status required?
- Is additional insured coverage to be provided on a primary and noncontributory basis?
- Is a waiver of subrogation required?
- Is there a requirement for the deletion of policy exclusions?
- Is there a policy period extension required for specific coverage?
- Are there any additional exposures requiring special endorsements?
- Are any marine, aviation or crime exposures adequately addressed?

**Property Coverage**

- What are the required coverage limits and sub limits for each type of covered property?
- What are the requirements for causes of loss?
- Is boiler and machinery coverage required?
- Is inland marine coverage required?
- Is builder's risk or in the course of construction coverage required?
- Is ocean cargo coverage required?
- Is motor truck cargo coverage required?
- Is there a loss payee requirement?
- Is a waiver of subrogation required?
- Is there a mortgage?
- Is earthquake or flood coverage required?

**Professional Liability (Errors & Omissions)**

- Is the coverage claims made or occurrence? If claims made, is the retro data early enough to cover the operating period and any associated claims?
- What are the required coverage limits?
- Is the general aggregate required to apply per job, location or contract?
- Is there a policy period extension?

**Pollution Liability/Environmental Impairment Liability**

- Is the coverage claims made or occurrence?
- What are the required coverage limits?
- Is the general aggregate required to apply per job, location or contract?
- Is there a policy period extension?

# GLOSSARY

Much of the material in this glossary was provided courtesy of the International Risk Management Institute (IRMI).

**abatement**—The act or process of diminishing the presence of a pollutant (e.g., asbestos or lead) in either degree or intensity.

**accident**—Unplanned injurious or damaging event that interrupts the normal progress of an activity. An accident may be seen as resulting from a failure to identify a hazard or from some inadequacy in an existing system of hazard controls. See “disease,” “incident” and “occurrence.”

**actual cash value (ACV)**—In property and auto physical damage insurance, one of several possible methods of establishing the value of insured property to calculate the premium and determine the amount the insurer will pay in the event of loss. Although the term is seldom defined in the policy, the generally accepted insurance industry definition of actual cash value is the cost to repair or replace the damaged property with materials of like kind and quality, less depreciation of the damaged property. Courts have differed as to whether depreciation includes economic obsolescence as well as actual physical depreciation.

**additional insured**—A person or organization not automatically included as an insured under an insurance policy, but for whom insured status is arranged, usually by endorsement. A named insured’s impetus for providing additional insured status to others may be a desire to protect the other party because of a close relationship with that party (e.g., employees or members of an insured club) or to comply with a contractual agreement requiring the named insured to do so (e.g., customers or owners of property leased by the named insured).

**additional insured endorsement**—Policy endorsement used to add coverage for the additional insured by name (e.g., mortgage holders or lessors). There are a number of different forms intended to address various situations, some of which afford very restrictive coverage to the additional insured.

**admitted insurer**—Insurer licensed to do business in a particular state, regardless of where the insurer is domiciled.

**aggregate**—A limit in an insurance policy stipulating the most it will pay for all covered losses sustained during a specified period of time, usually a year. Aggregate limits are commonly included in liability policies. While not often used in property insurance, aggregates are sometimes included with respect to certain catastrophic exposures (e.g., earthquake and flood).

**A.M. Best rating**—An evaluation published by A.M. Best Company of all life, property and casualty insurers domiciled in the United States and U.S. branches of foreign property insurer groups active in the United States. The ratings are often used to determine the claims paying ability, suitability, service record and financial stability of insurance companies. Other rating agencies include Standard & Poor’s, Conning & Company, Fitch and Moody’s.

**bodily injury liability insurance**—Protection against loss arising out of the liability imposed on the insured by law for damages due to bodily injury, sickness or disease, including resulting death.

**boiler and machinery insurance**—Coverage for loss due to mechanical or electrical breakdown of covered equipment (typically referred to as covered “objects”). Coverage applies to the cost to repair or replace the equipment and any other property damaged by the equipment breakdown. Resulting business income and extra expense loss is often covered as well. Traditional boiler and machinery insurance is increasingly being replaced by equipment breakdown insurance, in part simply because the title is more descriptive of the coverage provided.

**borrowed servant rule**—A common law legal doctrine stipulating that if an insured borrows a worker or employs a person on only a temporary basis, the insured can be held liable for the borrowed employee’s actions, despite the fact that a permanent employee-employer relationship does not exist.

