

# Commercial Insurance Update

## Topics Affecting Buyers of Commercial Insurance

MSP C 08/99 – “Certificates of Insurance”

August, 1999

# Certificates of Insurance

Most, if not all, businesses will at some time have to provide a certificate of insurance to another party or require a certificate of insurance from a third party. For many businesses, this happens on a daily basis.

Certificates are generally required by one party of another party to verify that the party being required to provide the certificate has appropriate insurance. Oftentimes, as in a situation between a contractor and a subcontractor, insurance requirements are spelled out in a written agreement.

Unfortunately, certificates of insurance have several drawbacks. The certificate does not guarantee that:

- the coverage will not be cancelled;
- limits will not be exhausted by claims for other projects or activities in which the party providing the certificate is involved;
- required endorsements will be attached to the policy;
- the coverage has not been reduced by restrictive endorsements.

In addition, most certificates of insurance typically contain disclaimers such as the following:

*This certificate 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 afforded by the policies listed below.*

As if that were not enough, elsewhere in the certificate there is likely to be another disclaimer of sorts regarding “notice of cancellation.” It is meant

to be something of a promise, but it is not a guarantee. For example, the standard ACORD certificate states:

*Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail \_\_\_ days written notice to the certificate holder ... but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.”*

## Problems with certificates

Some critics of certificates allege that this type of disclaimer wording makes the certificates relatively useless.

The point to remember here is that the certificate will not confer any rights or benefits to the certificate holder. The certificate is merely evidence of insurance. Compounding this problem is the fact that certificates, at least those issued on the standard ACORD forms, do not alter the rights or obligations of the insureds or the insurer, nor do they broaden the policy coverage.

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To overcome some of the drawbacks of standard certificates, some parties will request certified copies of the required insurance policies instead of a certificate of insurance (the County of San Diego recently began requiring these in some cases).

Receipt of the actual policy gives the certificate holder an opportunity to verify that the policy meets the scope of coverage required in the underlying contract. However, this process is extremely time-consuming, and is often ignored for a variety of reasons, including:

- Hard copies of the policies called for in the contract have not actually been issued yet;
- Commercial lines policies are so complicated to assemble that providing a complete copy is not always as simple as it sounds;
- Insurance policies often contain confidential information about the named insured that the named insured is apprehensive about releasing to a third party.

Another route taken by some companies is to manuscript their own certificate of insurance. For most businesses, however, this is a challenge, since most insurance companies balk at issuing certificates that may vary the terms of their policies.

Moreover, the process by which the certificate holder provides its own certificate form to the insured, who then provides it to its agent, is much more cumbersome, especially when the insurer requires that all manuscripted certificates be approved by its home office, as is usually the case.

## Some Do's and Don'ts

From the tone of this article, it might appear that certificates of insurance create more problems than they solve. However, apart from obtaining a certified copy of the policy, which usually is impractical for a number of reasons, the only alternative is a certificate of insurance.

**A**lthough there are a number of certificate of insurance forms, the most common are those provided by ACORD (Agency-Company Operations Research and Development).

ACORD introduced the first standardized certificate of insurance in 1976. The ACORD certificates (and to varying extents, most other certificate forms) include the following information:

- Agent or broker issuing the certificate
- Named insured's name and address
- Insurance companies providing the coverages documented in the certificate
- Types of policies issued to the named insured
- Policy numbers
- Effective & expiration dates of each policy
- Limits of insurance for each policy
- Limited details of the coverages (e.g., occurrence or claims-made liability coverage forms, types of covered autos under the auto and garage liability policies, covered causes of loss under the property policy)
- Special instructions or terms of coverage, such as identification of the project or operations with respect to which the certificate is issued; exclusions added by endorsement, and waivers of subrogation
- Certificate holder's name and address
- Whether the certificate holder is named as an additional insured, and if so, under which policy(ies)
- A notice of cancellation provision stating that the insurers will "endeavor" to provide a specified number of days' written notice to the certificate holder prior to the cancellation of the policy(ies)
- Signature of the insurer's agent or representative
- A disclaimer saying that the certificate is issued as a matter of information only, and does not change, in any way, the terms and conditions of the policy(ies) to which it refers
- A statement disclaiming any implied assertion that the policy(ies) described in the certificate meet or comply with the terms or provisions of the contract in connection with which the certificate is issued, and a caution that the aggregate limits of insurance specified in the certificate may have been reduced by the payment of claims ✦

