



E&O Risk Management Newsletter

November 2023

In this newsletter:

- ➔ Handling Certificates of Insurance? What Can Go Wrong?
- ➔ Carrier Insolvency and Your E&O Policy
- ➔ Do You Know About Our Self-Assessment Tool?

We KNOW
for Insurance Agents



E&O

Handling Certificates of Insurance? What Can Go Wrong?

Improper handling of certificates of insurance (COIs) can often lead to E&O litigation. In fact, 6%-8% of E&O claims each year deal with COIs. What can you do? Establish set written procedures to ensure the proper handling and execution of certificates.

KEY ISSUES AND COMMON QUESTIONS INCLUDE:

Is it OK to provide “sample” certificates to clients that state *For Information Only*? It’s not clear why agents handle certificates in this manner, but it is not a good practice. ACORD guidelines/instructions on certificates require that, at all times, the “Certificate Holder” box must be filled in with the name and address of the person/entity that requested it.

Can anyone sign a certificate? As stated on the certificate form, the signature on the COI is that of an authorized representative of the insurer. Authorization comes from the insurer since the agent is issuing on the insurer’s behalf. The person signing the form must be authorized by the carrier. Authorization can be written or in the form of an appointment with the carrier. The person signing the certificate must be licensed in the state where the named insured is domiciled and in the state for which they are providing coverage confirmation.

The carrier is non-admitted. Can we still issue a certificate? Technically, no – because the retail agent is not the agent of record. When dealing with wholesalers to place non-admitted business, certificates need to be executed by the wholesaler as the wholesaler is technically the agent of record. If an agency wants to issue certificates involving E&S business, the agency should secure written authorization from the wholesaler that makes it clear what the expectations are of each party.

What’s one of the biggest problem areas with certificates? One of the biggest problem areas is agencies checking the Additional Insured box when that coverage is, in theory, not part of the coverage. Additional Insured status affects how a claim would be handled, so without this coverage, agents are technically misrepresenting the coverage. Blanket Additional Insured does not mean that everyone is covered as there are conditions that will need to be met. Ensure that staff responsible for evaluating and approving requests for additional insured status is trained on the topic.

Continues

We heard that we should have the carriers issue the certificates. Is this a good suggestion? It's a good suggestion if you can find carriers willing to do it as most believe this is an agency obligation. It was always strongly suggested to send the certificates to the carriers, but it's unknown what the carriers would do with them.

The client has a \$5 million Umbrella, but the contract only calls for them to have \$1 million. What limit should be shown? Show the full limit, even if the client only wants the \$1 million shown. Failure to do so could expose your agency to allegations of providing an incorrect certificate.

From time to time, we are asked to use a non-ACORD form. Is this a problem? It can be. Before completing the certificate, provide it to the carrier and ask for their approval. If they don't approve the use of the non-ACORD form, it is probably best to not use it.

When it comes to certificates of insurance, ensure that they're your friend, not your foe.

Carrier Insolvency and Your E&O Policy

With the recent uptick in carrier downgrades and rehabilitation actions, it is vital to consider how this could impact the insolvency coverage provided in your E&O policy should a carrier become insolvent.

Insolvency occurs when an insurance carrier's liabilities exceed its assets, and it is no longer able to cover its debts – including claims. Some carriers may be backed by the state guaranty fund which provides recourse for customers if their carrier goes insolvent. If a carrier does go insolvent, your customer could bring a claim against your agency for placing coverage with a carrier that was not financially stable or for not disclosing that the carrier was not backed by the guaranty fund.

Agents' E&O carriers typically exclude coverage for claims resulting from a carrier going insolvent, however, offer exceptions based on the carrier's rating or state guaranty fund status at the time the agent places coverage. The most common exceptions are for:

- Entities with a "B+" or better rating by AM Best
- Entities with an "A" or better rating by Demotech
- Entities that are member insurers of the state guaranty fund or guaranty association
- Entities that were guaranteed by a governmental body and/or operated by a governmental body
- Entities that were part of a state-established residual market program
- County Mutuals reinsured by carriers with a "B+" or better rating by AM Best

Be aware of the ratings and state guaranty fund status of the carriers you place your clients with and how this can impact the coverage available under your E&O policy. The exceptions are often attached as an endorsement, modifying the standard policy language. Review your policy and address any questions with your E&O carrier.

FREQUENTLY ASKED QUESTIONS

- **Will the policy cover claims for a lower-rated/non-rated/non-guaranteed carrier that has NOT gone insolvent?** The restrictions are specific to claims submitted due to the carrier's inability to pay claims as a result of the insolvency.

Example: ABC Agency places business with a solvent C-rated, non-admitted carrier. The agency overlooks a bind request for a client and the client subsequently has a claim that is not covered because coverage was not bound. The insolvency exclusion would not apply in this scenario.

- **What does “at the time the insured placed coverage” mean?** This means the client’s most recent policy term placed by the agent.
- **Can the Utica National companies provide rating information for my carriers?** No, we do not supply this information. See the following additional resources for details on how to find your carriers’ ratings
 - AM Best ratings – [ambest.com](https://www.ambest.com)
 - Demotech ratings – [demotech.com](https://www.demotech.com). You can also be added to Demotech rating emails by contacting Barry Koestler at 614-526-2164 or bkoestler@demotech.com.
 - [Carrier Ratings: Have the Necessary Process in Place](#)
 - [Sample Carrier Downgrade Letter](#)
 - [Sample Carrier Downgrade Acknowledgement Form](#)

Do You Know About Our Self-Assessment Tool?

Here’s some information we think you should know about.

What is it? It’s a free agency risk assessment available to insureds of the member companies of the Utica National Insurance Group.

How does it work? Simply answer a series of questions and then receive an overview of your agency with feedback on whether your current processes and procedures help protect you from E&O claims. Recommendations are provided to make improvements when your current processes and procedures are insufficient. Topics include Producer Procedures, Premium Handling, Record Management, System/Procedural Issues, and more.

How do you access it? It’s easy! Sign in to our [online Customer Care Center](#) and then click on Risk Management on the left side to access the risk management website. On the bottom left of the screen, you will see *Try Our Self-Assessment Tool*.

[Please see our flyer for additional details on the Self-Assessment Tool.](#)

Not signed up for Customer Care? [Here’s how](#) – and you can find out more about our risk management resources, too!

READY TO HELP

Do you have a client looking for risk management guidance on a particular topic and you aren’t sure what to suggest?

Reach out to Tabitha DeGirolano of our E&O team for help at tabitha.degirolano@uticanational.com.

This information is provided solely as an insurance risk management tool. Utica Mutual Insurance Company and the other member insurance companies of the Utica National Insurance Group (“Utica National”) are not providing legal advice or any other professional services. Utica National shall have no liability to any person or entity with respect to any loss or damages alleged to have been caused, directly or indirectly, by the use of the information provided. You are encouraged to consult an attorney or other professional for advice on these issues.

