Additional insured coverage is one of the most complex, controversial, and disputed issues in construction risk and insurance. The scope of additional insured coverage provided can be influenced by so many factors, including policy language, contract language, public policy, and state laws. This workshop examines controversial issues such as changes in standard additional insured endorsements, pros and cons of blanket endorsements, application to joint ventures and limited liability companies, the impact of capping additional insured coverage, and more. The role of indemnity agreements and certificates of insurance in shaping additional insured coverage will also be examined.

To print on both sides of the page, set your printer for duplex printing.
IN AN INSTANT, CALVIN BERGER SAW THE VALUE OF IN-CAB BEHAVIOR TRAINING FROM CNA

When a recent safety webinar revealed that 280,000 drivers are involved in serious accidents every year, Calvin Berger of Calberg Contracting took CNA’s recommendation to heart, and posted placards restricting cell phone use in each of his company’s vehicles. Now Calberg Contracting is filing fewer claims, and Calvin’s enjoying a handsome bonus for worker safety and performance.

When you’re looking for risk control programs that keep contractors dialed in to relevant industry trends … we can show you more.

To learn more about CNA’s coverages and programs for building contractors, contact your independent agent or visit www.cna.com.

JUNE 5TH, 11:08 A.M.

A STAGGERING STATISTIC INSPIRES A LIFE-SAVING RULE

The examples provided in this material are for illustrative purposes only and any similarity to actual individuals, entities or places is coincidental. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. CNA is a registered trademark of CNA Financial Corporation. Copyright © 2014 CNA. All rights reserved.
Bill Wilson  
Associate Vice President of Education and Research,  
Founder and Director of the Virtual University  
Independent Insurance Agents & Brokers of America

Mr. Wilson is the associate vice president of education and research and founder and director of the Virtual University of the Independent Insurance Agents & Brokers of America (IIABA), the country’s largest trade association of independent insurance agents. He is the former director of education and technical affairs for the Insurers of Tennessee and prior to that was employed by Insurance Services Office, Inc. (ISO). Mr. Wilson is a graduate of the Illinois Institute of Technology with a BS degree in fire protection and safety engineering.

Mr. Wilson speaks frequently at insurance seminars and conferences and has been the top-rated presenter at several Chartered Property Casualty Underwriter (CPCU) national conventions. He has published dozens of technical articles and manuals and has authored articles in various business and trade periodicals, as well as mainstream publications such as Readers Digest, Kiplinger’s, Money, and the Wall Street Journal. He has also served as an expert witness in litigation.
“The Additional Insured Illusion…

…and Other Feats of Contractual Risk Transfer and Certificates of Insurance Magic Even David Copperfield Couldn’t Pull Off!”

Presented By:
Bill Wilson, CPCU, ARM
Assoc. VP, Education & Research
Independent Insurance Agents & Brokers of America

Q: When you see this on a certificate of insurance, what does it tell you?

Welcome to reality!
“The AI Illusion...”
Welcome to reality!

Answer:

Outline of issues

- Shifting the Risk
- Indemnification Issues
- Insurance Issues...CGL Policies
- Insurance Issues...Additional Insureds (including 2013 ISO changes)
- Insurance Issues...Priority of Coverage
- Certificates of Insurance Issues (as time permits)
- Post Seminar Symposium: Exploration of Alternative Career Opportunities
  (Meeting at the cocktail reception)
The Road to Awareness

“Teach a Man to Fish”

What's the Problem?
E&O statistics 2005-2014

<table>
<thead>
<tr>
<th>Policy Type</th>
<th>10-yr Ave.</th>
<th>Low</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>CGL</td>
<td>60%</td>
<td>35%</td>
<td>67%</td>
</tr>
<tr>
<td>WC</td>
<td>15%</td>
<td>8%</td>
<td>18%</td>
</tr>
<tr>
<td>Auto</td>
<td>5%</td>
<td>0%</td>
<td>12%</td>
</tr>
<tr>
<td>Property</td>
<td>4%</td>
<td>0%</td>
<td>29%</td>
</tr>
</tbody>
</table>
What’s the Problem?
E&O statistics 2005 - 2014

