



With the recent spate of Federal regulatory legislation, including the just-passed Wall Street Reform and Consumer Protection Act, we are adding a host of new defined terms to our regulatory lexicon. Not all of them make sense, and a few could even be classified as oxymorons. Our favorite in that category is "adult child," brought to us by the health insurance reform law, or PPACA. It ranks right up there with "jumbo shrimp." And after the regulators worked to fill in the blanks in the law, they gave us the "interim final" regulations! Who says that our government doesn't have a sense of humor?

Speaking of the financial reform legislation, you may have heard that, among the many other things that it does, it creates a Federal Insurance Office (FIO). Fortunately or unfortunately, depending on your point of view, the FIO has little regulatory authority, and the law leaves pretty much intact the current system of state regulation of insurance companies. The FIO analyzes data, advises the Secretary of the Treasury and makes reports to Congress, one of which will be how to modernize and improve the regulation of insurance in the U.S., due in 18 months. We will eagerly await that report (but then we are insurance geeks).

-- Ed.

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# CANALYSIS & COMMENT

## REINING IN SOCIAL MEDIA RISKS

Is your company connected to the electronic world? Being connected used to mean having e-mail and a web site. Today, businesses are awakening to the opportunities and pitfalls of the burgeoning social media network through such platforms as Facebook, MySpace, LinkedIn, YouTube and Twitter. What are Social Networks all about?

According to the web site of a soon-to-be-rolled-out social network called *somethingcoolhappened.com*, social networking is the practice of gathering connections between individuals. Sites gather as much information as possible about someone, and then allow other site users who know bits and pieces of this information to find that person, essentially opening up people's lives to the Internet. *Somethingcoolhappened.com* plans to take this a step further. Rather than creating connections based on a person's true identity, complete strangers will be allowed to "share the cool happenings of their lives with each other through pictures, stories and videos." Real names and e-mail addresses will not be displayed anywhere on the site; a username and an alias will be used instead. *Somethingcoolhappened.com's* stated goal is to redefine the concept of social networking. Change is good, right?

Over the past several years Cyber Risks have gained the attention of Risk Managers, but the social media network, an ideal venue for advertising and connecting with the public at large, also represents a significant loss exposure that businesses must address. Things are happening fast in the social networking media frontier and business organizations need to develop policies and/or guidelines to help avoid allegations of defamation or copyright infringement, and to avoid needless damage to their own reputation.

The use of social media platforms for company advertising has its risks, but they are not unlike those associated with other forms of Internet advertising. Social media platforms can, however, lead to claims alleging right-of-privacy violations, the disclosure of confidential or other protected information including copyrighted materials, and posts about people that can result in hostile workplace claims.

In addition, there is the risk to your own data and intranet from viruses and malware. McAfee Labs, in its *2010 Threat Predictions*, points to Facebook's over 350,000 active applications, or apps, as fertile ground for malware purveyors, as is Apple's App Store with its 100,000 apps. Users trust these sources and can easily spread data-gathering apps among hundreds of thousands of other social networkers.

According to a 2009 survey by Proofpoint, a significant number of companies have experienced a data loss event through social media platforms and in several cases, employment terminations were necessary. Such terminations doubled from 2008 to 2009 reflecting the ever-increasing risk associated with social media platforms.

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If you haven't already, you should consider developing a company policy or guidelines to address the "Dos and Don'ts" of employees using social media. To that end, SHIFT Communications, a public relations agency has been kind enough to offer (for free and without copyright restrictions) an example of the [Top 10 Guidelines of Corporate Social Media Policy](#). At the [Social Media Governance](#) web site, you can access a fully searchable database of more than 130 social media policies from a wide range of industries. You may also want to consider establishing a position or committee (or adding the responsibility to an existing position) to oversee your organization's social media's activities.

And, don't lose sight of the need to take a fresh look at your insurance program to see where it might be improved to better address the social networking risks facing your organization.

-- Charles H. Cox ([cox@aldrichandcox.com](mailto:cox@aldrichandcox.com))



***“[C]onsider developing a company policy . . . to address . . . employees using social media.”***

### UNDERSTANDING INSURANCE TERMS

One of the confusing aspects of insurance is the terminology that can be misunderstood by people who don't work with it on a regular basis. From time to time, we will try to explain some of the more common insurance terms in various segments of the industry. In this issue, we'll talk about some Property insurance terms.

One of the first questions a building owner will often be asked in discussing Property exposures deals with construction. There are five general *types of construction*:

1. Frame – exterior walls are of wood, or other combustible materials. This can include veneer surfaces like brick veneer, stone veneer, or stucco on wood.
2. Joisted masonry – exterior walls are brick, adobe, concrete, gypsum block, stone, or tile, etc. Roof and floors are usually combustible.
3. Non-combustible – exterior walls *and* roof and floors are non-combustible. Walls are generally the same as in the Joisted Masonry description above, but can also be metal skin walls.
4. Modified fire resistive – exterior walls, floors, roofs are masonry or other non-combustible materials with a fire resistive rating of at least one hour.
5. Fire resistive – exterior walls, floors, roofs are masonry or other non-combustible materials with a fire resistive rating of at least two hours or more.

