

Giving Notice: New ACORD Changes for Certificates of Insurance

by Robert Horkovich and Pamela Hans

Companies of all sizes and across virtually all industries routinely rely on certificates of insurance as proof that their counterparty, vendor or supplier has insurance, including an additional insured endorsement that may be required by contract. The certificate of insurance not only shows the types of insurance policies, limits of insurance and policy period, but also requires the additional insured or certificate holder to be notified when the insurance policy is cancelled. Specifically, the “old” ACORD certificate of insurance stated:

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, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

Recently, the ACORD certificate and notice requirement was fundamentally changed. Instead of requiring that the certificate holder receive notice of cancellation, the form now states:

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Consequently, unless the insurance policy itself requires that a certificate holder receive notice of cancellation, no such notice need be provided. As a result, an additional insured who relied on the certificate of insurance as evidence of insurance and of its status as an additional insured is no longer guaranteed that it will receive notice of cancellation unless the policy itself affirmatively requires such notice.

The question now becomes, what can a prudent company do to ensure that it receives notice that an insurance policy has been cancelled? Policyholders have tried at least three different approaches: 1) request that the insurance company issue the “old” certificate; 2) require the counterparty responsible for purchasing the insurance to provide notice of cancellation; and 3) request an additional insured endorsement that requires the insurance company to notify the additional insureds of cancellation. Each approach has its pros and cons.

An insurance company is unlikely to issue an out-

dated certificate of insurance. Brokers and insurance companies may respond that they are unable to use the “old” certificate of insurance without approval by state regulators or because of other licensing requirements. While it may be possible to have regulators approve a different certificate that includes the notice of cancellation provision, it is unclear whether insurance companies are willing to seek regulatory approval to use a certificate of insurance form that differs from the current ACORD form.

While requiring a counterparty to provide notice of cancellation may have initial appeal, this solution may not be ideal in all situations. A counterparty’s failure to notify you of cancellation may give rise to a breach of contract claim and damages, but it may not fully address the situations in which your company may be in breach of its obligations, whether in keeping with the terms of its own insurance, other contract requirements or bid requirements, if insurance is cancelled. While any such breach of contract dispute is pending, your company may also have to fund defense and other payment obligations that would otherwise have been insured under the insurance policy. Careful drafting of insurance, indemnity and other risk transfer provisions, and a thorough assessment of the counterparty’s ability to pay, may reduce the chances that your company will be left holding the bag if an insurance policy is cancelled without notice.

A third — and perhaps better — way to avoid the pitfalls created by the changes in the ACORD form may be to require that your counterparty purchase an insurance policy that requires the insurance company to notify additional insureds of cancellation. Because not all insurance companies offer such additional insured endorsements or policy language, it is important to work closely with your broker to ensure that the correct additional insured form or description of the additional insured coverage requiring notification is reflected in the contract.

The change to the ACORD certificate of insurance that removes the notice of cancellation requirement emphasizes the importance of reading the fine print — both in the policy on which you are named and in your contract with the counterparty. Although it was previ-

ously possible for a certificate-holder to rely upon a certificate of insurance and the requirement that a certificate-holder or additional insured be notified of cancellation as proof that insurance is in force, that may no longer be the case. Policyholders should consult with their trusted advisors, including brokers and outside counsel, to identify the most effective way to ensure that their commercial contracts — including their counterparty's insurance policies — require that they be notified if insurance upon which they rely is

cancelled for any reason.

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