<table>
<thead>
<tr>
<th>Error Type</th>
<th>10-yr Ave.</th>
<th>Low</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>AI/loss payee</td>
<td>39%</td>
<td>24%</td>
<td>58%</td>
</tr>
<tr>
<td>Misrepresentation</td>
<td>29%</td>
<td>14%</td>
<td>48%</td>
</tr>
<tr>
<td>Failure to procure</td>
<td>9%</td>
<td>4%</td>
<td>14%</td>
</tr>
<tr>
<td>Inacc. Policy status</td>
<td>8%</td>
<td>2%</td>
<td>27%</td>
</tr>
</tbody>
</table>

“What’s the Problem?
E&O and AIs...example

“Ask an Expert” question:

“In the past, we have not been individually adding Additional Insured endorsements, relying on them being an indemnitee in the ‘insured contract’ wording of the CGL or BOP policies, which gives them AI status without endorsing that on the policy. Our state now has a law that says if we put AI status on the certificate, we MUST have an AI endorsement added to the policy. Is this correct or can we still rely on ‘indemnitee in an insured contract’ and not go to the trouble or expense of using AI endorsements?” – Texas agent
What’s the Problem?
E&O and Al...example

- Upstream party requires “Owner and architect are additional insureds per CG 20 10 07 04” shown on a certificate of insurance

- Problem: The CG 20 10 provides AI status only for claims arising “in the performance of your ongoing operations for the additional insured(s).”

- The agent believes the CG 20 07 is the appropriate AI endorsement for the architect

- Problem: The CG 20 07 applies to engineers and architects “engaged by you”

- Solution: The agent should use the CG 20 32

What’s the Problem?
E&O statistics 2004 - 2012

<table>
<thead>
<tr>
<th>Source of Claims</th>
<th>All claims</th>
<th>COI claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent sued by carrier</td>
<td>6%</td>
<td>10%</td>
</tr>
<tr>
<td>Agent sued by 3rd party</td>
<td>4%</td>
<td>32%</td>
</tr>
<tr>
<td>Agent sued by insured</td>
<td>90%</td>
<td>58%</td>
</tr>
</tbody>
</table>

#IRMI2015
What’s the Problem? The “RTFP” Doctrine

• The importance of “RTFP”
• “Does ‘a CGL policy’ cover....”
• “CG xx xx xx xx or its equivalent” or “no more restrictive than...”

• Is It ISO or Is It Memorex Insurance Company?
  • Test 1: Form number structure
  • Test 2: Form edition date
  • Test 3: Copyright notice
  • Good example
  • Bad example #1
  • Bad example #2

What’s the Problem? “RTFP” example

• Exclusions

What’s the Problem?
“RTFP” example

• ISO language:

• Proprietary insurer language:

“This insurance does not apply to...‘bodily injury’ to...An ‘employee’ of any insured....”

Contractual Liability
Requirements to Insure

• “Contractual liability coverage shall apply to all indemnity agreements.”
• “Contractual liability coverage is provided for all indemnity obligations of Subcontractor.”
• “General liability insurance includes blanket contractual.”
• “Policy includes Broad Form Contractual Liability coverage for contract with XYZ.”
• “All the requirements from Project Manual are covered by the Insurance Certificate.”
Contractual Liability
Requirements to insure

Contract requirement:

“To the fullest extent permitted by applicable law, Contractor shall **insure** and defend, indemnify, and hold harmless Owner and Agent and their respective officers, directors, members, employees, agents, shareholders, partners, joint venturers, affiliates, successors, and assigns from and against any and all liabilities, obligations, claims, demands, causes of action, losses, expenses, damages, fines, judgments, settlements, and penalties including, without limitation and without regard to the cause or causes thereof....”

