

BEFORE THE COMMISSIONER OF INSURANCE

STATE OF GEORGIA

IN THE MATTER OF:

**CHAPTER 120-2-103
CERTIFICATES OF INSURANCE**

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DOCKET NUMBER I-13-I-2

ORDER

I. STATEMENT OF PROCEEDINGS

On February 13, 2013, Notice of Intent to Adopt Rule Changes and Notice of Hearing was issued regarding the following proposed regulatory actions (Record, Exhibit 1):

- Adding Regulation Chapter 120-2-103 entitled "Certificates of Insurance"
- Adding Regulation 120-2-103-.01 entitled "Authority"
- Adding Regulation 120-2-103-.02 entitled "Purpose"
- Adding Regulation 120-2-103-.03 entitled "Definitions"
- Adding Regulation 120-2-103-.04 entitled "Approval of Certificates"
- Adding Regulation 120-2-103-.05 entitled "Requirements"
- Adding Regulation 120-2-103-.06 entitled "Prohibited Practices"
- Adding Regulation 120-2-103-.07 entitled "Penalties"
- Adding Regulation 120-2-103-.08 entitled "Severability"

By letter dated March 6, 2013, the Office of the Attorney General opined that the proposed regulatory actions are within this office's scope of authority (Record, Exhibit 5). Pursuant to O.C.G.A. Section 50-13-4(e), the proposed regulatory changes were transmitted to Wayne R. Allen, Legislative Counsel for the General Assembly, for assignment to the appropriate standing committees of the Senate and House of Representatives (Record, Exhibit 6) and were assigned accordingly (Record, Exhibit 7).

II. CONSIDERATION OF INTERESTED PARTY COMMENTS

Background

The purpose of proposed Regulation Chapter 120-2-103 is to implement recent changes to the Insurance Code which are aimed at ensuring that property and casualty certificates of insurance (the “Certificates”) accurately reflect underlying policies. Interested persons were given the opportunity to participate in the proposed rulemaking by submitting their written comments to the Georgia Department of Insurance (the “Department”) by March 15, 2013, and by making oral comments at the public hearing held March 19, 2013. The Department received five (5) written submissions by the March 15, 2013, deadline (Record, Exhibits 8-12). Six (6) persons representing various interested parties offered oral comments at the hearing (Transcript, pp.12-38). Steve Manders, the Director of the Department’s Division of Insurance Product Review, also spoke at the hearing and addressed both the written and the oral comments submitted (Transcript, pp.6-38). During the hearing, the Commissioner provided that the record would remain open to allow for the receipt of additional written comment until April 2, 2013 (Transcript, p.42). The Department received two (2) additional written submissions during this extended submission period (Record, Exhibits 13 and 14).

As described *supra* multiple persons have offered comments in this matter.¹ For purposes of clarity, those comments are categorized herein into four groups: comments offered by “Brokers,”² Lenders,³ “Other Parties”⁴ and “Department Staff.”⁵

¹ For the parties’ reference, all written comments submitted to the Department are attached to this Order (Exhibits 8-14).

² Steven Monroe, representing MARSH; Greg Erath, representing AIG; and Kevin Gunya, representing Lockton Companies, LLC. (Record, Exhibits 10-12).

Broker Comments

The Brokers expressed a concern regarding the following proposed language in Regulation Section §120-2-103-.05: “Only insurers may file certificates for approval” (Exhibits 10-12). The Brokers’ concern is that this language may prohibit them from filing Certificates on behalf of insurers. To resolve this ambiguity, one suggestion is that the Department simply remove the “only insurers” language from the proposed Regulation (Exhibit 10). Another suggestion is that the Department modify the language in contention to read as follows: “An insurer, or an insurance producer, agent, or broker required to be licensed under the laws of this state to sell, solicit, or negotiate insurance may file certificates for approval” (emphasis added) (Exhibit 10).

AIG suggested that the following language be added to the proposed Regulation: “Additionally, certificate of insurance forms whose specific content and wording are established by Federal law or regulation, or any law or regulation of this State, are not required to be filed by individual insurers.” (Exhibit 11) The rationale given for the addition of this language is that more than one approval by the government is duplicitous and unnecessary.

³ Curtis Leonard, representing the American Council of Life Insurers (Exhibit 9); American Council of Life Insurers; American Fidelity Assurance Company; Bank of America, N.A.; Connecticut General Life Insurance Company; KeyCorp Real Estate Capital Markets, Inc. d/b/a KeyBank Real Estate Capital; MetLife Inc.; Mortgage Bankers Association; New York Life Insurance Company; Principal Financial Group, Inc.; Prudential Financial, Inc.; TIAA-CREF; Unum Group; and Wells Fargo Bank, N.A., collectively (Exhibit 13).

⁴ Gould Hagler, representing the Independent Insurance Agents of Georgia, Inc. and Ronald Jackson of the American Insurance Association (Exhibits 8 and 14).

⁵ Steve Manders, Director of the Insurance Product Review Division of the Department of Insurance, spoke on behalf of the Commissioner’s Department employees.

