



## 4<sup>th</sup> Quarter 2013

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# Florida Gold Coast Chapter

## BECOME ACTIVE IN THE CPCU FLORIDA GOLD COAST CHAPTER

### President's Message By Dawn Ingham, CPCU, ARM

It's hard to believe that 2013 is coming to an end! Our chapter has accomplished much this year as shown by the highlights below:

- Provided a scholarship for Florida State University's Risk Management Program
- Regularly published quarterly chapter newsletters
- Conducted a toy drive
- Held quarterly meetings that included informative and engaging speakers
- Promoted the CPCU program through publications and presentations

Not only has our chapter been busy this year, but also the CPCU Society and The Institutes have been busy. Let's review some of their recent activities:

- More than 2,000 industry professionals attended the **2013 CPCU Society Annual Meeting**, held October 26 to 29 in New Orleans. During our last chapter meeting, new designee Kelly Blake gave a presentation on his experiences while attending the meeting. He was very impressed with the caliber of the speakers and the professionalism of the meeting. Mark your calendars for the **2014 CPCU Society Annual Meeting**, which will be held September 20- 23, 2014 in Anaheim, California.
- By utilizing member feedback, the CPCU Society has developed more **user-friendly chapter websites**. The transition to the new easy-to-use and customizable chapter sites is taking place during December 2013.
- The **CPCU Society Leadership Summit** will be held April 23-29, 2014 in Phoenix, Arizona. This summit provides an opportunity for members to further develop leadership skills and learn about chapter and interest group operations and best practices.
- Beginning in 2014, The Institutes will offer **two new leadership programs**: the Executive Education

Program (EEP) and the Management Development Program (MDP). Both of these five-day interactive seminars provide leadership and managerial training as it relates to the property-casualty insurance industry. The EEP will be held March 30 to April 4, 2014 at the Darden School of Business, University of Virginia. The MDP will be held May 18-23, 2014 at the University of Wisconsin-Madison.

I look forward to continuing our chapter efforts in 2014. As always, the chapter officers welcome your assistance and feedback. Happy holidays to you and have a wonderful, safe, and prosperous new year!

### Report from the Vice President-Communications Officer By Shani Oulton, CPCU

In honor of the holiday season, I hope this finds you all safe and healthy.

### Protecting the big guy: Santa Claus & Insurance

Posted by Renaissance Group Dec 23, 2009

You have to admit - jolly old St. Nicholas runs one heck of a business operation. He employs a huge number of elves and maintains a herd of reindeer. He runs a factory that operates 24/7, along with a busy warehouse and shipping operation. He has at least one specialty vehicle, although we suspect he also needs some back-ups. Like any good business person, he needs solid insurance coverage to protect the business should anything go amiss.

Gregory Boop of About.com's business insurance page has previously discussed the various types of insurance coverage that Santa Claus needs.



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First, as an employer, he is mandated to have workers compensation coverage for his elves. And to be a good employer, he should also provide health insurance, too. The elves are pretty loyal workers - to show appreciation for this, Santa should consider disability insurance and some type of retirement planning, such as 401k options.

We agree that he needs commercial general liability coverage, as well as product liability coverage. Gregory suggests that Santa needs commercial auto insurance and a specialized equipment rider ... but we are not so sure we would classify Santa's sleigh as an auto - we think it might be better for Santa to have aircraft coverage. He might also benefit by travel insurance and pet insurance for the reindeer. Gregory also suggests that Santa should have key man coverage on himself since he is so essential to the operation. Good idea.

Now apart from the needs of his business, Santa himself has some specialized insurance needs. He needs a heck of a life insurance policy and it poses some significant challenges for his insurance agent. He's getting on in years, he's overweight, he's been known to smoke a pipe and drink brandy, and he's got a lead foot when driving his sleigh. He also faces a lot of on-the-job hazards. Even before that big day of the year, he travels to thousands of shopping malls and meets millions of kids. This year, that means he is at heightened risk for the H1N1 virus. Not to mention all the other hazards that Santa faces - he can be exposed to everything from back strain while lifting kids to a wet lap caused by terrified children. It's hard to believe, but not everyone loves Santa.

