CAUTION FOR THE CONSTRUCTION EXECUTIVE—LEGAL AND FINANCIAL PITFALLS AHEAD

THREE REASONS YOU NEED TO KNOW ABOUT CHANGES TO ACORD 25—CERTIFICATE OF LIABILITY

A recent change to a common risk management activity poses new risks for you and your bottom line. Language in ACORD 25—Certificates of Liability was recently modified regarding notice of cancellation. Some may think, “That’s just paperwork.” But whether you are a construction executive for an owner, general contractor or subcontractor, you need to know about this important change. What you don’t know may cost you big money.

WHAT’S THE SIGNIFICANCE OF CERTIFICATES?
Construction contracts often contain a provision that requires a contractor working on behalf of another contractor or owner to hold harmless and indemnify the contractor or owner. To assure sufficient assets are available to back an indemnity, it is common for the general contractor or owner to contractually require the subcontractor to provide a certificate of insurance. That certificate provides evidence that the subcontractor has appropriate insurance coverage.
Changes in the ACORD 25—Certificate of Liability will impact how the holders of these certificates are notified if policies listed on the certificate are terminated before their expiration date.

**RECENT CHANGES TO ACORD 25—CERTIFICATE OF LIABILITY**

ACORD, the Association of Cooperative Operations Research and Development, has made a subtle but important change in the language of the most commonly used certificate of insurance, the ACORD 25—Certificate of Liability. The pending changes to ACORD 25—Certificate of Liability are a result of changes in state laws and regulatory guidance from state insurance departments.

The most significant change in the Certificate of Liability is the change to the Notice of Cancellation. The old language provided a good faith attempt by the insurer to notify a certificate holder of cancellation of an insurance policy, not a promise or ability to actually notify certificate holders. The new version states the notice of cancellation of an insurance policy will be delivered only in accordance with the policy provisions. The problem is there are currently no provisions written into liability insurance policies to notify certificate holders about early termination.

**WHAT DO THESE CHANGES MEAN FOR YOU AND YOUR BUSINESS?**

In short, this change can mean possible breach of contract if you are a subcontractor. It means a potential loss of coverage if you are a general contractor. That’s a costly risk.

If you’re a subcontractor and no provision exists in your insurance policy to provide advance notice to third parties, then insurance brokers/agents cannot say that on the certificate. If no provision for cancellation is provided in the certificate, then you may be out of compliance with the construction contract and in breach of contract.

General contractors have a legitimate need to be notified if the contracted party’s insurance terminates before the natural expiration date. With advance notice, they can make arrangements to ensure the coverage provided by the additional insured status continues. But without an ability to be notified, the general contractor increases the risk the subcontractor’s insurance will not be there at the time of loss.

“the forms differ vastly from one carrier to the next as carriers adopt different philosophies”
KEY POINTS EVERY CONSTRUCTION EXECUTIVE NEEDS TO UNDERSTAND

The change to ACORD 25 puts a new risk in your risk management. Lockton strongly advises that the implications to the change to ACORD 25 be thoroughly vetted by your risk managers with counsel from your insurance agent or broker. In the meantime, the following are three key points, as a construction executive, that you need to understand:

1. **Only those named in an unendorsed insurance policy can be notified when a policy is cancelled.**

   New language in ACORD 25 states that notice of cancellation of an insurance policy will be delivered only in accordance with the policy provisions. If you have subcontractors on a project who have provided you a certificate of insurance, the insurance carrier is not obligated to tell you about a cancellation. Your firm will need to work with subcontractors and their insurance carriers to work out a new solution to be notified.

   If your firm works as a subcontractor, you still have an obligation to notify any firm you have a contractual requirement with regarding notice of cancellation. To avoid a possible breach of contract, your firm will need to find a solution that notifies certificate holders of cancellation.

2. **Attempting to modify a certificate of insurance to change or amend the terms of the policy is a violation of law in many states.**

   The certificate of insurance is intended to be a “snapshot” of the insurance policy. Some parties to a construction insurance policy may try to modify the certificate of insurance as a means to ensure notice of policy cancellation. However, any statement in a certificate of insurance that alters, amends, or extends coverage can be a violation of state law. Some states view misrepresentation on the certificate of insurance as a criminal offense while other states have the ability to impose monetary fines or penalties and/or restrict, suspend or revoke an agent’s license.

3. **The approach and philosophy in addressing this issue varies greatly by insurance carrier.**

   Carriers have developed proprietary forms to add a provision to the policy outlining how third parties will be notified when a policy terminates before the natural expiration date. In Lockton’s reviews to date, the forms differ vastly from one carrier to the next as different carriers adopt different philosophies in addressing this issue. This makes it imperative to fully read and understand how the form will meet the insurance requirements of the construction contract.
Lockton believes carriers need to include the right of certificate holders to receive notice of cancellation within the terms of a policy. We will do whatever we can within the state law and regulations to assist our clients in complying with their construction contract terms and conditions. The Construction Services Group at Lockton has been tracking and monitoring changes to ACCORD 25 since 2009. This includes extensive research to date on the various options and combination of components in the proprietary forms that have been developed by 22 different insurance carriers.

All parties to construction contracts, owners, general contractors and subcontractors, are working with several associations to address the issue of notifications that result from the change in ACCORD 25. These are detailed in the white paper written by Michael Campo, Senior Vice President at Lockton Companies.

The impact of the change to ACCORD 25 will be felt soon. Take the detour exit now to avoid the risks that can cause havoc on your business and bottom line. Every construction firm needs a plan in place to address this important modification. A complimentary consultation from the Lockton Construction Services Group can help move your firm in the right direction. Contact us today at 816-960-9000 or tfortin@lockton.com.

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