AIG also asserted that the proposed language in Regulation §120-2-103-.05(4) and (5) conflicts with Regulations §391-3-11-.05 (Hazardous Waste Management, Financial Responsibility) and §391-3-15-.12 (Underground Storage Tank Management, Financial Responsibility Requirements) in the Georgia Administrative Code (the “GAC”). AIG maintains that these GAC sections already mandate the form of the Certificates used in these instances by incorporating, by reference, portions of the Federal EPA regulations. Moreover, those regulations do not permit the Certificates to be altered. In response to the foregoing, AIG suggests that the Department add a new paragraph (6) to Regulation Section 120-2-103-.05 as follows: “(6) Subsections (4) and (5) of this Section shall not apply to any certificate of insurance form found in any other section of the Georgia Administrative Code, or in any Federal law or regulation.”

For reference, the proposed language in paragraphs (4) and (5) of Regulation 120-2-103 reads as follows:

“(4) Each certificate of insurance must contain the following or similar statement: ‘This certificate of insurance is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage, terms exclusions and conditions afforded by the policies referenced herein.’

(5) The Commissioner has authority and may approve a certificate filed under this section which does not state that the form is provided for informational purposes only, if such form contains at a minimum the following statement: ‘This certificate of insurance does not amend, extend, or alter the coverage, terms, exclusions, and conditions afforded by the policies referenced herein.’ Forms filed under this provision shall state the limited use of the form and the insurer and producer shall only use the form for those stated and approved situations. The limited use provision may include, but not be limited to, mortgagee requirements or lending transactions. Any person requiring or using the limited use certificate outside of its intended use as stated in the filing by the insurer shall be subject to the penalty provisions of this regulation.”

Lender Comments

The Lenders have requested two amendments to the proposed Regulation (Exhibits 9 and 13). First, they request the removal of the requirement that only insurers (or their authorized representatives) are permitted to file the Certificates. The Lenders (commercial lenders, representative trade associations, banks and insurers without property & casualty line authority) would like to be allowed the authority to file Certificates for the Commissioner's consideration. Second, they request the removal of the requirement that all Certificates must be filed through SERFF since the Lenders have no access to that system. The Lenders assert that these requests are consistent with the intent of the Georgia General Assembly.

At the hearing, a spokesperson for the Mortgage Bankers Association ("MGA") expressed concern regarding the language in O.C.G.A. §33-24-19.1(d) and proposed Regulation Subsection 120-2-103-.05(4) because they describe the Certificates as for "information only" (Transcript, p.28). The language in the Insurance Code reads as follows: "Each certificate of insurance must contain the following or similar statement: 'This certificate of insurance is issued as a matter of *information only* and confers no rights upon the certificate holder...'" The language in the proposed Regulation simply repeats the language in the Insurance Code.

According to MGA, the language in O.C.G.A. §33-24-19.1(d) and proposed Regulation 120-2-103-.05(4) frustrates the lenders' need to be able to rely on evidence of insurance from the inception of loans until the insurance policy is received (*Id.*). MGA also requested clarification regarding whether an insurer could contract with a broker to allow the broker to issue and submit Certificates on behalf of the insurer, thereby avoiding the cumbersome process of having the broker perpetually seek the insurer's approval of Certificates (Transcript, pp.28-31).

Other Parties

Gould Hagler, representing the Independent Insurance Agents of Georgia, Inc. (“IIAG”), offered written comment in favor of the proposed Regulation (Record, Exhibit 8). According to IIAG, the proposed Regulation would provide specificity to some to the law’s provisions and make it far easier for IIAG’s members to demonstrate to certificate requestors who make improper demands that their demands are contrary to the law. IIAG also recommends, however, that the Commissioner add the following two paragraphs to the proposed Regulation, following existing paragraph (3) in section 120-2-103-.07.

(4) No person may require, request, issue or prepare a certificate which contains language summarizing or describing any provision of an insurance policy. Such a summary or description necessarily purports to alter coverage, as it differs from the complete language contained in the policy.

(5) No person may require, request, issue or prepare a certificate which contains language in the section of the form reserved for a description of the insured’s operation other than such a description. Information relating to the insurance coverage shall be entered only in those sections of the certificate from designed for that use.

Ronald Jackson of the American Insurance Association (“AIA”) also offered written comment in favor of the proposed Regulation (Record, Exhibit 14). According to AIA, Georgia law, like other states, contemplates the filing of forms and rates in various contexts, but those requirements apply exclusively to insurers and the entities that file on their behalf.

Department Staff

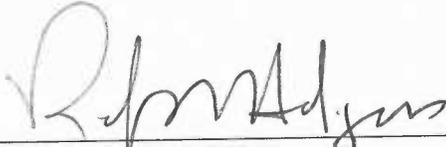
At the hearing, Steve Manders, Director of the Insurance Product Review Division of the Department of Insurance, spoke in favor of the proposed Regulation (Transcript pp.6-38). Mr. Manders also explicitly addressed many of the parties’ concerns. He noted that the Insurance

Code [Title 33, Chapter 9] contemplates insurers being responsible for the filing of their rates (Transcript, p.7). The insurers are allowed, however, to give third parties the authority to file on the insurer's behalf (*Id.*). According to Mr. Manders, the Department does not object to a similar grant of authority regarding the filing of Certificates (*Id.*).

