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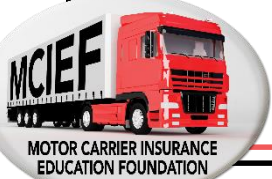
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# ADDITIONAL INSURED ENDORSEMENT VS. NO ENDORSEMENT

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# CALL FROM AN AGENT

- “A broker has refused to give a load to one of my insureds because they would not accept ISO’s Designated Insured endorsement and MUST have an Additional Insured endorsement”
- “Can you call and explain the difference?”



# I CALL

- Broker already knows all he wants to know
- Designated Insured does not provide defense and we must have an Additional Insured endorsement
- I ask him if he will send me a copy of the Additional Insured endorsement he would accept and I would send him the difference and confirm that the Designated Insured endorsement would meet all his requirements
- He just hung up



# CONSIDERATIONS

- The broker lost the services of a motor carrier because he did not understand “insurance”
- The insured/motor carrier lost loads because the broker did not understand “insurance”
- I call Rob Moseley



## CONSIDERATIONS CONT.

- After much work by Moseley Marcinak LLP, Rob, Fred and Lesesne with my input, we have prepared a white paper that can be provided to all interested parties to explain what brokers/shippers ask for and how insurance will meet their requirements



# WELCOME FRED AND LESESNE

- Most of you know about the Moseley Marcinak firm but let's take a minute to introduce you and talk about your firm





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MOTOR CARRIER INSURANCE  
EDUCATION FOUNDATION

# TALKING POINTS

- Broker/shippers need to make sure the motor carrier has authority
  - They check Licensing & Insurance
    - 91X?
    - Protects the public –
      - Not brokers/shippers/drivers/motor carriers
  - Need more verification of insurance than 91X
    - COI from a retail agent



# TALKING POINTS

- Why do brokers and shippers want to know the motor carriers they provide a load to have the “right insurance”?

# TALKING POINTS

- Motor carriers and their insurance providers understand they must provide proof of the “right” insurance to obtain loads
- But often there is a disconnect



# TALKING POINTS

- Some of these requirements are valid but are often asked for and misunderstood in what we describe as an **insurance sugar pill**

# TALKING POINTS

- Why is “asking” for or requiring proof of an “Additional Insured Endorsement” a “sugar pill”?

# CONSIDERATIONS

- Typical contract scenario between a broker/shipper and motor carrier
- Before engaging in business, a broker/shipper will generally require the motor carrier to provide proof of auto liability insurance. Typically the policy is a Standard Insurance Services Office (ISO) policy. This policy contains a “Who Is An Insured” provision and, when requested, the “Designated Insured” endorsement



## CONSIDERATIONS CONT.

- “Who Is An Insured” **policy wording** reads:
  - “Anyone liable for the conduct of an ‘insured’ described above but only the extent of that liability.”

# CONSIDERATIONS

- This provides protection for the broker/shipper in the situation where a broker/shipper is named in a suit because of the actions of the motor carrier. In legal terms, this is being held vicariously liable for someone else's actions



## CONSIDERATIONS CONT.

- First, any vicarious liability claim against the broker/shipper will be covered under the ISO based policy provision of the motor carrier because of the policy's "Who Is An Insured" with or without the "Designated Insured" endorsement

# CONSIDERATIONS CONT.

- A “Designated Insured” endorsement states that:
  - Each person or organization shown in the Schedule is an ‘insured’ for Covered Auto Liability Coverage, but only to the extent that person or organization qualifies as an ‘Insured’ under the “Who Is An Insured” provision. By referring to the “Who Is An Insured” provision above, the “Designated Insured” provision basically says that the broker/shipper is an “anyone”

# TALKING POINTS

- So standard ISO with no endorsement provided to the broker/shipper protects the broker/shipper from being held liable for their vicariously liability – Right?