**broker**—Individual or organization representing an insured in soliciting, negotiating or buying coverage, and rendering services related to these functions. By law, a broker also may be an agent of the insurer for certain purposes, such as delivery of a policy or collection of premiums.

**builders risk**—A type of property insurance that indemnifies for loss of, or damage to, a building under construction; the loss must be caused by specified or named perils.

**business interruption insurance**—Insurance covering loss of income suffered by a business as a result of not being able to use property damaged by a covered cause of loss, during the time required to repair or replace it.

**cancellation**—The termination of an insurance policy or bond, before its expiration, by either the insured or the insurer. Insurance policy cancellation provisions require insurers to notify insureds in advance of canceling a policy and stipulate the manner in which any unearned premium will be returned.

**certificate holder**—An entity which is provided with an insurance certificate as evidence of the insurance maintained by another entity.

**claims made policy**—A type of insurance policy that covers claims first made, reported or filed during the year the policy is in force or during specified extended periods.

**comprehensive automobile liability insurance**—Generic term for liability insurance designed to cover a variety of an insured’s automobile liability exposures for bodily injury and property damage.

**commercial general liability (CGL) policy**—A standard insurance policy issued to business organizations to protect them against liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations; and advertising and personal injury liability.

**commercial property program**—A portfolio of coverage forms, policy writing procedures and rating rules for insuring the property loss exposures of business entities.

**completed operations**—Liability a contractor might incur from improperly performed work after the job is completed.

**contractual liability**—Liability of others assumed by agreement, and that would not otherwise exist.

**disease**—In an insurance policy, a disease often is either any one of a specified list of pathological conditions or any illness that requires hospitalization.

**effective date**—The date on which an insurance binder or policy goes into effect and from which time protection is provided.

**endorsement**—An addendum to an insurance policy that changes the original policy provisions. Endorsements may serve any number of functions, including broadening the scope of coverage, restricting or limiting the scope of coverage, clarifying the application of coverage to some unique exposure, adding other parties as insureds or adding locations to the policy.

**errors and omissions (E&O) insurance**—An insurance form that protects the insured against liability for committing an error or omission in performance of professional duties. Generally, such policies are designed to cover financial losses rather than liability for bodily injury and property damage.

**estoppel**—A legal doctrine restraining a party from contradicting its own previous actions if those actions have been reasonably relied on by another party.

**excess insurance**—A form of insurance providing coverage and/or limits above those provided by a specific policy (referred to as the “underlying” policy).

**expiration**—The termination date of an insurance contract.

**extra expense coverage**—Coverage for expenses in excess of normal operating expenses that are incurred to continue operations after property damaged by a covered loss. Extra expense coverage is appropriate for service businesses whose property is not essentially income producing and for businesses that would find it imperative to continue operating regardless of cost perhaps by using a competitor’s facilities.

**fire legal liability coverage (fire damage insurance)**—Coverage of a tenant’s liability for damage by fire to the rented premises the tenant occupies. Such coverage is usually provided as an exception to policy exclusions applicable to property in the insured’s care, custody or control. Under the standard commercial general liability (CGL) policy, fire legal liability of the named insured is covered subject to the “damage to premises rented to you” limit.

**general aggregate limit**—Under the standard commercial general liability (CGL) policy, the maximum limit of insurance payable during any given policy period for all losses other than those arising from the products and completed operations hazards.

**general liability insurance**—Insurance protecting commercial insureds from most liability exposures other than automobile and professional liability.

**hold harmless agreement**—Contract provision under which the potential legal liability of one party for damages payable because of a future loss is assumed by another party to the contract.

**incident**—An event that may or may not cause accidental loss, depending on the particular circumstances of the event. An accident is a type of incident that results in accidental loss, but not all incidents are accidents.

**indemnification**—The agreement of one party to assume financial responsibility for the liability of another party.

**inland marine coverage**—Exposure to loss of property capable of being transported from place to place either in transit or wherever the property may be located (except on a body of water).

**insurance**—Contractual relationship that exists when one party agrees to assume financial responsibility to another for loss caused by designated contingencies. The first party is called the insurer; the second, the insured; the contract is the insurance policy; the legal consideration is the premium; the risk of loss is the exposure; and the contingency is the happening of the insured event.

**Insurance Service Office (ISO)**—Organization that provides advisory rating, actuarial, statistical and other services related to property and casualty insurance (except workers compensation) and supported by insurer subscription fees.