III. DECISION

WHEREAS, the Commissioner has reviewed the entire record in this matter, and **WHEREAS**, the Commissioner agrees with the comments offered by Mr. Manders and others in support of the proposed Regulation, and **WHEREAS**, the Commissioner recognizes the importance of promulgating a regulation in this matter in a timely fashion, **IT IS HEREBY ORDERED** that the unmodified proposed Regulation Chapter 120-2-103 entitled "Certificates of Insurance" a copy of which is attached hereto and made a part by reference, is **HEREBY ADOPTED**.

Given under my Hand and Seal this 2nd day of May, 2013.



RALPH T. HUDGENS
INSURANCE AND SAFETY FIRE COMMISSIONER
STATE OF GEORGIA



March 5, 2013

Mr. Vince Wiegand
Administrative Procedures Division
Office of the Commissioner of Insurance
1016 West Tower, Floyd Building
Two Martin Luther King, Jr., Drive
Atlanta, GA 30334

Re: Comments on Proposed Regulation on Certificates of Insurance
Docket Number I-13-I-2

Dear Mr. Wiegand:

On behalf of the Independent Insurance Agents of Georgia, I submit these comments on the proposed regulation on certificates of insurance. I will also attend the March 19 hearing to make an oral presentation.

Following the passage of HB 66, in the 2011 session of the General Assembly, the Department of Insurance worked with various organizations to develop the regulation now being proposed. IIAG took part in these discussions and made several suggestions which were incorporated in the proposal.

While the law is self-executing, the regulation is very important to our members and their insureds in that it provides specificity to some of the law's provisions and makes it far easier for our members to demonstrate to certificate requesters who make improper demands that their demands are contrary to the law.

We have two suggested changes to the proposed regulation to further this aim. We believe that the addition of these two new paragraphs following existing paragraph (3) in section 120-2-103-.07 would strengthen the regulation.

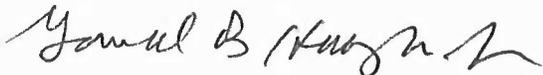
(4) No person may require, request, issue or prepare a certificate which contains language summarizing or describing any provision of an insurance policy. Such a summary or description necessarily purports to alter coverage, as it differs from the complete language contained in the policy.

(5) No person may require, request, issue or prepare a certificate which contains language in the section of the form reserved for a description of the insured's operation other than such a description. Information relating to the insurance coverage shall be entered only in those sections of the certificate form designed for that use.

Our members face demands from certificate requesters on a regular basis that put them in a most difficult position: either violate the law or lose a customer who will not get a job without a certificate as require by the certificate requester. The two suggested paragraphs address specific situations that our members must confront every day. Unfortunately, certificate requesters can provide examples of certificates completed by other agents that are questionable at best and clearly illegal at worst. Having provisions in the regulation that state clearly that the specific demand being made violates the law would assist our members, their insureds, and all others who are attempting to comply with the law.

Thank you for this opportunity to comment.

Sincerely,



Gould B. Hagler, Jr., AAI
Governmental Affairs

RECEIVED

MAR 07 2013

**ADMINISTRATIVE
PROCEDURE**



Curtis C. Leonard
Regional Vice President, State Relations

March 13, 2013

Mr. Vince Wiegand
Administrative Procedure Division
Office of Commissioner of Insurance
1016 West Tower, Floyd Building
Two Martin Luther King Drive
Atlanta, GA 30334

Dear Mr. Wiegand:

Thank you for the opportunity to provide comments on the proposed regulation regarding Certificates of Insurance (Chapter 120-2-103). When adopted, this regulation will implement Georgia House Bill 66 which passed in 2011.

A coalition of real estate lenders (Coalition) provided commentary throughout the legislative process regarding concerns with the original draft of House Bill 66. The Coalition's primary concern was the deleterious impact the draft would have concerning lenders' ability to receive adequate evidence of insurance for its non-recourse real estate loans. In recognition of that concern, House Bill 66 was amended to provide the Commissioner discretion to approve forms which would provide the evidence of insurance lenders use in real estate transactions. The Coalition's comments below reflect concerns that the proposed regulations impinges upon the discretion granted the Commissioner in the statute.

1. Remove mandate that only insurers file forms

In § 120-2-103-05(1), the proposed regulation mandates that only insurers can file certificate forms for approval by the Commissioner. This mandate is not found in § 33-24-19.1(b) of the legislation:

(b) No person, wherever located, may prepare, issue, or request the issuance of a certificate of insurance unless the form has been filed with and approved by the Commissioner of Insurance. No person, wherever located, may alter or modify an approved certificate of insurance form.

This mandate precludes lenders, banks and even insurers without a property/casualty line of authority the ability to file alternative forms for the Commissioner's consideration. Both the legislation in § 33-24-19.1(d) and the proposed regulation in § 120-2-103-05(5) allow for the Commissioner to approve in limited circumstances, including mortgage transactions, so long as the form does not amend, extend or alter the terms of coverage under the policy. The discretionary authority is rendered ineffective if lenders are not allowed to seek the Commissioner's approval. In short, the inclusion of the mandate is inconsistent with the legislative intent of House Bill 66.

