

EBOOK

# 10 EXPOSURES YOUR INSURED **DON'T KNOW** THEY ARE FACING



# WHAT ARE THEY MISSING?

When it comes to ensuring your clients have the coverage they need, the policies you place for them are only one side of the equation. They also need to make sure they are requiring the right insurance coverages from the downstream parties with whom they contract and also ensure those parties actually maintain the required coverage.

Gaps in this process create risk exposures that your insureds may not understand until it is too late. As an insurance professional who knows the many nuances of commercial insurance and keeps up with ongoing changes and updates, it is easy to forget how little many of your insureds really understand when it comes to checking for coverage from others.

In this white paper, we've compiled 10 overlooked items that will help you and your team think beyond the policies you place to help ensure coverage. Just remember: what may be basic knowledge to you is likely completely unknown to the administrators who are checking coverage for your clients.

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# WHY COI MANAGEMENT SOFTWARE?

Think of managing third-party COIs like a juggling act. Things are constantly moving to keep multiple balls in the air. Take your eyes off one ball, and they all might drop. Most can juggle with a few items, but introduce hundreds or thousands and the task becomes impossible.

Many companies track COIs manually, which does not scale as a company grows. Soon a process that may have worked before is dropping the ball and causing major financial problems – on-the-ground project delays, claims exposures, and contract non-compliance. Profitable ventures soon can become loss leaders all because of one missed COI.

Technology offers an extra set of hands. By instituting COI management software, companies can eliminate spreadsheet tracking, stacks of papers, manual entry, and back-and-forth emails that create unnecessary risk. They offer one scalable platform for keeping third parties compliant and the company protected.

Choosing the right COI management software is an important decision. The investment includes cost, time, resources, and a commitment to changing legacy processes. This eBook provides the critical questions necessary for evaluating COI software and maximizing ROI. While pure risks always present the possibility for loss, **business risks** hold the potential for losses and gains. A company may gamble on a new product, acquisition, or bank loan. The risk could impact profits positively or negatively. Leaders have more control over this type of risk largely by how they manage the business.

## EXPOSURE 1

### **Are your insureds thinking about ALL of the types of coverage they should require?**

Your insureds could be issuing contracts for many different types of relationships, and there are a variety of coverage types that could be applicable. It's important to help them think through the details. Certain scopes of work or industries may prompt the need to require additional types of liability insurance such as Cyber, Professional, Pollution, or Riggers.

Simply requiring the right policy types is not enough. It's also important to help them consider the details of each coverage type. For example, if property is required, should they be confirming the policy includes specific coverages such as Law & Ordinance coverage or Increased Cost of Construction coverage? While these coverage specifications may seem like a no-brainer to you, your insureds are likely relying on your expertise, so be as thorough as possible!

## EXPOSURE 2

### Completed operations coverage for additional insureds

We know that you and your team understand **additional insured status** inside and out. But this can be an incredibly confusing topic for your insureds who don't live and breathe insurance and risk management like you do. Of the many coverage debates that stem from this tricky endorsement, the most common is missing additional insured status for completed operations.

There can be a significant difference between your insured to be listed as an additional insured on the certificate of insurance versus seeing the endorsement they've been added to and confirming it provides the right scope of coverage. Remember, missing coverage for additional insureds is the number one reason for uninsured and under-insured claims year after year. The more you can help your insureds understand this critical aspect of coverage and confirm that they have everything in check, the better!

## EXPOSURE 3

### Contractual privity

Many of your insureds are probably relieved when they see a blanket endorsement and don't have to confirm a long list of additional insured or subrogee names. But tricky wording in some of those blanket endorsements can limit additional insured or subrogee status to those with whom the insured has a written contract rather than anyone who is required to be an additional insured or subrogee in that contract.

Much like sole negligence wording, **contractual privity** requirements can be added via just a few simple words in an endorsement, so it is very important to pay close attention to the details. Most of your insureds are likely unfamiliar with the idea of contractual privity, which makes it impossible for them to catch potential issues.





## EXPOSURE 4

### Scope of work exclusions

It is terribly important to make sure the right coverages have been included, but it is just as important to make sure that no critical coverages have been excluded! Your insureds and their compliance administrators are focused on confirming what is on a certificate or in a policy. Often they overlook, or don't even think to ask about, what's not in the policy. For example, countless exclusions exist that are specific to certain types of work.

Be sure to ask your insureds specific questions like these to understand their unique insurance needs:

- Has your insured hired a painter with an overspray exclusion?
- Have they hired a contractor with a height exclusion to build a skyscraper?
- Is a vendor working on a townhome with a residential exclusion?



## EXPOSURE 5

### Third party action-over exclusions

This increasingly common **exclusion** can go by many names, including the employment liability exclusion or the labor exclusion, which can make it even more difficult to spot in a policy.

The Third-Party Action-Over exclusion comes into play when one of your insured's third parties has a worker who is injured while performing work for your insured. In addition to a workers' compensation claim, that worker may also pursue your insured for additional damages. Where this exclusion is present under any of its many names, your insured will not be able to obtain the coverage it needs for the claim, and, unfortunately, it is often not until a claim occurs that an organization even recognizes this exposure.