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Following are recommendations to reduce the problems associated with certificates of insurance:

- A certificate of insurance should not be viewed as a policy endorsement;
- Certificate holders should carefully review the documents they receive for compliance with the underlying insurance requirements;
- A certificate of insurance should not list the holder as an additional insured unless the policy is endorsed to that effect. It is also recommended that the certificate designate the appropriate kind of additional insured endorsement (e.g., ACORD Form CG 20 10 [11/85]).

## Summary

A certificate of insurance is, at best, an imperfect means for a certificate holder to obtain assurance that the policy(ies) set out in the certificate have, in fact, been issued, and that the party providing the certificate has fulfilled the insurance requirements set out in the contracts.

It is important to remember that the certificate of insurance has no bearing on the scope of coverage, nor does it alter or amend the contract of insurance.

The administration of insurance certificates is an arduous task considering that countless certificates may be required by some entities, and this article illustrates only some of the many problems associated with the issuance and administration of certificates. Nevertheless, this is a responsibility that comes with the territory. There is no other way by which proper protection can be verified.

Don't hesitate to contact us if you need assistance with your certificate of insurance administration process. ✦

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***Disclaimer:** This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.*

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# Insurance Definitions

## A quick primer on the meaning of insurance terminology

**Additional Insured** – A person or organization not automatically included as an insured under an insurance policy, but for whom insured status is arranged, usually by endorsement. A named insured's impetus for providing additional insured status to others may be a desire to protect the other party because of a close relationship with that party (e.g., employees or members of an insured club) or to comply with a contractual agreement requiring the named insured to do so (e.g., customers or owners of property leased by the named insured).

**Certificate of Insurance** – A document providing evidence that certain general types of insurance coverages and limits have been purchased by the party required to furnish the certificate.

**Contractual Liability Insurance** – Insurance covering the liability of another party that the named insured has agreed to assume in a "hold harmless" or indemnity provision of a contract.

**Cross Liability Clause** – Often known as a "severability of interest" clause, this is an insurance provision clarifying that the word "insured" as it appears within various parts of a policy applies severally and not collectively. When there is more than one insured, the effect is as though a separate policy is issued to each insured. Thus a policy containing such a clause will cover a cross liability claim – a claim made by one insured against another insured. Limits for each insured, however, are not cumulative.

**Indemnity/Hold Harmless** – A provision in a contract that requires one party (the indemnitor) to respond to the legal liabilities of another party (the indemnitee). For example, construction con-

tracts typically require the contractor (indemnitor) to indemnify the owners (indemnitee) with respect to the owner's liability to members of the public who are injured or whose property is damaged during the course of the contractor's operations.

**Insurance Services Office (ISO)** – An insurance industry association that collects statistical data for rate making and develops standard insurance policy forms. ISO is the organization that drafted the standard Commercial General Liability (CGL) and comprehensive general liability forms commonly used by insurers.

**Named Insured** – The individual or entity to whom a policy is issued. Named insureds typically have more rights and responsibilities than additional insureds. More than one named insured

may be included on a policy if common ownership exists.

**Notice of Cancellation/Non-Renewal Clauses** – Provisions in policies mandating that insurers are to provide advance notice of cancellation or nonrenewal of a policy. Most commonly, the required cancellation notice period is 30 days, although state amendatory endorsements frequently extend this period to 60 days. However, only a small handful of policies require that the insurer provide advance notice of nonrenewal.

**Waiver of Subrogation** – The relinquishment by an insurer of the right to collect from another party for damages paid on behalf of the insured. The waiver of subrogation condition in current liability policies is referred to as "transfer of