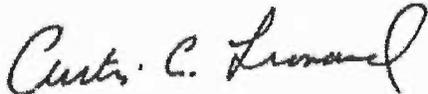
2. Remove mandate all forms must be filed through SERFF

In addition to mandating who may file forms, § 120-2-103-.05(1) of the proposed regulation mandates that forms shall only be filed through the SERFF filing system. We are unaware of any statute or regulation requiring the electronic filing of any certificate forms. If there are, we contend that the Commissioner should have the discretion to waive this requirement so that lenders have reasonable access to the Commissioner. If the Commissioner has discretionary authority to approve alternative forms, certainly it's reasonable to expand that discretion to include how the requests are submitted. Therefore, we request that you strike the mandate requiring the use of SERFF for filing certificates.

3. Conclusion

Appropriate evidence of insurance is vitally important to the Coalition and lending in this state. When the discretionary authority provision was added to bill, it was understood that those certificates would be filed by lenders, including banks and non-p/c insurers. The twin mandates allowing only insurers to file forms and requiring that forms be filed using SERFF, are inconsistent with the intent to address the concerns of the Coalition by adding the discretionary approval provision to the bill. We request that the regulation be revised to keep it in conformity with House bill 66 by removing both mandates.

Kindest Regards,



Curtis C. Leonard



Steven M. Monroe, Esq.
Chief Compliance Officer U.S. & Canada

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Steven.Monroe@marsh.com
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VIA FEDEX

March 14, 2013

Vince Wiegand
Office of Commissioner of Insurance
Administrative Procedure Division
1016 W Tower, Floyd Building
Two Martin Luther King Jr. Drive
Atlanta, Georgia 30334

Re: Proposed Georgia Rule Section 120-2-103-.05

Dear Mr. Wiegand:

I am writing on behalf of Marsh USA Inc. and Marsh & McLennan Agency (MMA) to submit comments regarding Proposed Georgia Rule Section 120-2-103-.05, related to the Approval of Certificates. Marsh is a world leader in insurance broking and risk management, delivering innovative industry-specific solutions to clients in over 100 countries, including locally serving clients through our Marsh Atlanta office; and our MMA Rutherford offices in Atlanta and Alpharetta. Thank you for the opportunity to share our feedback with you.

We agree with the important goals that Georgia and other states are pursuing to regulate the issuance of Certificates of Insurance ("Certificates") to ensure that the terms and conditions of the underlying policies are properly represented. However, there are certain practical considerations that we believe must be taken into account in drafting the final rule. In particular, the last sentence of subsection (1) of the proposed rule includes the following language: "Only insurers may file certificates for approval." This limiting verbiage may have unintended consequences that will negatively affect the insurance industry, as well as general business commerce in Georgia. For the reasons discussed below, we would suggest that:

- a) the Office **eliminate** the "[o]nly insurers may file certificates for approval" clause from the proposed rule, *or, in the alternative,*
- b) modify that sentence, so that it reads in its entirety: "An insurer, or an insurance producer, agent, or broker required to be licensed under the laws of this state to sell, solicit, or negotiate insurance may file certificates for approval."



Page 2
March 14, 2013
Vince Wiegand
Office of Commissioner of Insurance

Like most insurance producers, Marsh regularly issues Certificates. These Certificates include standard ACORD forms, our own internally created "Memorandum of Insurance" and other manuscript forms that address clients' unique needs that cannot be met through standard Certificates. (Please see attached examples.) Marsh goes to great lengths to ensure compliance of such forms, whose content may at times be mandated by contractual obligations between the insured and the Certificate holder. Sometimes these unique Certificate requirements are dictated by a governmental entity that may, or may not, have formalized its Certificate requirements in a regulation or statute.

The current state of the insurance market places the responsibility of Certificate issuance squarely on the insurance producer. Most insurance companies require the producers, through contracts and agency agreements, to issue the Certificates. Insurers have taken a backseat when it comes to the actual day-to-day world of Certificates, very often eschewing any active responsibility for Certificates, including not wanting to receive copies of the Certificates that producers issue. Moreover, nearly all the states that regulate how a Certificate is issued place the responsibility of compliance – that the Certificate accurately reflects the terms and conditions of the policy – on the party issuing the certificate, i.e. the producer and sometimes also the insured.

Under the plain language of the proposed rule, producers, like Marsh, may not be able to file template Certificate forms. This could have direct and serious repercussions on commerce in Georgia, creating a barrier for businesses to provide timely evidence of insurance mandated by their business partners. We have seen many instances across the country where certificate holders refuse to allow our insureds to commence work, or even enter a job site, until a Certificate, in the form they are familiar with, is delivered to them. Because the producer is obligated by contract with the insurer to manage Certificate matters, it would be difficult, if not impossible, to engage insurers in a timely way to get them to make the filing on the insured's behalf.