Insurance requirement:

- 2004 ISO CGL policy with $1M/$2M Coverage A limits including P/CD coverage, $1M Coverage B, $5K Coverage C, and $50K FDLL
- Blanket contractual coverage (including coverage for the indemnity agreement)
- P/CD coverage to be maintained 2 years following completion of work
- Deletion of employee and contractual exclusion from PI coverage
- Broad Form Property Damage liability
- Independent Contractor liability
- Waiver of subrogation using CG 24 04 11 85 or equivalent
- At least 30 days notice of cancellation or material change
- Modification of “Other Insurance” clause of contractor’s CGL policy to clarify that it is primary and noncontributory to any insurance carried by the requestor or its customers
- Additional insured endorsement to be maintained for 2 years following completion of work identifying the following as additional insureds: “XYZ and its customers and all respective directors, officers, employees, agents, subsidiaries, divisions, affiliates and successors with respect to liability for bodily injury, property damage or personal and advertising injury caused in whole or in part by the acts or omissions of either you or the additional insureds.” (Note: This requires that the sole negligence of the AI be covered.)
**Blanket Contractual Liability Insurance**

Coverage applying to all liability assumed by the insured in contracts, whether reported to the insurer or not. Note that the term "blanket contractual liability insurance" does not address the extent of the transferred liability the policy covers, only that it is not necessary to report contracts to the insurer for listing in the policy. It is possible to have blanket broad form contractual liability insurance or blanket limited form contractual liability insurance. Contractual liability coverage was added to 1973 and earlier edition comprehensive general liability (CGL) policies by endorsement. Blanket broad form contractual liability coverage is incorporated into the basic provisions of the 1986 and subsequent commercial general liability (CGL) forms.

*Source: Glossary of Insurance and Risk Management Terms, International Risk Management Institute, Inc.*


**DEFINITION of 'Blanket Contractual Liability Insurance'**

Liability insurance that provides coverage for all contracts in which the insured is assuming liability. Blanket contractual liability insurance is most commonly used in situations in which a business is working with a third party, and especially if that third party is using the business’ property. The policy is designed to be automatically applicable to any agreement that the business may sign.

*Source: Investopedia Dictionary*

[http://www.investopedia.com/terms/b/blanket-contractual-liability-insurance.asp#ixzz3m7ZfB4eL](http://www.investopedia.com/terms/b/blanket-contractual-liability-insurance.asp#ixzz3m7ZfB4eL)
Does contractual liability override policy exclusions?

“Ask an Expert” question:

“We have an insured who leases a premises and while operating his backhoe, he accidentally damaged a door at the premises. The adjuster denied the claim under his CGL policy. We believe that his CGL contractual liability coverage should pay. He has a lease that makes him responsible for damages to the premises and a lease is an ‘insured contract’.”

---

**Contractual Liability “Broad Form Contractual”**

- **Broad form risk transfer**
  - Covers the indemnitee’s sole fault
  - **Insurance example:** CGL contractual liability “coverage”
- **Intermediate form risk transfer**
  - Covers the indemnitee’s direct and vicarious liability as long as the indemnitor has some liability
  - **Insurance example:** 2004 ISO AI endorsements
- **Limited form risk transfer**
  - Covers only the indemnitee’s vicarious liability for the indemnitor (no direct liability of the indemnitee)
  - **Insurance example:** Many insurer AI endorsements
**Additional Insured Issues**

**ISO AI end. edition dates**

- **CG 20 10** – ongoing operations AI endorsement

- **CG 20 37** – completed operations AI endorsement

- **CG 20 33** – “blanket” ongoing operations AI endorsement

- **CG 20 38** – new “blanket” ongoing operations AI endorsement
  (no privity of contract required for AI status)
  Edition: **2013**

- **CG 20 01** – new “primary and noncontributory” endorsement
  Edition: **2013**

