



Current Articles 2009 – May

Certificates of Insurance

The purpose of Certificates of Insurance is to fulfill confirmation of insurance requirements to Third Parties and which may include limits of insurance, names of insureds, what is included in coverages and in some cases, confirmation of any contractual or whether hold harmless clauses are addressed. A Certificate of Insurance **does not replace a policy wording!** Certificates are not intended for insureds or additional insureds. For these entities, a policy (or interim Binder) should be forwarded as requested or required. A Certificate does not include all the conditions, exclusions, etc. which the insureds are entitled to. If a Certificate is forwarded to an Insured and without a follow-up with a policy, this insured's defense will be that he was not made aware of the applicable exclusion, and the courts have upheld that argument.

These comments and the following are only a few of the comments and suggestions from my recent 1 hour seminar – Certificates of Insurance.

To prevent a possible E & O, a broker should be very careful in completing a Certificate that is supplied by a Third Party. This frequently happens with lessors of equipment, auto leasing companies, landlords, municipalities, etc. Many of these certificates may have guarantees of certain conditions which may not be covered by the policy. Some of these Certificates may have originated from USA parent companies and the conditions may not be covered by a Canadian policy wording. This frequently happens with truck leasing companies whose certificates do not comply with our OAP 1. These Certificates may require a longer notification of cancellation, having the leasing company added as an Additional Named Insured, a guarantee to notify if the policy is changed or reduced, etc.

The IBC have advised that "if a Certificate is issued which thereby alters the coverage, the Certificate becomes a contract which may not be accepted by the insurer. This may result in an E & O claim for the broker!"

When issuing certificates in relation to liability coverages it is a recommended practise that all staff members use a standardized form such as the CSIO (Centre for Study of Insurance Operations) Certificate of Insurance and not to accept a Third Party form.

One area of recent and with the more frequent application of Aggregate Limits of Liability is the provision of some Third Party Certificates confirming that the limit shown will be maintained during the term of the Certificate. This would mean that if a claim occurred for the insured and perhaps with a different Third Party and which reduces the remaining Aggregate Limit, one of three situations could be interpreted by the court: firstly, that the insured would have to notify the Third Party Certificate Holder that the limit has been reduced; secondly, to reinstate the limit for the benefit of the certificate holder or thirdly, to delete the Aggregate limits entirely. Neither of these latter solutions will be acceptable to the insurer and with regard to the first situation, do you want your client to disclose to a Certificate holder that he has had a liability claim and perhaps the amount? What about privacy rules? The CSIO Certificate handles this by stating "**Limits Shown may have been reduced by paid claims.**"

The CSIO form also addresses to a Certificate holder of a mid-term cancellation as follows:
"Should any of the described policies be cancelled before the expiration date thereof, the issuing company will endeavour to mail _____ days written notice to the certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

If a Third Party insists on a certain certificate to be filed and it does not fit with the policy wording, the best advice is to either send it the underwriter to sign, prepare your own standard certificate or refuse to issue their certificate. This may cost some business but may prevent a costly E & O.

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