

-NEWS RELEASE-

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Construction, insurance industries collaborate to resolve problem of evidencing contractor insurance

ALBANY, N.Y.—In an extraordinary case of cooperation, industries often at odds over the disclosure of insurance coverage for contractors have achieved a beneficial solution that serves multiple stakeholders. A working group comprised of trade associations in both the insurance and construction industries; legislative and regulatory representatives; as well as individual insurance, construction and legal firms have announced the new ACORD 855 New York Construction Certificate of Liability Insurance Addendum. The product of more than a year of collaboration to address a burgeoning concern over inconsistencies and subsequent lack of confidence in coverage representations, the new Addendum highlights 13 coverage issues that are not currently included in the ACORD 25 Certificate of Liability Insurance form. It will be promulgated by ACORD in June 2014.

The working group, which included the Professional Insurance Agents of New York State; Independent Insurance Agents & Brokers of New York; Council of Insurance Brokers of Greater New York; Associated General Contractors of New York State; New York Insurance Association; American Insurance Association; Property Casualty Insurers Association of America; New York State Department of Financial Services; New York State Senate; New York State Assembly; Welby, Brady & Greenblatt, LLP; insurance agencies; and construction companies; was formed on Oct. 16, 2012, to

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address the concerns of owners and general contractors in New York, who began to lack confidence in the standard ACORD 25 Certificate of Liability because of the disruption of customary insurance markets caused by unique circumstances in this state. Some safe-place-to-work sections of the Labor Law, specifically, Sections 240, 241 and 241-a, impose a “strict” liability standard (as opposed to a “negligence” standard) upon owners and general contractors for workers injured at their job sites. Because of this law, it is very difficult to procure comprehensive coverage for contractors performing certain kinds of work and in certain locations.

As a result, much of the insurance is placed in the Excess Line and Free Trade Zone market, where flexibility of forms is permitted. The few authorized insurers that still insure contractors have responded with independently filed restrictive endorsements. There are height exclusions, residential exclusions, classification exclusions, injured worker exclusions, “insured contract” exclusions, etc.

“Owners and general contractors often have millions of dollars at risk due to legal liability for occurrences that take place during and after a construction project,” said Richard A. Savino, CIC, CPIA, past president of PIANY and CEO at Warwick Resource Group in Warwick, N.Y. “They have been looking for more detailed information about the coverage afforded contractors at the job site.”

In response to adverse experiences with missing coverage, owners and general contractors (with their attorneys) began developing their own certificate forms in an attempt to obtain more information. In addition, some of these forms (often referred to as “attestation” forms) were designed to create legal liability for the producer issuing them with regard to warranties of coverage. This became a serious Errors & Omissions problem for

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New York producers.

Savino voiced satisfaction in the accomplishment. “Policyholders will have less breach of contract consequences and construction sites will be better protected,” he said. “We see this as a win for all New York stakeholders.”

Kevin A. Viaña, vice president, specialty risks division of Marshall & Sterling Insurance, is a board member of the Associated General Contractors of New York, IIABNY member and PIANY member. He explained that, “the Addendum will have a positive impact on both the construction and insurance industries, especially when one considers the amount of time both sides spend ensuring contractors are in compliance with their contractual requirements.”

“This collaboration between the construction and insurance industries that led to the development and approval of the ACORD form addendum is something in which both industries should take pride. It helps provide more clarity and certainty to contractors about coverage for their projects, an issue made even more critical by the severe challenges facing both the construction and insurance industries as a result of the absolute liability standard of New York's job-killing Scaffold law,” said Mike Elmendorf, President and CEO of the Associated General Contractors of New York State (AGC NYS).

The 855 Addendum will be voluntary, but standardized for ease of use and consistency. When required by the certificate holder, this addendum should be used to supplement the ACORD 25 with more information about the policy's coverage. It bears the ACORD 25 disclaimer language and is not intended to answer specific coverage questions, but merely to indicate areas of coverage when the solicitation of more details may be expedient (e.g.,

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examination of the actual policy forms). However, completion of the 855 Addendum will require greater sophistication on the part of its issuers, so a Forms Instruction Guide has been written to assist those issuers. Not only will there be more information, but better information given the certificate holder.