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January 28, 2009

MEMORANDUM 2009-3A

TO: Property and Casualty Insurers and Producers Writing Property and Casualty Business in Hawaii

FROM: J.P. Schmidt
Insurance Commissioner

SUBJECT: Certificates of Insurance for Property and Casualty Insurance Policies

It has come to our attention that producers routinely modify certificates of insurance (“COI”) without the knowledge or consent of the insurer to include representations that are inconsistent with the terms of the underlying insurance policy or the contractual obligations of the insurer to the named insured. The modifications may include:

- a. naming as additional insureds parties that may not be covered under the policy such as, subsidiaries, affiliates, agents, elected officials, volunteers, successors, and assigns;
- b. a guaranty to notify all additional insureds (named or unidentified) of policy changes and termination;
- c. eliminating the phrase “endeavor to” from the standard COI language regarding the mailing of notices in the event of a policy cancellation
- d. an amendment to the insurance policy to incorporate the indemnity obligation of the contract between the policyholder and the additional insured;
- e. naming additional insureds that have no real interest in the contract or subject matter of the contract between the policyholder and the primary additional insured; and
- f. statements that the subject policy is primary and non-contributory when typically most begin coverage only after the policies of the primary defendants are exhausted.

Producers are reminded that the law requires the truthful representation of the terms and conditions of any insurance policy. Misrepresentations can expose the producers to civil, administrative and criminal prosecution and sanctions. Thus, it is imperative that the producers issue certificates of insurance that accurately represent the terms and conditions of the policies as contracted between the insurer and the policyholder.

The Insurance Division understands that the general purpose of the COI, whether it is a proprietary form or a generic outline, is to serve as proof of insurance in lieu of an actual copy of the insurance policy. The COI provides on a single sheet of paper a concise summary of selected key elements of the insurance policy. Typically, the COI will disclose policy limits, policy numbers, retention limits, and policy periods. The information purports to be accurate as of the date of the COI.

The COI is not the insurance policy. The COI is not intended to provide a comprehensive digest of the insurance policy. The COI is not intended to provide a vehicle to amend the insurance policy. The insurer can be bound only by a person or entity with the actual or apparent authority to execute an amendment to the contract.

Please contact Mark K. Morita, Staff Attorney at 808 586 2790 if you have any questions.

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