---

**Additional Insured Issues**

**“Contractual privity” issue**

- **COI language requirement:**
  “XYZ Catering, Inc. (d/b/a XYZ Creations), ABC Sports & Entertainment LLC, ABC Holdings LP, the DEF Center, their respective principals, members, officials, officers, directors, shareholders, employees, and agents, their respective parent and affiliate companies and their respective Successors or Assigns as now or hereafter may be constituted and the Centennial Authority, the City of Raleigh, North Carolina, the State of North Carolina and their departments, divisions, commissions, and boards and their respective principals, members, officials, officers, directors, shareholders, employees, and agents have been named as additionally insured’s [sic] under said policy with respect to any legal liability arising out of the Licensee’s performance hereunder.”
Additional Insured Issues

“Contractual privity” issue

• New York trial court cases
  • Brooklyn Hosp. Ct. v. One Beacon Ins.
  • Cusumano v. Extell Rock, LLC
  • Skanska USA Building, Inc. v. Burlington Ins. Co.
• Illinois Court of Appeals
  • Westfield Insurance Company v. FCL Builders, Inc.

“Performance privity” issue

Includes copyrighted material of Insurance Services Office, Inc. (ISO)
© Insurance Services Office, Inc., 2012

#IRMI2015
Additional Insured Issues
“Performance privity”

• AI endorsement language (other than CG 20 26):
  “Such person(s) or organization(s) is an additional insured only with respect to liability...caused, in whole or in part, by...Your acts or omissions...or...The acts or omissions of those acting on your behalf...in the performance of your ongoing operations for the additional insured.”

• Westfield Insurance Company v. FCL Builders, Inc.
  “The plain language of the endorsement requires two conditions to be met in order for an entity to qualify as an additional insured under JAK’s policy with Westfield. First, the entity must be one ‘for whom you [JAK] are performing operations’.”

Additional Insured Issues
“Extent permitted by law”

Includes copyrighted material of Insurance Services Office, Inc. (ISO)
© Insurance Services Office, Inc., 2012
If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations

whichever is less.

If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

Free access to this article:
“Be Careful What You Ask For...Some Disturbing Changes to ISO’s 2013 Additional Insured Endorsements”
Additional Insured Issues

One last thing on changes

- ISO’s CG 20 10 and CG 20 37 don’t require a written contract or agreement
- In fact, they don’t require a contract or agreement at all (unlike MANY non-ISO AI endorsements)
- In fact, IF there is a contract or agreement, the coverage and limits afforded to the AI appear to be less than if there isn’t a contract or agreement.

---

Additional Insured Issues

“Primary and Noncontributory”

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

1. The additional insured is a Named Insured under such other insurance;
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

Who Is An Insured issue

- Cited by IRMI:
  *Bott v. J.F. Shea Co., Inc.*, 299 F.3d 508 (5th Cir. 2002)

  *How might this impact AI status?*
### Additional Insured Issues
#### Non-ISO AI endorsements

- Coverage is triggered by agency issuance of COI
- Only vicarious liability is covered
- Claims based on negligent supervision excluded
- Provides only excess coverage (not P/NC)
- Only ongoing operations are covered
- Professional liability exclusion
- Limit is lesser of policy limit or contract “requirement”

---

#### One insurer’s AI endorsement:

“This insurance shall apply as primary and not contributing with any insurance **carried by** such Additional Insured.”

#### Another insurer’s AI endorsement:

“Insurance provided under this policy shall apply on a primary basis and shall not seek contribution from any other insurance **available to** an additional insured added to this policy.”
A “Blanket Additional Insured Protection Endorsement” says:

“This insurance does not apply to any person or organization not specifically approved by us as an additional insured.”

One insurer’s AI endorsement:

“The limits of insurance applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this policy, whichever are less.”

Another insurer’s AI endorsement:

“The insurance provided will not exceed the lesser of the coverage and/or limits of this policy or the coverage and/or limits required by said contract or agreement.”
"The insurance afforded by this Additional Insured endorsement shall be limited to the liability required by the written contract to which this endorsement is subject."

- No reference to “agreement,” only “contract”
- What is the “liability required”? It doesn’t say “insurance required” so could it be interpreted to refer to an unlimited indemnity requirement?
- Should insurance be “subject to” a third-party contract?