# TALKING POINTS CONT.

- Why additional insured endorsements?
  - To make the broker/shipper happy
- But the title is the only difference
- Read beyond the title
  - No additional insured endorsement is broader than the unendorsed ISO policy and is in fact is more limited



# EXAMPLES OF “ADDITIONAL INSURED ENDORSEMENT” WORDING

- The person or organization is an insured with respect to such liability coverage as is afforded by the policy, but this insurance applies to said insured only as a person **liable for the conduct of another insured and then only to the extent of that liability**. We also agree with you that insurance provided by this endorsement will be primary for any power unit specifically described on the Declarations Page

# EXAMPLES OF “ADDITIONAL INSURED ENDORSEMENT” WORDING CONT.

- Who Is An Insured is changed to include as an ‘insured’ the person or organization shown in the SCHEDULE on this endorsement **only if they are liable for the conduct of an ‘insured’ shown in the Who Is An Insured provision and only to the extent of that liability**





# EXAMPLES OF “ADDITIONAL INSURED ENDORSEMENT” WORDING CONT.

- In consideration of payment of the additional premium listed below, LIABILITY COVERAGE is extended to include the additional insured named herein, provided that: 1) such insurance applies only to the ownership, maintenance or use of a covered auto; and 2) **such insurance applies only to acts or omissions by you, your agents or your ‘employees’ while covered auto is being used in your business;** and 3) such insurance does not apply to the acts or omissions of the additional insured or any of the additional insured’s agents or ‘employees’ other than you; and 4) such inclusion of additional insured shall not increase our limit of liability under this policy



# TITLE DIFFERENT BUT COVERAGE PROVIDED IS NOT

- Compared with the ISO policy with or without the “Designated Insured” endorsements, the only difference between the above three endorsements are the title, not the protection provided

# TITLE DIFFERENT BUT COVERAGE PROVIDED IS NOT CONT.

- In fact, these endorsements are slightly more limited than the unendorsed Standard ISO policy or the “Designated Insured” endorsement. For example, if the broker requires an endorsement and it is named as an “additional insured” under any of the above endorsements, then the broker will be protected but the shipper will not. In comparison, the ISO policy, with or without the “Designated Insured” endorsement, protects based on anyone held liable for the conduct of the insured, not based on whether the entity is listed in the “Additional Insured Schedule”

# TITLE DIFFERENT BUT COVERAGE PROVIDED IS NOT CONT.

- So when the broker/shipper is named in a suit following a crash caused by a truck they provided a load to, the Standard ISO policy with or without the “Designated Insured” endorsement or any other additional insured endorsement will provide the broker/shipper defense and they will receive a release if the claim is settled within the limits of the policy

# TITLE DIFFERENT BUT COVERAGE PROVIDED IS NOT CONT.

- If the insurance carrier of the motor carrier cannot obtain a settlement within the limits of the policy, then the broker/shipper's policy would be excess of the primary coverage provided by the insurance carrier of the motor carrier they provided a load to

# TALKING POINTS

- Explain the difference between being vicariously liable and being liable for the broker/shipper's actions

## TALKING POINTS CONT.

- So in this case, the broker/shipper would need their own primary coverage for their own negligent actions

# TALKING POINTS CONT.

- Bottom line
  - Standard based ISO Auto Liability policies with no endorsements make a broker/shipper an additional insured
    - Coverage primary
      - Cannot seek contribution from an insured
      - And
      - Contracts allowing subrogation to be waived
  - If the broker/shipper is alleged to be vicariously liable for actions of the motor carrier





# TALKING POINTS CONT.

- We have discussed Auto Liability
- How about Cargo?
  - Additional Insured
    - Broker?
    - Shipper?



# TALKING POINTS CONT.

- Another requirement
  - Loss payee



# CONCLUSION

- Motor carriers go to great lengths to make the broker/shipper happy
- It is important for brokers and shippers to refrain from putting unnecessary burdens on the motor carriers or their insurance provider
- By making these requirements, brokers and shippers gain no additional benefit at the expense of limiting motor carriers that do business with them

## CONCLUSION CONT.

- This insurance sugar pill (requirement for an additional insured endorsement) does not benefit any broker/shipper involved and can only provide unnecessary roadblocks for the broker/shipper to use an otherwise well-qualified motor carrier
- The white paper does not mean to deter the vetting of motor carriers, but it is important not to get hung up on titles or insurance requests which at the end of the day do not matter when a crash happens

## CONCLUSION CONT.

- The white paper will be posted on our website at [mcief.org](http://mcief.org)
- Send it to your motor carriers and let them know if they receive these requirements to provide to their broker/shippers
- If you have a relationship with brokers/shippers, share this with them



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