



Certificates of Insurance: What Do They Really Tell Us?

Construction contracts almost always impose a myriad of insurance requirements upon general contractors, subcontractors, managers, design professionals and owners involved in the project. Typically, the insurance procurement requirements are divided among the parties, with one contracting party often agreeing to obtain a particular kind of coverage for another, which is extended on an additional insured basis under a particular policy.

Proof of such coverage is almost always delivered to contracting parties in the form of a Certificate of Insurance. However, what exactly does a Certificate of Insurance tell us, and does it really afford the kind of proof, or any “guaranty” that the contract is meant to provide? You may be surprised to learn that the answer is a resounding, “no”.

CERTIFICATES ARE NO SUBSTITUTE FOR THE POLICY

In short, a contracting party should never rely on a Certificate of Insurance as the exclusive source of evidence that another party has procured the coverage required by the contract. Similarly, a party who relies on a Certificate of Insurance as proof that he or she is benefited as an additional insured under a policy is inviting the potential for disaster in the event of a loss. Quite simply, a great deal of effort expended in the negotiation of risk allocation provisions in the construction contract can be all for naught if additional verification of coverage is not obtained for the express purpose of verifying a party's compliance with its contractual insurance obligations.

In essence, a Certificate of Insurance has been described as a “snapshot” depicting the existence of an insurance policy at the precise moment the policy was issued. The Certificate of Insurance does not provide an explanation of any of the insurer's obligations, the conditions, endorsements or exclusions that are contained within the policy. The certificate will not reveal, for instance, whether employee exclusions, and/or contractual liability exclusions, exist within the actual policy. In other words, the certificate is only evidence of coverage that existed at the time the policy was issued, but not of the actual coverage itself, or proof that the proper coverage is in place. Indeed, the insured can even change its coverage at any time without any notice to, or consent from a certificate holder. Thus, if there is ever a conflict or discrepancy between the policy and the certificate, the policy will always prevail.

Significantly, a Certificate of Insurance cannot change the coverage afforded by the policy. A notation appearing on the face of a certificate, made by perhaps a broker, agent, or insured, will have absolutely no impact on creating any actual coverage under the policy. In fact, most certificates will even include a disclaimer, indicating that the certificate has been issued for information purposes only, and confers no rights upon the certificate holder.

Most certificates provide little information about the coverage contained in the policy, or whether the policy actually covers the risks required by the contract. Rather, as noted above, the only information verified by the certificate is that the policy with the specified limits was issued to an insured for a particular policy period. Importantly, since brokers, or their agencies frequently issue the certificates, the insurance company may not even know that the certificate has been issued.

WHAT KIND OF HIDDEN RISKS MAY LURK BEHIND A CERTIFICATE?

Arguably the most common overreliance on certificates is as evidence of additional insured status. An insurance policy covers the named insured stated in the Declarations and, in some circumstances, may extend coverage to others as “additional insureds”. For those seeking to be covered as an additional insured, however, the certificate is essentially meaningless. Additional insured status is triggered only from a policy’s insuring provisions or an endorsement, not the actual Certificate of Insurance.

In order to obtain coverage as an additional insured - in every instance - there must be a provision or endorsement added to the policy that creates the additional insured coverage. Without an endorsement, the chance of obtaining additional insured status is close to nil, regardless of what a contract may require, or what a certificate may state. The only way to verify that the appropriate additional insured endorsement has been added to the policy is to obtain and review each additional insured endorsement of the policy.

WHAT CAN I DO TO MAKE SURE I HAVE THE REQUIRED COVERAGE?

In order to prevent disaster, a party to a contract that requires another to procure insurance for his or her benefit should never rely solely upon the certificate as the source of evidence, but, at the very least, should demand to see the endorsement issued by the insurer. Indeed, if a broker issues a certificate, but fails to have the policy endorsed, then it is very likely that no coverage exists under the policy.

So, you have taken all the time and expense of negotiating concise insurance coverage requirements into your contract. Specific types of insurance and the limits thereof have all been precisely set forth in order to meet your particular risk allocation goals. However, do not stop there; your work is not finished. Never rely upon the certificate to verify the contractual requirements. Rather, make sure the party providing the insurance is also contractually required to provide a copy of the entire policy (or at least the endorsements and exclusions) so that your team has the chance to assess whether the actual coverage matches the project requirements. Also, do not rely on insurance companies or brokers to provide notice of a cancellation or change. Instead, the insured should be contractually required to provide advance thirty (30) day notice of any change to its insurance program and you must continue to look out for and monitor any changes in the status of coverage.

KNOW THE DEPTH OF THE POOL BEFORE DIVING IN

In summary, one should never make it their routine to rely on certificates of insurance as the solitary source of proof of insurance coverage, the type of coverage, the scope of coverage, or the existence of additional insured status. A certificate of insurance provides next to no information about whether a risk is covered, or whether the policy in place satisfies the contractual insurance requirements.

Just a little bit of due diligence early on in the contract negotiation phase can go a long way in avoiding catastrophe and unexpected surprise. On the other hand, failing to look beyond the certificate may result in, among other things, devastating economic loss and costly and time-consuming litigation in the event of an uncovered claim. Accordingly, always seek to receive, review and retain, the certificate, in addition to the endorsements, as well as even the policy itself, prior to proceeding with the work.

Remember, sound risk management habits can facilitate proper use of the certificate without dangerous overreliance and will always result in a much less painful experience than trying to work it all out after a loss has occurred and the claim is filed.

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Craig H. Handler is an experienced attorney dedicating much of his practice to working with construction industry professionals and property owners in contract drafting and negotiation and in disputes related to defective construction, delay, scope of work, mechanic's lien foreclosure and defense, OSHA violations, ECB violations, and Labor Law claims. Mr. Handler's prior experience working with the insurance industry has afforded him a broad understanding of the complex insurance coverage and indemnity issues that regularly impact the construction industry. Mr. Handler routinely applies this expertise to his practice in order to help his clients cut costs, limit exposure and avoid the many risks associated with this fast-paced industry.

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