---

- AI endorsement language cited by IRMI:
  “No coverage is provided to an additional insured for damages because of bodily injury to an employee of the named insured, whether suit is brought or claim is made by the employee or the parent, spouse, child or sibling of such employee or any entity seeking damages because of injury to such employee.”

- *Bayport Construction Corp. v. BHS Insurance Agency* (NY Ct. App. 2014)
  CGL employer’s liability exclusion applied to “‘Bodily injury’ to: (1) An employee of any insured arising out of and in the course of: (a) Employment by any insured.”
### Additional Insured Issues
#### Non-ISO AI endorsements

“This amendment applies only when you have agreed by **written ‘insured contract’** to designate the person or organization listed above as an additional insured subject to all provisions and limitations of this policy.”

- Commonly used ISO AI forms (other than the CG 20 33 and CG 20 38) have no WRITTEN contract requirement
- ISO forms refer to contracts (not just “insured contracts”) AND agreements

---

<table>
<thead>
<tr>
<th>3-page “Broad Form Additional Insured” endorsement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Used with contractors, owners/managers/lessors, equipment lessors, vendors, and others</td>
</tr>
<tr>
<td><strong>Question:</strong> Does this form provide ongoing AND completed operations?</td>
</tr>
<tr>
<td><strong>Poll of 10 experts:</strong></td>
</tr>
<tr>
<td>1 No</td>
</tr>
<tr>
<td>3 Yes</td>
</tr>
<tr>
<td>2 Yes AND No</td>
</tr>
<tr>
<td>2 Maybe</td>
</tr>
<tr>
<td>1 I have no idea</td>
</tr>
<tr>
<td>1 This endorsement proves why most insurers should leave policy form drafting to ISO</td>
</tr>
</tbody>
</table>
**Additional Insured Issues**

**Non-ISO AI endorsements**

- Covers AI vicarious liability only
- Expressly excludes any direct liability of AI
- “Our obligation to provide coverage to an ‘additional insured’ is further limited by the interest of the ‘additional insured’ as defined below.

  “Interest of the Additional Insured(s) Defined:

  “Contractor”

---

**Vicarious liability revisited**

- Coverage is provided “...only to the extent that ‘additional insured’ is being held responsible for the acts, omissions and/or negligence of the ‘named insured’.”
- “The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.”
- “The coverage afforded hereunder is limited to imputed liability resulting solely from the conduct of the named insured for which the additional insured is held responsible and liable.”
- “The coverage afforded to the additional insured is limited solely to the additional insured’s ‘vicarious liability’ that is a specific and direct result of your conduct.”

• Construction contract required indemnification of “owners, officers, directors, shareholders, partners….”

• The policy covered “[a]ll owners, contractors…who require that you add them as an Additional Protected Person in a specific contract entered into by you.”

RTFP!

Subcontractor “Special Condition” or “Warranty” Endorsements

• Require the GC to contractually require sub to have a CGL with the GC as an additional insured

• If the sub does not have a CGL policy or it does not extend AI coverage to the GC, the GC’s own policy does not cover the claim
**Additional Insured Issues**

**Auto AI endorsements**

- The ISO BAP and the CA 20 48 – Designated Insured endorsement
  - What does the CA 20 48 do?
  - The ISO BOP and the BP 04 04 – Hired Auto and Non-Owned Auto Liability endorsement
  - Non-ISO CGL H/NO coverage

- “Primary and noncontributory” requirement
  - Primacy under both ISO BAP and BOP programs is governed primarily by auto ownership
  - The BAP (not BOP) has some contractual liability primacy under the “insured contract” provision for certain situations (defense within limits?)
  - Some non-ISO BAP AI forms say they are “primary and noncontributory”
  - Some state laws might govern
  - Many subs insure auto exposures via PAPs

---

**Statement required by certificate requestor in the ACORD 25 Description of Operations (DOO) field:**

“Workers compensation, general liability and automobile liability contain... additional insured status (except additional insured status on workers compensation) in favor of the additional insureds as required by the contract, for ongoing operations and completed operations.”

