



Certificates of Insurance

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A certificate of insurance is a document generally provided to a third-party as a snapshot of the insurance carried by a particular insurance at a specific point in time. It is nothing more than that. It confers no rights on the holder. It does not alter the terms and conditions of the policies listed on it. Nonetheless, a significant number of professional liability claims are asserted against insurance agencies based on certificates of insurance they have issued.

Claims involving certificates of insurance can arise in several ways. One general category of claims involves allegations that a certificate of insurance contains inaccurate information. A second category of claims involves improper use of the certificate form to alter the policy's coverage, usually to add an additional insured. Third, the article discusses claims arising out of opinions or representations made by an agent in connection with a certificate of insurance. Finally, the article discusses claims involving alterations to the form of the certificate.

Inaccurate Information in a Certificate of Insurance: While it is often said that a certificate of insurance is not a contract, liability claims are frequently made against insurance brokers on the basis that the certificate holder relied to its detriment on the information shown by the certificate. Take the example of an insurance broker who provides a general contractor with a certificate of insurance stating that a subcontractor has a liability policy. If the contractor experiences a loss attributable to the subcontractor's negligence, and it turns out the subcontractor did not actually have coverage in force at the time the certificate was issued, the general contractor might allege liability against the broker on a theory it would not have used the subcontractor if it had not been led to believe there was coverage in force. These inaccuracies can simply be the result of a typographical error regarding limits or policy period; however, certificate holders are generally entitled to rely on the certificate's accuracy. Brokers should never issue certificates in anticipation of a policy's issuance – the policy does not exist until the carrier says it exists, and any certificate showing otherwise is inaccurate. Claims arise where a contractor, typically new to the business, requires coverage and a certificate to bid on its first job, but doesn't have the means to pay the initial premium, and asks the broker for a "favour." The broker issues the certificate (usually with a bogus policy number), and the contractor gets the job. The carrier ends up rejecting the application, and the brokerage is left holding the bad for any claims that would have been covered by the policy had it been issued.

Brokers should take greater precautions when issuing certificates reflecting coverage placed through an intermediary, as there is an extra layer of opportunity for inaccuracies to arise, much like inaccuracies arise in the children's game of "telephone." Thus, policy numbers, limits and other information should be compared against the policy itself, or double checked directly with the carrier if possible to reduce the chance that a mistake by the broker ends up on a certificate issued by the brokerage. Unfortunately, there have been claims where unscrupulous brokers have fabricated policy numbers for coverage that didn't exist, and the innocent brokerages (and their E&O carriers) that issued certificates with the bogus information, have been left to defend the claims by the certificate holders. Checking the information directly with the carrier also guards against such predicaments.

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* *The above example is provided by the program underwriter Swiss Re/Employers Reinsurance Corporation*



Using Certificates to Change the Policy: Certificate of Insurance forms typically state that the “certificate does not amend, extend or alter the coverage afforded by the policies” shown on the certificate. However, brokerages have attempted to use the certificate as a policy. There are several problems with this. First, the broker may or may not have the carrier’s authorization to add additional insureds – or, a particular additional insured may require some underwriting attention (and perhaps an additional premium) beyond what the carrier authorized the brokerage to do. Second, issuing the certificate does not endorse the policy to add the additional insured. Therefore, the certificate would inaccurately indicate to the certificate holder that a party is an additional insured when that party has not been endorsed as an additional insured on the policy. Certificates should be used to show the state of the policy – if a party has been endorsed as an additional insured, then a certificate is the proper vehicle to provide a certificate holder a document reflecting the additional insured’s status. Certificates of insurance should never be used to alter the terms and conditions of the policy.

Opinions or Representation by Agent Regarding a Certificate of Insurance: Third parties sometimes ask a broker to confirm whether a policy covers specific risks presented by a contract, particularly with respect to construction contracts, such request in conjunction with issued a certificate of insurance. Such a request might, as a practical matter, involve an intricate legal analysis of complex issues of construction law and insurance law. That sort of analysis is clearly beyond the purview of expertise of most insurance brokers. Even in the rare case where a particular broker has the legal training to perform such analysis, she would be taking on additional legal duties that would otherwise not be imposed on her, and therefore increase her exposure to professional liability claims. Thus, a broker should avoid offering opinions or making representations in connection with a certificate of insurance regarding what the policy covers or whether the policy satisfies requirements of an underlying construction contract or other agreement. Rather, the broker should remind the certificate holder of the language on the certificate form: “the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.” If the certificate holder requires more specific information, the brokerage can offer to obtain a copy of the policy itself, perhaps certified by the carrier, and suggest that the certificate holder take the policy to its attorney to evaluate whether the policy provides the desired protections. The insurance broker should not endeavour to make such an evaluation.

Changes to the Form of the Certificate of Insurance: Changes to a standard certificate of insurance form can change the coverage of the policy and/or create additional obligations for the carrier and brokerage. The most common modifications to the form involve the notification language, typically changing the number of days notice promised, and eliminating the “endeavour to” language. Essentially, these simple changes create an obligation for the carrier and/or the brokerage to provide mandatory notification to the certificate holder of any early cancellation of the policy. However, if the language modification is absolutely required by the certificate holder, and sometimes it is, be sure to get written confirmation from the carrier that it is willing to meet the modified notification obligation. This would be a tremendous burden for most brokerages to meet, and creates tremendous exposure to professional liability claims for failure to notify certificate holders of the cancelled policy. Thus, insurance brokers should avoid changes to the certificate of insurance form whenever possible.

Sending Copy of Certificate of Insurance to Insurance Company: As discussed in the preceding paragraph, a carrier’s failure to notify certificate holders of a cancelled policy can create liability for the carrier, as the certificate holders are relying on the coverage stated on the

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certificate to remain in place through the stated term. Obviously in order for a carrier to send such notification, it would have to possess a complete list of all certificate holders. Many insurance companies take the position that they do not want insurance brokers to send them copies of the certificates of insurance issued by the broker. Such policies can effectively shift the burden of maintaining an accurate list of certificate holder from the carrier to the brokerage, and concomitantly create additional professional liability risks for the brokerage. Despite a carrier's stated policy rejecting copies of certificate, brokers should send them anyway, and, if returned, send them again. Carriers are simply better equipped to send cancellation notices to certificate holders than most brokerages, and should retain any obligation to send such notices.

The limited scope of this discussion does not permit addressing anything remotely close to all issues with respect to certificates of insurance or strategies for avoiding potential liability claims. However, even this brief discussion should convince readers that certificates of insurance are not the simple documents they might seem, and that their issuance is not a simple clerical task carrying little risk of involving an insurance broker in a potential liability claim.