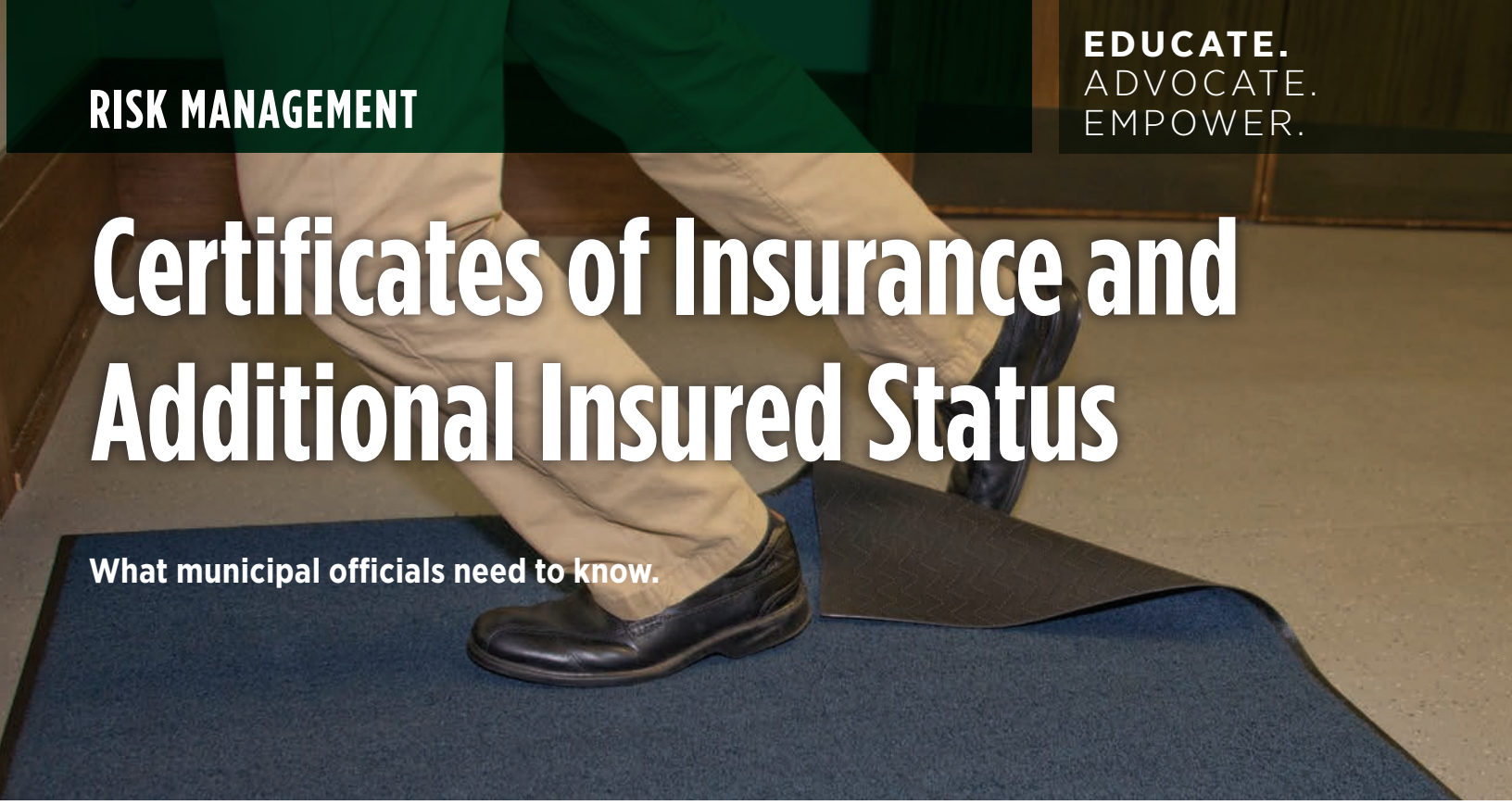

Certificates of Insurance and Additional Insured Status

What municipal officials need to know.