A building is generally considered *vacant* from the owner's standpoint if less than 31% of the square footage is not being used to conduct customary operations or is not rented and used by a tenant for its customary operations. For the tenant, its part of a building is *vacant* if it doesn't contain enough Contents to conduct customary operations. Under ISO's Property forms,

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properties vacant for more than 60 days are not covered for vandalism, sprinkler leakage, breakage of building glass, water damage, theft or attempted theft. For other covered perils, the carrier would pay only 85% of a loss. If part of the building not being used is under renovations, the vacancy rules don't apply.

**Improvements and Betterments** are changes that a tenant makes to leased space to make it more suitable for the tenant's use. This may include the addition of walls, lighting, carpet, etc. The typical Property policy includes this coverage under the Business Personal Property coverage section as:

Your use interest as tenant in . . . fixtures, alterations, installation or additions: (a) Made a part of the building or structure you occupy but do not own; and (b) You acquired or made at your expense but cannot legally remove.

Notice that it refers to a "use interest." Because these additions belong to the landlord, all the tenant has is the right to use them for the remaining term of the lease. Loss recovery is on a replacement cost or actual cash value basis, just as if the tenant owned the improvements, if repaired promptly. If not repaired promptly, the recovery is reduced to account for the amount of use the tenant already received, from the time the improvements were made up to the date of the loss.

-- James B. Hood, Jr. ([hood@aldrichandcox.com](mailto:hood@aldrichandcox.com))



***"[C]hanges made by ACORD® represent a step backwards . . . ."***

### THE NEW ACORD® CERTIFICATES OF INSURANCE – PART 2

ACORD® Certificates are commonly used today, but the newest versions are causing a stir in the industry. In our last issue, we focused on the change in the certificate's cancellation provision which now obligates the insurer to provide notice in accordance with the policy's provisions (in other words, no notice to the certificate holder or additional insureds unless specifically endorsed to the policy). While it can be argued that cancellation provisions on previous versions of the ACORD® Certificates did not modify the policies they were evidencing either, they did offer some comfort and potential recourse against the agents/brokers that issued certificates with inaccurate information.

This article will focus on the other changes in the new ACORD® Certificates, some good, some not so good. Again, our comments are limited to the new ACORD® Certificate of Liability Insurance [ACORD® 25 (2009-09)]. Here is a link to [ACORD® 25 \(2009-09\)](#) with most of the changes highlighted (courtesy of the State of Hawaii's official web site).

Viewing the new certificate from the top down, the first notable change is the inclusion of the Disclaimer language (indicating that the certificate does not alter the policies evidenced on the certificate), as well as the important Additional Insured and Subrogation Waiver language (that indicates endorsements may be necessary to trigger such provisions), on the front of the certificate instead of the reverse side. This was a positive move by ACORD® since the language was often overlooked when it was on the back or not included on photocopies of certificates.

The new ACORD® certificate now includes specific contact information for the producer, again a positive addition by ACORD®.

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**THE NEW ACORD®  
CERTIFICATES OF INSURANCE – PART 2**

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New to the ACORD® certificate is the inclusion of blanks in which the Certificate Number and Revision Number can be filled in. This will be beneficial to certificate holders who are frequently provided with multiple revisions of a certificate.

The new ACORD® certificate now contains boxes in the Umbrella/Excess section so that certificate holders can readily determine if the policy being evidenced is written on a true Excess Umbrella Liability form versus an Excess Liability form (that likely only serves to increase limits). This is a beneficial change by ACORD®.

The Workers' Compensation section of the new Certificate now contains a Y/N box in which to indicate if any proprietor, partner, executive officer or partner is excluded from coverage. The previous version of the certificate asked the question, but left no specific area for a response, so this is a positive change for certificate holders.

The previous ACORD® Certificate included a section in which additional information was to be included. The previous version read as follows:

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES /  
EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The language on the newest certificate reads:

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach  
ACORD 101, Additional Remarks Schedule, if more space is required)

The removal of "EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS" is troublesome and significantly diminishes the certificate's value. While frequently left blank, a producer's or insurer's failure to list exclusions added by endorsement or special provisions included in the policy afforded some recourse for certificate holders who found the evidenced coverage to be unusually restricted by endorsed exclusions or special provisions.

On balance, the changes made by ACORD® represent a step backwards for certificate holders.

-- Charles H. Cox ([cox@aldrichandcox.com](mailto:cox@aldrichandcox.com))

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