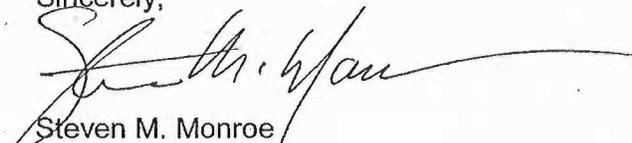
We recognize the purpose behind Georgia's regulation that Certificates need to be filed for approval before being used. However, we do not understand the regulatory purpose for restricting the right to file a template Certificate to insurers only. If the purpose is to ensure that the terms and conditions of the underlying policies are properly represented, this filing restriction would not accomplish that goal. There are no policy terms and conditions in a template Certificate form. Those terms and conditions are added later by the producers when a Certificate is issued to the Certificate holder. Moreover, once the template form is approved, it could be used for evidencing different coverage for any insurer, not just the insurer who filed the template form.



Page 3
March 14, 2013
Vince Wiegand
Office of Commissioner of Insurance

We appreciate the consideration of the Office and hope you will address a potential barrier to the insurance market's efficient operation by amending the rule as discussed herein. Please let us know if there is further information that we can provide as you consider this issue.

Sincerely,



Steven M. Monroe
Chief Compliance Officer, U.S. & Canada

cc: Fred E. Karlinsky, Esq.



Georgia Department of Agriculture

19 Martin Luther King, Jr. Drive • Room 242 • Atlanta, Georgia 30334-4201

Gary W. Black
Commissioner

Telephone: (404) 656-3641
Facsimile: (404) 463-6671
INSURANCE@AGR.GEORGIA.GOV

GEORGIA STRUCTURAL PEST CONTROL ACT INSURANCE CERTIFICATION FORM

Insured _____ License No. _____

Address _____

City _____ State _____ Zip Code _____

Insurance Company _____

Policy No. _____ Effective Date _____ Expiration Date _____

.....
Licensed Categories: _____ Fumigation _____ Household Pest Control _____ Wood-destroying Organism

| MINIMUM LIMITS REQUIRED FOR PEST CONTROL AND/OR FUMIGATION LICENSE | |
|---|-----------|
| Bodily Injury: Any One Occurrence | \$50,000 |
| Property Damage: Any One Occurrence | \$50,000 |
| Minimum Annual Aggregate | \$200,000 |

| MINIMUM LIMITS REQUIRED FOR WOOD-DESTROYING ORGANISM LICENSE | |
|---|-----------|
| Bodily Injury: Any One Occurrence | \$100,000 |
| Property Damage: Any One Occurrence | \$100,000 |
| Minimum Annual Aggregate | \$500,000 |

INSURANCE CERTIFICATION

Certification is hereby made that insurance coverage as required by the Georgia Structural Pest Control Act has been established by the above names insured through liability insurance in the minimum amount specified above as provided in O.C.G.A. 43-45-9. Licensees for the control of wood-destroying organisms shall have coverage for claims arising from the licensee's treatment or services for control of wood-destroying organisms including errors and omission coverage on an occurrence basis. Insurance also covers legal damages resulting from sudden and accidental discharge or release of pollutants. Notification of cancellation shall be made to and received by the Secretary of the Structural Pest Control Commission no less than 30 days prior to any cancellation.

Carrier or Agent _____

By _____ Date _____

Address _____

City _____

State _____ Zip _____

Telephone _____

TO BE EXECUTED ONLY BY CARRIER OR AGENT

SAMPLE

| MEMORANDUM OF INSURANCE | | | | | DATE | |
|--|--|------------------|-----------------------------|-------------------------------------|--|--|
| <p>This Memorandum is issued as a matter of information only to authorized viewers for their internal use only and confers no rights upon any viewer of this Memorandum. This Memorandum does not amend, extend or alter the coverage described below. This Memorandum may only be copied, printed and distributed within an authorized viewer and may only be used and viewed by an authorized viewer for its internal use. Any other use, duplication or distribution of this Memorandum without the consent of Marsh is prohibited. "Authorized viewer" shall mean an entity or person which is authorized by the insured named herein to access this Memorandum via http://www.marsh.com/moi?client=E753. The information contained herein is as of the date referred to above.</p> <p>Marsh shall be under no obligation to update such information.</p> | | | | | | |
| PRODUCER Marsh USA Inc. ("Marsh") | | | | COMPANIES AFFORDING COVERAGE | | |
| INSURED demo | | | | Co.A demo | | |
| | | | | Co.B | | |
| | | | | Co.C | | |
| | | | | Co.D | | |
| COVERAGES | | | | | | |
| THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS MEMORANDUM MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. | | | | | | |
| CO LTR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE | POLICY EXPIRATION DATE | LIMITS LIMITS IN USD UNLESS OTHERWISE INCIDCATED | |
| | GENERAL LIABILITY | | | | GENERAL AGGREGATE | |
| | | | | | PRODUCTS - COMP/OP AGG | |
| | | | | | PERSONAL AND ADV INJURY | |
| | | | | | EACH OCCURRENCE | |
| | | | | | FIRE DAMAGE (ANY ONE FIRE) | |
| | | | | | MED EXP (ANY ONE PERSON) | |
| | AUTOMOBILE LIABILITY | | | | COMBINED SINGLE LIMIT | |
| | | | | | BODILY INJURY (PER PERSON) | |
| | | | | | BODILY INJURY (PER ACCIDENT) | |
| | | | | | PROPERTY DAMAGE | |
| | EXCESS LIABILITY | | | | EACH OCCURRENCE | |
| | | | | | AGGREGATE | |
| | GARAGE LIABILITY | | | | AUTO ONLY (PER ACCIDENT) | |
| | | | | | OTHER THAN AUTO ONLY: | |
| | | | | | EACH ACCIDENT | |
| | | | | | AGGREGATE | |
| | WORKERS COMPENSATION /EMPLOYERS LIABILITY | | | | WORKERS COMP LIMITS | |
| | | | | | EL EACH ACCIDENT | |
| | | | | | EL DISEASE - POLICY LIMIT | |
| | | | | | EL DISEASE - EACH EMPLOYEE | |
| The Memorandum of Insurance serves solely to list insurance policies, limits and dates of coverage. Any modifications hereto are not authorized. | | | | | | |