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Municipalities often enter into transactions with private organizations that create risk that the municipality will be sued for if an accident occurs. Examples of such transactions are (1) a municipality leases a building to be used for a high school graduation ceremony, and an invitee falls and gets hurt, and sues the municipality, (2) a municipality hires a snow removal service for a municipal parking lot, and a pedestrian slips and falls on ice, and sues the municipality, (3) a municipality owns a golf course and leases the pro shop to a private business, and a pro shop employee trips and falls on a stairway leading out of the pro shop, and sues the municipality, and (4) a municipality leases a baseball field to a youth baseball league, and a coach gets hit in the head with a baseball, and sues the municipality. In all four of these cases — which are real cases taken from published case law — the municipality required the organization it contracted with to make the municipality an additional insured on its liability policy and successfully obtained additional insured coverage for the suits filed against the municipality. Other situations where a municipality can expect to be named an additional insured are hiring a construction contractor to do work on municipal property, and granting of permits and utility easements.

The party that is required to provide additional insured coverage for the municipality will usually furnish proof of its compliance with the requirement by having its insurance broker send a certificate of insurance to the municipality. Certificates are uniformly issued on an industry standard form called the ACORD form. There are pre-printed disclaimers on the form indicating that the municipality must review the actual policy in order to confirm that the required coverage has been placed, and that the municipality should not rely on the certificate alone. Remember also that it is the insurance broker who issues the certificate, not the insurance company, so the representations in the certificate about the coverage that has been obtained are not going to be binding on the insurance company.

The wording of the insurance provision in the contract should be carefully reviewed to make sure it requires what the municipality actually expects. An insurance provision in one contract required the subcontractor to name the general contractor an additional insured on a certificate of insurance, but did not actually state that the general contractor had to be named an additional insured on an insurance policy. The appellate court held that if the parties had intended that the general contractor be named an additional insured on an actual insurance policy, they should have said that specifically.

It is also important to note that there is a wide variety of additional insured endorsements in the insurance marketplace. Standard endorsements are written by the Insurance Services Office (ISO), an industry association. It is important to specify in a contract that the municipality is to be named on the ISO CG 20 10 form endorsement or its equivalent, which provides coverage for bodily injury or property damage "caused in whole or in part by your acts or omissions" ("your" meaning the named insured's). Courts have found that this coverage applies as long as both the named insured and the additional insured are alleged to have been negligent. Failure to specify the ISO CG 20 10 form endorsement or its equivalent could leave the contractor free to name the municipality an additional insured on a non-standard form endorsement that covers only the municipality's vicarious liability for the contractor's acts or omissions. That is very narrow coverage indeed, and arguably illusory.

The municipality should also put in its contracts a requirement for additional insured coverage for both ongoing and completed operations, i.e., for losses taking place both while the work is ongoing and after it is complete. This avoids arguments about whether the loss was an ongoing or completed operations loss, such as where a member of the public slipped and fell on an icy surface that the municipality hired the named insured to keep clear. If the snow removal contractor furnishes only ongoing operations additional insured coverage, that leaves room for its insurer to argue that if the contractor was not actually on site at the moment of the fall, the coverage does not apply to the municipality, because the contractor's operations for that day had been completed. Carrying both types of additional insured coverage—for ongoing and completed operations—avoids that gap.

The municipality should also require that its additional insured coverage be primary, non-contributory, and that any coverage obtained by the municipality be excess over the additional insured coverage. Failure to specify this in the contract could result in additional coverage applying only on an excess basis over the municipality's own coverage. ISO form endorsements do not provide for excess additional insured coverage, but many non-ISO forms do.

While not always feasible, the municipality should ask the contractor to provide a copy of its actual policy (as opposed to a mere certificate of insurance), in order to confirm that the contractor has complied with the contract's insurance requirements.

Careful attention to this subject in drafting contracts and monitoring compliance can make the difference between losses being paid by contractors' insurance companies or out of municipal coffers.

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