

Insurance Certificates Must Be Read To Be Understood

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by Kevin J. Connolly

Certificates of Insurance are easy to obtain but can be deceiving when it comes to what is and is not covered.

In the world of property-casualty insurance, businesses and their advisers often deal with certificates of insurance. They are commonplace instruments that are accepted in the marketplace as reasonable assurance that certain objects or activities are covered by insurance. For example, when valuable equipment is stored in a warehouse until a construction project is ready to receive and install it, cautious owners often insist on seeing insurance certificates before paying for the merchandise in order to be assured that the property is protected against casualty losses.

When a contractor employs a subcontractor to perform part of the work of a construction project, it is common for the contractor to insist on seeing an insurance certificate that indicates that the subcontractor is carrying the right kind of insurance, with adequate limits of liability, and that the required parties (usually, the contractor and owner) are named as "Additional Insureds." The general contractor is often required to ensure that the subcontractors have insurance and file certificates.

The required certificates are readily obtained, but when the time comes to resort to the underlying insurance, the parties often find that the insurance is not what they expected. Sometimes, there is no insurance at all. Even

when there is coverage, it may turn out to be riddled with gaps. The only way to be sure is to read the policy.

The insurance industry on the whole (and the brokers' community in particular) takes a fairly lackadaisical attitude toward insurance certificates. In large part, this results from a legend that appears on the workhorse form of insurance certificate, the Acord-25:

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 BELOW.

The legend seems to warn the reader that the document is not worth the paper it is printed on: all rights are governed by the policies, not the certificate. Nonetheless, the market seems to accept these certificates, taking comfort in the supposed diligence of the brokers who issue the certificates. In some jurisdictions, including New York, however, that comfort should be cold at best, because the broker does not owe a duty of care to the certificate holders. The duty of care runs only to the broker's client, the owner of the insurance policy. Absent a legal duty of care, the certificate holder cannot successfully sue the broker for negligence.

Users should also be aware that even if the insurance certificate is accurate, it does not say much. The actual certifying language is:

The policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, ex-



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clusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.

The certificate says two things: the policies were issued (1) to the insured and (2) for the stated period. It does not say that the policies are still in effect, that they have not been amended, or even that the liability policies carry any particular limit of liability.

The certificate then reminds us that all of the terms and conditions of the coverage can be found only by reading the policies. The certificate concludes with a chilling caveat: even if the certificate is in all particulars accurate, and even if it is true that the insurance covers an occurrence, the certificate does not guarantee that any insurance is available to cover that or any other occurrence, because the aggregate limit may have been exhausted.

Aggregate Limits and their exhaustion is another topic for another day. The fact remains that an Acord-25 certificate tells the holder nothing useful about the insurance policies, and it does not advise anyone that the insurance has been or is expected to be exhausted by claims. Just as important, it is only by reading the policy that the reader will learn of the exclusions that are so important for understanding the coverage. <<