Now we know that Santa has already given some thought to his insurance coverage because we read a few years ago that he has insured his trademark beard with Lloyds of London. That's a good start, but today, he'd do well to have insurance against identity theft, too.

Santa, we're worried about you. Call your agent, we can help!

## **Homeowners & Santa Claus**

And what about you as the host? Are you properly covered to entertain a V.I.P. like Santa in your home? What if your dog bites Santa or he gets stuck in your chimney - are you covered against these or any other

mishaps while he's on your property? If you have homeowners insurance or rental insurance, the personal liability and medical payments portions should cover you, but you may want to check your coverage limits and deductibles. If you are hiring a Santa stand-in for a party, there are some other things you should consider to limit your liability: Covering the Santa Clause.

If you plan to leave any sweets out for the big guy, Mrs Claus issues this plaintive plea: Please skip the cookies - Santa has a weight problem. Consider leaving a healthier snack. If you decide to leave cookies out anyway, you may want to get Santa to sign Christmas Cookie Liability and Indemnification Agreement . And something that should go without saying - don't leave any wine or brandy out - you don't want to be liable if a tipsy Santa leaves your house and has a DUI accident!

## **The New ACORD Certificates of Insurance- *What Contract-Drafting Attorneys Need to Know* By Brent Winans**

The Certificate and Evidence of Insurance forms that ACORD (Association for Cooperative Operations Research and Development) made effective in late 2009/early 2010 have raised alarm among insurance certificate holders and their attorneys. Many real estate attorneys include insurance provisions in the leases they draft, and they should be aware of these changes. Unless insurers issue manuscript endorsements to their policies (which is unlikely), they no longer make any pledge that they will even attempt to notify the certificate holders if the policies are cancelled. The new certificate forms have eliminated the assurance that the insurer would "endeavor to mail \_\_\_ days written notice to the certificate holder." They simply state that "... should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions."

### **What It Means**

What does that mean to certificate holders under standard insurance policies? 1) Liability and auto — Even if a certificate holder is an additional insured, it will not be notified if the policy is cancelled. Only the First Named Insured will be notified; 2) Workers' compensation — Certificate holders will not be notified of cancellation since the policy requires the insurance



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company to notify only the covered employer; 3) Property — Mortgagees and loss payees on standard property policies will be notified: 10 days before the insurer cancels for nonpayment, 30 days before it cancels for any other reason and 10 days before it nonrenews the policy (unless modified by state requirements). Other certificate holders, even additional insureds, will not be notified; and 4) All policies — Certificate holders, even additional insureds, will not be notified if the insured itself cancels the policy.

## Changes in Contracts

How should insurance requirements in contracts be changed in order to respond?

1. Contract language requiring insurance certificates to state that “ \_\_ days notice of cancellation be given” and requiring that the “endeavor to” language in the certificate be deleted is no longer applicable.

Even if changes are made to the certificate, ACORD has made it exceedingly clear that changes to the certificate do not change the policy.

2. The contract should require that the insured party provide immediate notice to the owner, lessor, etc. if the insured entity receives notice of cancellation or nonrenewal from its insurer. This provision is especially important since many insurers will not be willing to comply with the recommendations below, especially for smaller insureds. Unfortunately, this has the obvious drawback of depending on the very party who is non-performing to report the situation. The City of Atlanta instituted this approach. To learn more about how and why they did it, see [www.aci-na.org/static/entransit/Caput---Legal%20Aspects%20of%20Airport%20Insurance.pdf](http://www.aci-na.org/static/entransit/Caput---Legal%20Aspects%20of%20Airport%20Insurance.pdf).