In addition to being difficult to spot, the exclusion is also making its debut in many new industries and in new areas of the country. It wasn't long ago that this was only a concern for those working in the most litigious areas or the riskiest industries.



## EXPOSURE 7

### What does follow form mean anyway?

It's not unusual for an agreement to include requirements for excess or umbrella coverage, and the easiest way to write that requirement is to say that it must “follow form” to the underlying policies.

Sure, this makes sense to an insurance professional, but do your insureds really know what they are looking for? Consider the following:

- Are they confirming that there is no limiting language in that follow form endorsement?
- Are they confirming that the correct underlying policies are scheduled on the excess or umbrella policy?
- Is it clear when the umbrella or excess policy begins responding to the claim if the underlying policy covers defense costs outside of its limits?

These are all considerations you have in mind when seeking coverage for your own insureds, and in many ways their compliance review process should mirror your own process for confirming the details.

## EXPOSURE 6

### The hammer clause

Like the Third-Party Action-Over exclusion, the **Hammer Clause** also goes by a myriad of names, including the “Consent to Settle” clause and the less flattering “Blackmail” clause. This clause will require the insured to agree to a settlement or forfeit all coverage of additional defense costs. The Hammer Clause is often misunderstood or not even on the radar for compliance administrators until it is too late.

While these clauses are most common in professional liability policies, they can be found in other types of policies, and the specifics can vary. Understanding where to look and what these different variations really mean will prevent nasty surprises in the midst of defending a claim.



## EXPOSURE 8

### Excluded parties on the workers' compensation policy

If your insureds are paying attention when they receive certificates of insurance, they will notice that officers, partners, proprietors, or executives are sometimes excluded from **workers' compensation coverage**, especially for smaller businesses.

It may be alright for these parties to be excluded, but if those parties are going to be on your insured's site or performing any work for your insureds it's important to address this coverage gap. Discuss with your insureds the simple practice of confirming which parties are excluded when one of these certificates comes in; it can save them from a big headache in the future!



## EXPOSURE 9

### Workers' compensation in multiple states

Your insureds may have operations nationwide or across multiple states, and workers' compensation requirements can vary. Another consideration for your insureds that track compliance of vendors and subcontractors is that a workers' compensation policy may only apply to one state. Insurance for workers' compensation coverage is state-by-state, and each state has its own rules and regulations that serve to govern how this applies.

It can be common for a subcontractor or vendor to be based in one state or working on a specific project and then either transfer to another state for a project or move on his or her own to begin working in a new state.

As you know (but your insureds may not), if that subcontractor or vendor is injured on the job, it can open up a HUGE set of complications when workers' compensation isn't valid in the new state.

## EXPOSURE 10

### The NOC is not a guarantee

A notice of cancellation (otherwise known as a NOC) is bound to show up in the mail every now and then, and when it arrives, it gives your insured a false sense of security that a notification is sent for every cancelled policy. Unfortunately, many providers only "endeavor to" send notices of cancellation to certificate holders, and many cancelled policies go unnoticed until renewal time, creating not just a gap in coverage, but no coverage at all. Encourage your insureds to continue tracking insurance for compliance at renewal time and to reconfirm coverage throughout the year to capture and correct as many cancelled or changed policies as possible.



# GIVE YOUR INSUREDS THE **HELP THEY NEED**

Keeping track of each policy at renewal time can be challenging enough; we understand how reconfirming coverage throughout the year to uncover cancellations could seem impossible, especially with all of the new items we've just added to your insureds' compliance checklist. When you combine this type of administrative burden with the insurance knowledge it takes to close these coverage gaps, most of your insureds will feel defeated pretty quickly. It's easy to ignore the need to improve this process, and many organizations do just that until they experience a major loss from an uninsured or under-insured claim caused by a third party.

Your insureds need their trusted insurance advisor to be a part of this process! From including the right requirements in their contract language to confirming the parties they contract with have the right coverage to leveraging those excellent compliance practices to earn great rates for their own liability coverage, your insureds don't stand a chance of making the most of their certificate tracking unless you get involved.

While these 10 exposures should serve as a solid start for educating your insureds and ensuring they have proper coverage, myCOL's exclusive program for commercial agents is here to help you address the entire coverage equation.



# ABOUT MYCOI

If your company is ready to solve the compliance juggling act, direct these questions to myCOI. Our intuitive cloud-based solution is backed by a team of insurance experts to keep organizations protected from costly claims. Clients benefit from a comprehensive system for COI tracking, compliance, and risk reporting. Automated processes increase efficiencies and minimize risk. Plus, system integrations create workflow connections that stop noncompliance whenever and wherever it occurs. Make dropping the ball on compliance a thing of the past with myCOI.

For more information or to schedule a free demo visit [mycoitracking.com/request-a-demo](https://mycoitracking.com/request-a-demo) or call (317) 759-9426.

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