SAMPLE

| MEMORANDUM OF INSURANCE | DATE |
|---|------------------------|
| <p>This Memorandum is issued as a matter of information only to authorized viewers for their internal use only and confers no rights upon any viewer of this Memorandum. This Memorandum does not amend, extend or alter the coverage described below. This Memorandum may only be copied, printed and distributed within an authorized viewer and may only be used and viewed by an authorized viewer for its internal use. Any other use, duplication or distribution of this Memorandum without the consent of Marsh is prohibited. "Authorized viewer" shall mean an entity or person which is authorized by the insured named herein to access this Memorandum via http://www.marsh.com/moi?client=E753. The information contained herein is as of the date referred to above. Marsh shall be under no obligation to update such information.</p> | |
| PRODUCER Marsh USA Inc. ("Marsh") | Insured demo |
| ADDITIONAL INFORMATION The Memorandum of Insurance serves solely to list insurance policies, limits and dates of coverage. Any modifications hereto are not authorized. | |



AIG State Relations
100 Colony Square,
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1175 Peachtree St. N.E.
Atlanta, GA 30361

Greg Erath
Sr. State Relations Officer
T 404 249 1943
M 770 843-6118
Greg.Erath@aig.com

March 15, 2013

Vince Weigand
Administrative Procedure Division
Office of Commissioner of Insurance
1016 West Tower, Floyd Building
Two Martin Luther King, Jr, Drive
Atlanta, GA 30334

Re: Proposed Chapter 120-2-103, Certificates of Insurance

Dear Mr. Wiegand:

The following are AIG's comments regarding the proposed Rule and Regulation 120-2-103, Certificates of Insurance, of the Georgia Administrative Procedure Act. We appreciate the department's efforts to develop this rule and the opportunity to review it and comment. Please note that we have added some bold-facing and underlining of text for the sake of identification and emphasis.

120-2-103-.05 (1)

The last line of this subsection, which reads, "**Only insurers may file certificates for approval**" is inconsistent with Georgia code § 33-24-19.1(a) (1) which states that a "Certificate or certificate of insurance means any document or instrument...which is prepared or issued by an insurer **or insurance producer**..." If insurance producers are allowed to prepare and issue certificates, apart from actions by insurers, then it is also appropriate to allow producers to file their certificates for approval.

Furthermore, restricting the issuance of certificates of insurance to insurers does not comport with current market practices and will create significant burdens for insurers, producers and brokers. Currently, an overwhelming majority of the certificates of insurance that evidence coverage issued by AIG-affiliated insurers are drafted and issued by our producers (agents and brokers), with no involvement by our employees. This is a service provided by producers to policyholders because those producers have the direct relationship with the policyholder and are best positioned to assist with such requests. To require the insurer to file these certificates is likely to be disruptive in today's marketplace.

For these reasons we believe that it's critical that the rule allow for either the insurer or its agent to make such filings. Of all the states that have enacted similar legislation and rules in the last two years, Georgia would be the only state to establish such a requirement.



In fact, the Certificates of Insurance Model Act adopted in November 2012 by the National Council of Insurance Legislators (NCOIL), includes, in pertinent part, the following language:

“Section 3. Certificate Forms

A. A person may not prepare, issue, or request or require the issuance of a certificate of insurance on property, operations, or risks located in this state unless the certificate of insurance form has been filed with the commissioner **by or on behalf of an insurer.**”

Because of the foregoing, we respectfully request that the language in subsection 120-2-103-.05, of the Proposed Rule, be revised to reflect that the required filing may be made either by the insurer or by the producer on behalf of the insurer.

120-2-103-.05(2)

We respectfully suggest that a sentence be added to this subsection as follows:

Additionally, certificate of insurance forms whose specific content and wording are established by Federal law or regulation, or any law or regulation of this State, are not required to be filed by individual insurers.