3. Contracts should require that the insured’s policies be endorsed to meet the certificate holder’s reasonable requirements. (However, as stated above, not all insurers will be willing to cooperate.) If the insurer is somewhat cooperative, it may be willing to extend the same notification rights to the certificate holder that it gives to the first Named Insured. Below is sample manuscript endorsement wording that would accomplish that end. Very large insureds may be able to obtain even broader notification rights.

*If we cancel or elect not to renew this policy, we will give written notice to \_\_\_\_\_ at the following address \_\_\_\_\_. We will provide the same notice of cancellation and nonrenewal that is required by this policy to the first Named Insured.*

So if the certificate holder is given the same notice of cancellation and nonrenewal as the first Named Insured, what does that actually mean with standard policies?

Standard commercial insurance policies provide the first Named Insured with 10 days notice of cancellation for nonpayment of premium. If the insurer cancels mid-term for any reason besides non-payment of premium, commercial general liability, automobile and property policies provide 30 days notice of cancellation. Workers compensation policies, however, provide only 10 days notice of mid-term cancellation. If an insurer nonrenews a policy versus cancelling it mid-term, it may nonrenew a commercial automobile or workers compensation policy without any advance notice at all. Property policies may also be nonrenewed without any advance notice to the insured, but if there is a mortgagee or loss payee on the policy, they must be given at least 10 days advance notice. General liability policies may be nonrenewed with just 30 days notice.

Most states’ laws change these criteria, requiring more notice in many situations. For instance, Florida requires that carriers provide the first Named Insured with 45 days’ notice of cancellation in some circumstances. The provisions of the different state laws are often complicated, differing not only by line of coverage, but also by length of time the policy has been in force, the specific reasons for the cancellation or nonrenewal, etc. The specific state requirements can be accessed through the IRMI Insurance Cancellation Guide published by the International Risk Management Institute. See [www.irmi.com](http://www.irmi.com).

4. The larger the insured client, the more likely that it will be able to obtain additional concessions from its insurer. If possible, those additional provisions should require:

- a) Advance notice to the certificate holder even if the insured initiates the cancellation or nonrenewal; and
- b) Minimum cancellation and nonrenewal provisions, regardless of what is provided by the standard policies or various state laws.

## Why Not Just Require the Old Form?

You may ask, “Why doesn’t the certificate holder simply require the insured and its insurance agent to provide the old certificate of insurance form?” What drafting attorneys and insureds should know is that if an agent does modify a standard certificate or sign a custom one that provides notice of cancellation, it is almost certainly doing so against the explicit direction of the insurance



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company. So while the insured may have a paper in hand stating that the insurance company will provide notice of cancellation, the insurer will not stand behind it. If coverage is cancelled, all that the insured has probably gained is the right to sue the agent and hope that it will collect under its errors and omissions policy.

Since the agent is probably executing the modified certificate with the full knowledge that it is not authorized to do so, coverage under its errors and omissions policy is suspect. For a fuller understanding of why an agent executing modified certificates is engaging in a practice that may be unauthorized, deceptive and potentially illegal, *see* the article written by Bill Wilson for members of the Independent Insurance Agents and Brokers of America at [www.iiaba.net/eprise/main/VU/NonMember/WilsonCancellationNotice.htm](http://www.iiaba.net/eprise/main/VU/NonMember/WilsonCancellationNotice.htm).

## Vendor Solutions

There are about 20 different vendors that provide some form of insurance certificate and verification service. Only one vendor provides a certificate service that completely bypasses ACORD certificates and their problems. The following information is included as a service to readers. The vendor's name is Ins-Cert Corporation, and information on its services can be found at [www.Ins-Cert.com](http://www.Ins-Cert.com). Their system is Webbased and requires the agent/broker to agree to make a "good-faith effort" to enter notices of cancellation into their system. The system then automatically sends cancellation notices to all certificate holders by e-mail.

This appears to offer a solution to the problem of cancellation notices and also the problem of fraudulent ACORD certificates. It appears that Ins-Cert may offer a legitimate service that is worthy of consideration.