- AI status on auto liability?
- “as required by contract”?
- Completed operations on auto liability?
Q: So, when you see this on a certificate of insurance, what does it tell you?

“It is a tale, told by an idiot, full of sound and fury, signifying nothing.”

Macbeth
Certificates of Insurance

What a certificate ISN’T

• If a certificate purports to amend, extend or alter policy forms, it is in effect an endorsement
• Which means that it must be filed as a policy form with the DOI

• So, are certificates “actionable” against the issuer?

Certificates of Insurance

Legal issues

• Bases for judicial or regulatory relief for alleged certificate errors
  • Contract law
  • Detrimental reliance
  • Fraud laws
  • Unfair trade practices laws
• Case law
• State laws and regulations
The bottom line...

If it's not illegal, a misrepresentation of policy terms, or a violation of an agent's authority, what you place on a COI is a business decision.

"Be wary of the man who urges an action in which he himself incurs no risk."

– Joaquin Setani

But....

“Any time you attempt to summarize policy language on a certificate of insurance, you are opening yourself up to the possibility of allegations that you have misrepresented policy terms. Many coverages, exclusions, and conditions do not lend themselves to one-sentence summary statements and the failure to adequately and completely express such policy terms can result in successful E&O claims, allegations of fraud, and censure (or worse) by insurance regulators.”

– Insurance defense attorney
Certificates of Insurance

The spawn of satan...

COI supplements such as...
- Insurance “Warranty” statement
- “Pre-qualification” documents
- “Coverage verification” forms
- Agent “affidavits”
- “Coverage questionnaires”
- Broker “affirmations”
- “Compliance checklists”

“A properly executed copy of this document shall be legally binding as a Carrier Certificate of Insurance Form.”

Certificates of Insurance

Statements required on COIs

From a NY village:

Liability Insurance Requirements

Effective immediately: all liability insurance forms must indicate that

“NO EXCLUSIONS APPLY”

This must be clearly indicated on each certificate of insurance submitted with every building permit application. No application will be accepted with certificates that do not contain these words.
Certificates of Insurance
Statements required on COIs

• “Additional insured status provided as per construction contract.”
• “Additional insured status is provided as per written contract.”
• “ABC is an Additional Insured with respect to General Liability, as required by written contract.”
• “[Policy] covers contracts without exception that Subcontractor has signed with Contractor or is going to sign....”
• “Policy includes Contractual Liability and Pollution Liability.”

Certificates of Insurance
Statements required on COIs

• “Comprehensive form of general liability provided which includes personal injury with Employment Exclusion deleted.”
• Insurer will provide written notice of any reduction of coverage with reasonable promptness.”
• “General liability insurance must include blanket contractual, broad form property damage, and coverage for independent contractors.”
• Hotel attorney wanted agent of insured renting a hotel meeting room to show the CGL limit on a certificate as “Enough”.
• Fire damage legal liability (FDLL) requirements:
  • FDLL requirement of $50,000...for an $80 snow shoveling job
  • FDLL requirement of $500,000...insured was a paving contractor repairing a parking lot
  • FDLL requirement of $1,000,000...insured was a building contractor and project was under $500,000

• Special events policy was written without an aggregate...the certificate requestor demanded that an aggregate limit be shown on the certificate