**insured**—Party to an insurance contract for whom an insurer has agreed to assume financial responsibility for losses. See “insurance.”

**insurer**—Party to an insurance contract that has agreed to assume financial responsibility for losses. See “insurance.”

**lessee**—The person to whom a lease is granted.

**lessor**—The person granting the lease.

**liability**—The obligation to pay a monetary award for injury or damage caused by one’s negligent or statutorily prohibited action.

**liability limits**—The stipulated sum or sums beyond which an insurance company is not liable for payments due to a third party.

**loss payee**—A property insurance policy provision that authorizes the insurer to make a loss payment to a party other than the insured to the extent that the party (loss payee) has an insurable interest in the property.

**manuscript**—Insurance terms to include specific coverages or conditions not provided by standard policy language.

**monopolistic state**—Jurisdictions where an employer must obtain workers compensation insurance from a compulsory state fund or qualify as self-insurer.

**mortgagee clause**—Property insurance clause that authorizes the insurer to pay a loss to the mortgagee and/or the insured, as their interests may appear at the time of the loss. This clause also may specify other rights and duties of the mortgagor and mortgagee regarding the insurance.

**negligence**—A tort; the failure to do something that a reasonable person would do under the circumstances, or doing something a reasonable person would not do. The elements of this tort include: a legal duty to use reasonable care under the circumstances; a breach of this duty; a direct causal link between the breach and the plaintiff’s harm; and resulting harm to the plaintiff.

**nonadmitted insurer**—Insurer not licensed to do business in a particular jurisdiction.

**notice of cancellation/nonrenewal clause**—Provision stating that insurers are to provide advance notice of cancellation or nonrenewal of an insurance policy.

**occurrence policy**—A type of insurance policy covering claims which occur during the policy period.

**ongoing operations**—Work or other business activity that has not been completed or abandoned.

**personal and advertising injury**—Injury, including consequential bodily injury, arising out of a list of specified offenses.

**personal property**—Tangible property not classified as real property.

**policyholder**—Entity in possession or ownership of the insurance policy.

**policy period**—The term or duration of the policy.

**primary insurance**—The first policy applicable to a claim.

**products liability**—The liability for bodily injury or property damage incurred by a merchant or manufacturer as a consequence of some defect in the product sold or manufactured.

**products-completed operations**—The liability for bodily injury or property damage arising out of the insured’s products or business operations conducted away from the insured’s premises once those operations have been completed or abandoned.

**professional liability**—Coverage designed to protect professionals against liability incurred as a result of errors and omissions in providing professional services.

**property insurance**—Insurance that indemnifies the owner or user of property for losses caused by a covered peril.

**real property**—Land and most things attached to the land, such as buildings and vegetation.

**remediation**—Cleanup or other methods used to remove or contain a toxic spill or hazardous materials.

**replacement cost coverage**—The cost of replacement with property of like kind and quality without deduction for depreciation.

**retention**—Potential dollar amount of loss from the exposure that an insured retains.

**retroactive date**—A provision found in claims made policies that provides coverage for injuries or damage that occur after the specified date, when the claim is made during the policy period.

**risk**—Possibility of loss or exposure to loss.

**risk management**—The practice of identifying and analyzing loss exposures and taking steps to minimize the financial impact of the risks they impose.

**risk professional**—An individual assigned all or part of responsibility for managing an organization's risks.

**self-insured retention (SIR)**—Portion of a loss exposure assumed by an entity. See "retention."

**subrogation**—The common law right to recover damages or loss from the party responsible for causing them.

**umbrella liability policy**—A form of excess liability insurance affording higher limits of coverage for many diverse liability exposures, including those not covered by underlying insurance.

**vicarious liability**—Liability imposed on a party because of that party's relationship to a wrongdoer.

**waiver**—The surrender of a right or privilege.

**waiver of subrogation**—A relinquishment the common law right to recover damages or loss from the party responsible for causing them.

### Additional Resources

*Glossary of Insurance and Risk Management Terms.* International Risk Management Institute Inc., Dallas, TX.

*Risk Management Glossary.* Risk and Insurance Management Society, New York, NY.

*Black's Law Dictionary.* West Publishing Co., St. Paul, MN.

*Insurance and Risk Management Glossary.* Richard V. Rupp, CPCU. NILS Publishing Chatsworth, CA.