## Why the 'Good Ol' Days' Weren't Really So Good

Certificate holders certainly wish that the insurance industry would find a way to notify them when an insurance policy is cancelled. But in reality, they may not have lost much in this change besides the illusion that the insurer would notify them.

Many insureds have a "blanket additional insured" endorsement on their liability policies. That means that anyone that the insured agrees to name as an additional insured in a contract is automatically given that status in its insurance policy. But that also means that the insurance company does not obtain the names and addresses of those additional insureds, so the insurer does not know who they are or how to notify them.

Certificate holders would reasonably assume that as a matter of good faith, insurers would require that the agents/brokers send them a list of all of the certificates that they issued so that the insurer could "endeavor" to give notice of cancellation. Incredibly, that is not the case. Many carriers have explicitly told the agents/brokers not to send them copies of the certificates.

Since many insurance carriers have not made the good-faith effort to comply with the notice requirements of the old certificate forms, not much is lost by eliminating the notice requirements altogether. At least false promises are no longer being made.

## Closing Thought

In writing about these changes on its own website, ACORD explained that it had to change its certificates because the certificates sometimes contradicted or expanded the duties contained in the underlying insurance policies. *See* [www.acord.org/standards/forms/Documents/20100628\\_ACORDFormsNotice.pdf](http://www.acord.org/standards/forms/Documents/20100628_ACORDFormsNotice.pdf).

Unfortunately, they were not able to cooperate with the other players in the insurance industry (the insurance companies, ISO and NCCI) to craft a solution that solved that problem while also meeting the legitimate business need of certificate holders to receive a cancellation notice. The outcry from the business community may need to get much louder before a better solution to this problem is reached. In the meantime, attorneys drafting insurance provisions for leases can serve their clients by removing outdated insurance requirements that cannot be met and inserting new provisions that more effectively protect their clients.

This article was originally published in the February 2013 issue of *Commercial Leasing Law & Strategy* and is reprinted with permission.

## Florida Gold Coast CPCU Chapter Scholarship

The scholarship was established in 2003 by the Florida Gold Coast Chapter of CPCU. It is available to FSU students enrolled in its Department of Risk Management, Insurance, Real Estate, and Business Law.

One scholarship is awarded in the amount of \$1,000. The selection is made in the spring, and the award is made in the following fall semester.

Preference is given to students from the South Florida area. Other criteria are: Junior (not senior) RMI Major at time of application, minimum of 3.0 GPA, primary interest in Property-Casualty insurance.

RMI faculty makes recommendations to the Florida Gold Coast CPCU Chapter.

### **CPCU's in the News**

Caught in the Middle: Agent/ Broker E&O Issues  
October 30, 2013; Presenter Arthur B. Campbell, CPCU, ARM, AMIM

Chapter member Arthur "Art" Campbell recently gave a presentation on errors & omissions to a group of individuals at the Fort Lauderdale Mariners Club Marine Seminar. We would like to recognize Art for a job well done!

### **Florida Gold Coast Chapter December 11, 2013 Chapter Meeting**

We would like to thank our own new designee, Kelly Blake, for speaking on his recent experience at the CPCU Commencement Ceremony.

We would also like to extend a huge thank you to guest speaker Jorge Rivero who gave an informative presentation about wage and hours.

See a picture below of Kelly and his wife at the CPCU Commencement/Convention in October.



Please watch for your invite to the February 19, 2014 Gold Coast Chapter meeting which will be cocktails & h'ordeuvres in the evening at NCCI. The guest speaker is going to be Cecil Pearce President of the Florida Insurance Council.

### **Call for News/Articles**

If you have written any news or articles that would be of interest to our general chapter membership, please contact Shani Oulton, CPCU Communications Officer at shani\_oulton@ncci.com or (561) 893-3168. We also welcome postings for any professional positions you may have open within your company. Just let us know and we'll get the word out.

Also, please visit our **new** chapter website at <https://floridagoldcoast.cpcusociety.org/>.

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