• “Policy covers Certificate Holder without restrictions or limitations based on negligence.”
• “Other Insurance clause in policy states this insurance is primary.”
• “There are no claims (pending or paid) that could significantly reduce the aggregate.”
• “For those policies containing an aggregate, as soon as loss activity (paid or reserve) depletes the aggregate by 50% or more, written notice will be sent to the Contractor by certified mail.”
<table>
<thead>
<tr>
<th>Statements required on COIs</th>
</tr>
</thead>
<tbody>
<tr>
<td>• “Other States endorsement included.”</td>
</tr>
<tr>
<td>• “Assault and Battery is not excluded.”</td>
</tr>
<tr>
<td>• “Additional insured endorsements do not contain any restrictions.”</td>
</tr>
<tr>
<td>• “[Lender] is ‘additional named insured’ on property, business interruption, general liability, and auto policies.”</td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>Statements required on COIs</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Umbrella (excess) liability insurance is ‘Following Form’ to the General Liability Policy (meaning no additional exclusions that aren’t already on the CGL policy). Y or N.”</td>
</tr>
<tr>
<td>• Many/most umbrella and excess policies have exclusions or an absence of coverage for exposures covered by underlying policies</td>
</tr>
<tr>
<td>• An exclusion for damage to rented premises is common, with no exception for FDLL or the ISO CGL’s open perils coverage for 7 days or less</td>
</tr>
<tr>
<td>• Defined terms such as BI and PD are often different</td>
</tr>
<tr>
<td>• Verify this with IRMI’s CUP comparisons</td>
</tr>
</tbody>
</table>

---

#IRMI2015
Certificates of Insurance
Speaking of ACORD forms...

- ACORD 25 edition dates: 11/77, 01/79, 02/84, 08/84, 11/85, 03/88, 11/89, 07/90, 03/93, 01/95, 07/97, 08/01, 01/09, 09/09, 05/10, 01/14
- Federal copyright law
- ACORD’s licensing agreement
- State filing requirements (22+ states)
- Agency/company agreement

Certificates of Insurance
Sending COIs to insurers

- *Marlin v. Wetzel County Board of Education*, 569 S.E.2d 462 (West Virginia Ct. App., 2002)
- “[T]he insurance company asserted that it never received the certificate of insurance or any other documents suggesting the insurance policies needed to be amended.”
- “[T]he insurer argues that it had no knowledge of the certificate’s existence....”
Certificates of Insurance
Sending COIs to insurers


  “Each of the following is added as an Additional Insured...[a]ny general contractor, subcontractor or owner for whom you are required to add as an additional insured on this policy under a written construction contract or agreement where a certificate of insurance showing that person or organization as an additional insured has been issued and received by [NGM] prior to the time of loss.”

Certificates of Insurance
Sending AI ends. to AIs

- *Admiral Insurance Company v. Cresent Hills Apartments*, 328 F.3d 1310 (U.S. Ct. App. 11 Cir. 2003), citing:


  “…an insured has a duty to take certain steps for its own protection such as reading their policies, certificates of insurance or any cancellation notices in their possession.”

- “An insured has a duty to read the insurance policy and is charged with knowledge of its provisions.”
- “The Court concludes that [the client], claiming to be an additional ‘insured’ under [the policy], should be held to the same obligation as a named insured to review a policy of insurance on which it seeks to rely, and its reliance solely on the agent’s certificate of insurance is not reasonable under the circumstances....”

Alabama Electric Cooperative (cont’d)

- “Where an entity requires another to procure insurance naming it an additional insured, that party should not rely on a mere certificate of insurance, but should insist on a copy of the policy.” – Couch on Insurance (3d ed. 1997)
- “Thus, the Court finds that Plaintiffs’ reliance upon [the insurance broker’s] representation of [the client’s] additional insured status was not reasonable. Accordingly, as a matter of law, Plaintiffs’ claims for negligent and fraudulent misrepresentation fail.”
“The AI Illusion...”

Questions?

bill.wilson@iiaba.net
T1. The Additional Insured Illusion

<table>
<thead>
<tr>
<th>Rating scale for all questions:</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 = Excellent</td>
</tr>
</tbody>
</table>

Overall rating for this workshop?  

<table>
<thead>
<tr>
<th>4</th>
<th>3</th>
<th>2</th>
<th>1</th>
<th>0</th>
</tr>
</thead>
</table>

Bill Wilson

<table>
<thead>
<tr>
<th>Preparation and quality of information</th>
<th>4</th>
<th>3</th>
<th>2</th>
<th>1</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy and enthusiasm of delivery</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Educational focus (not a sales pitch)</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

Comments:

_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________

To enter the drawing for $500, affix your personal bar code label here or complete this evaluation online.