This wording, also, is found in NCOIL’s Certificates of Insurance Model. The rationale for including this language is that the form and content of the certificate of insurance is already mandated in Federal or State law or regulation; therefore, further review is unnecessary and thus deemed approved by the Insurance Commissioner.

120-2-103-.05(4) & (5)

These subsections of the proposed Rule present a significant problem for insurers who write commercial environmental liability policies. Certificates of Insurance are routinely provided in conjunction with such liability policies to satisfy financial assurance requirements for certain hazardous waste facilities and underground storage tank systems, and their language must comply with the requirements set forth in Federal and state laws and regulations.

Subsection 102-2-103-.05 (4) & (5) of the proposed Rule mandate specific language to be included in all certificates of insurance. This proposed section would conflict with Section 391-3-11-.05, Hazardous Waste Management, Financial Responsibility, as well as Section 391-3-15-.12, Underground Storage Tank Management, Financial Responsibility Requirements in the Georgia Administrative Code (GAC). These sections of the GAC require financial assurance for hazardous waste facilities and underground storage tanks. These GAC sections already mandate the form of the certificates of insurance used in these instances (by incorporating, by reference, portions of the Federal EPA regulations). They do not



permit the forms to be altered. The forms and certificates must be identical to that which is contained in the regulation. Obviously, it would be impossible to comply with both these existing sections and the new, proposed rule.

Therefore, base upon the foregoing, AIG respectfully suggests that the following language be added to the proposed Rule, as new Subsection 120-2-103-.05(6):

(6) Subsections (4) and (5) of this Section shall not apply to any certificate of insurance form found in any other section of the Georgia Administrative Code, or in any Federal law or regulation.

The rationale for the insertion of this language is straightforward:

- a. If the form and content of the certificate of insurance is already mandated in another section of the GAC, or in a Federal law or regulation, and by said law or regulation it cannot be altered and/or amended, and must be identical, those certificates must be exempt from this portion of the proposed Rule; and
- b. Without this language the proposed Rule would directly conflict with already established environmental liability coverage rules and would force insurers into the untenable position of having to violate one section of the Georgia Administrative Code, or another.

[For your additional reference, language to that proposed herein has been incorporated in the laws of other states including Idaho Senate Bill 1390 (Section 1 – Idaho Code Section 41-1850(16)), Maryland House Bill 463 (Section 1 – Annotated Code of Maryland Section 19-116(C) (3)), and Virginia Senate Bill 47 (Section 1 – Code of Virginia Section 38.2-518(D)), all of which were enacted late last year.]

In general, we recommend using the NCOIL Certificates of Insurance Model Act as a guide to drafting this proposed Rule. We realize that the department is dealing with some limitations due to the legislation enacted in 2011; however, we have attempted to identify those portions of the Model Act that we believe are very important and appropriate and for inclusion in the proposed Rule and will not conflict with state law.

Again, thank you very much for the opportunity to comment on this proposed rule. If you have any questions about these comments, please do not hesitate to contact me.

Yours very truly,



March 8, 2013

Vince Wiegand
Administrative Procedure Division, Ofc of Commissioner of Insurance
1016 W Tower, Floyd Bldg.
Two Martin Luther King Jr. Dr.
Atlanta, GA 30334

Re: Lockton comment to proposed rule GAC 120-2-103-.01 thru .08.

Dear Mr. Wiegand,

I submit these comments to the above-referenced proposed rule on behalf of Lockton Companies, LLC, a licensed insurance producer in the State of Georgia.

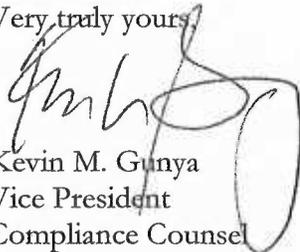
Specifically, we reference Section 120-2-103-.05 Approval of Certificates, which states:

“(1) No person, wherever located, may prepare, issue, or request the issuance of a certificate of insurance unless the form has been filed with and approved by the Commissioner. Forms shall be submitted in the same manner as any other form filing through the SERFF filing system with applicable filing fees submitted electronically. Only insurers may file certificates for approval.”

We hereby request that the last sentence of this subsection be deleted as it would seemingly preclude insurance producers such as Lockton from filing certificates for approval on behalf of its clients. The need for specific certificate forms is almost always client-driven. In our experience, insurers have little interest in certificates in general and would seemingly have minimal interest or incentive to file certificate forms for approval. Prohibiting insurance producers and their clients from filing certificate forms for approval would frustrate a genuine client need and create an unnecessary impediment to our client’s business operations.

Thank you for your consideration.

Very truly yours,



Kevin M. Gunya
Vice President
Compliance Counsel

March 28, 2013

Mr. Steve Manders
Director of Insurance Product Review
Office of Insurance and Fire Safety
Two Martin Luther King, Jr. Drive
West Tower, Suite 704
Atlanta, Georgia 30334

Dear Mr. Manders:

At the conclusion of Tuesday's hearing on proposed regulation Chapter 120-2-103 regarding Certificates of Insurance, Commissioner Hudgens requested that interested parties provide comment letters in the next couple of weeks. This letter is a response to that request and represents the perspective of the below listed commercial real estate lenders, investors and servicers, and selected trade associations, a group who stands to be adversely impacted by this regulation.

As communicated at the hearing, mortgage lenders are very different from the vast majority of parties who request evidence or certificates of insurance. Lenders are an additional insured – either the loss payee or the co-loss payee under the policy. Through the standard union mortgage clause in the policy, lenders have unique rights and obligations that other certificate holders do not have. Since 1984, lenders, who must have evidence that insurance is in place on loan collateral at all times throughout the life of the loan, have been provided with evidence of insurance forms as opposed to binders, because binders lack sufficient specificity as to the coverage being bound and generally expire before policies can be delivered by the property and casualty insurance carriers. According to Georgia law, binders automatically expire in 90 days and can only be extended with the written approval of the Commissioner.

We are requesting 2 amendments to the proposed regulation:

1. Remove the requirement that only insurers or their authorized representatives are permitted to file forms.
2. Remove the requirement that all forms must be filed through SERFF.

As you know, lenders and servicers worked with the Georgia legislature in 2011 to ensure that House Bill 66 included discretionary authority allowing certificate forms to be filed by lenders, including representative trade associations, banks and insurers other than property and casualty carriers. This authority necessarily included the ability to file forms outside of the SERFF system since lenders and related groups have no access to that system.

To ensure that commercial real estate lending in Georgia does not become more difficult in an already challenging economic environment and to help manage the risk associated with commercial mortgage lenders' interests in the billions of dollars of outstanding loans in the state, we hope that you will modify the regulation as requested above.

Mr. Steve Manders
March 28, 2013
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Representatives from our companies are standing by to discuss this request in greater detail at your convenience.

Yours very truly,

American Council of Life Insurers
American Fidelity Assurance Company
Bank of America, N. A.
Connecticut General Life Insurance Company
KeyCorp Real Estate Capital Markets, Inc. d/b/a KeyBank Real Estate Capital
MetLife, Inc.
Mortgage Bankers Association
New York Life Insurance Company
Principal Financial Group, Inc.
Prudential Financial, Inc.
TIAA-CREF
Unum Group
Wells Fargo Bank, N.A.

cc: Commissioner Ralph Hudgens
Representative Howard Maxwell



American Insurance Association

SOUTHEAST REGION

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April 2, 2013

VIA ELECTRONIC MAIL

Mr. Vince Wiegand, Esq.
Administrative Procedure Division
Office of Commissioner of Insurance
1016 West Tower, Floyd Building
2 Martin Luther King, Jr. Dr.
Atlanta, GA 30334

RE: Docket No. I-13-I-2 Proposed Regulation Chapter 120-2-103 "Certificates of Insurance"

Dear Mr. Wiegand,

The American Insurance Association (AIA) is the leading property-casualty insurance trade organization, representing approximately 300 insurers that write more than \$117 billion in premiums each year. AIA member companies offer all types of property and casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage for small businesses, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance.

We are writing in response to the request for additional comments regarding the proposed adoption of the above-referenced Regulation. Specifically, we write to support adoption of the Regulation and oppose the contention by other parties that the Regulation should be revised to permit the filing, approval, and issuance of a certificate of insurance, such as the Mortgage Bankers Association (MBA) certificate form, that has not been filed by the insurer or another party on behalf of insurers (i.e., a producer or standard-setting organization).

Unlike producers or standard setting organizations, the MBA is a national advocacy association that pursues the best interests of the real estate financing industry not a standard-setting organization that serves the public interest through the development of form and data standards. Like other states Georgia law contemplates the filing of forms and rates in various contexts, but those requirements apply exclusively to insurers and the small group of statistical agents and standard-setting organizations that submit forms on their behalf. HB 66 did nothing to change those provisions and for good reason. Just as the Regulation contemplates, a certificate of insurance form cannot

begin to accurately describe the underlying policy unless it is a form that has been developed by or on behalf of the insurer. (Likewise, the Insurance Commissioner would not accept life insurance policy form filings for instance made by consumers or other third parties.)

Finally, notwithstanding protestations to the contrary, a lender can obtain a copy of the underlying insurance policy (or the binder, which is an interim policy itself) at any time and review it for compliance with the terms of the loan agreement if it wishes to do so; and a borrower seeking large sums of money has every reason to provide it. However, the sanctioned use of a form not developed or adopted by an insurer would eliminate any incentive for lenders to conduct due diligence, impose significant new liabilities on the insurance community, shift the responsibility of insurance due diligence from the commercial lending community to agents and brokers, and increase the likelihood of litigation.

Additionally, as all parties are aware, at the recently concluded Spring Meeting of the National Conference of Insurance Legislators, all parties confirmed willingness to discuss whether the ACORD 875 enhanced binder form might form the basis of a possible solution. Consequently, ACORD will be reconvening its Certificates Working Group. While it is unclear what may result from that process, should an acceptable ACORD form be agreed upon, that form would of course be deemed approved under Georgia law and the Regulation. Therefore, it would seem particularly inappropriate to simply sanction the use of the MBA form at this time.

Respectfully submitted,

Ronald V. Jackson
Vice President, State Affairs