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Certificates of Insurance Can Create Troubling Coverage Gaps

Nearly all construction projects involve a minefield of insurance requirements pushed on to the contractors, subcontractors, construction managers, and design teams assembled for a project build. Not every team member gets every form of insurance; rather, one member often agrees to obtain a particular form of coverage or to extend its coverage to others as additional insureds.

Proof that the insurance coverage is in place often is delivered to the project team members in the form of a certificate of insurance. However, the exchange of certificates is no guarantee that the desired coverage exists or will be in place when disaster strikes.

Certificates Are Just Snapshots, Not Policies

A project team member should never rely on a certificate of insurance as the sole source of evidence that another team member has obtained the insurance required by the contract. An even greater risk is to rely on a certificate as evidence that you have the additional insured coverage that you need. All of the effort to negotiate a construction contract that allocates risk through insurance can be undone if certificates are used as the sole verification of a party's compliance with its obligations.

A certificate of insurance is nothing more than a snapshot that shows the existence of an insurance policy at the specific moment in time it is issued – it does not explain the insuring agreement, exclusions, conditions, or endorsements that make up the specific coverage carried by the insured. Pollution, mold, residential work, professional liability, or exterior insulation and finish systems (EIFS) exclusions to a commercial general liability (CGL) policy, for instance, will not be revealed in a certificate. The certificate of insurance is evidence that coverage existed at a certain time, but not actual coverage itself or proof that the right coverage is in place.

Importantly, a certificate of insurance also cannot alter the coverage provided by a policy or give rights to another person. A broker or insured cannot create new coverage simply by making a note on the face of a certificate. Most certificates

of insurance contain a disclaimer to this effect, such as the one noted at the top of certificates issued on the Association for Cooperative Operations Research and Development (ACORD) 25 form:

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.

The only representation certified by a certificate is that a policy with the stated limits was issued to a named insured for a particular policy period. Because certificates of insurance typically are prepared by brokers or agents, insurance companies often do not know they have been issued. As a result, a certificate itself does not provide assurance that the policy will provide coverage. Moreover, a certificate provides very little information about the coverage secured by the insured and whether the policy actually covers the risk intended to be insured by the parties on a particular project.

Coverage Shortfalls Are Not Revealed by Certificates

The danger of relying on certificates lurks in many corners, each of which a contractor must investigate if it intends to rely on another's insurance as a component of its risk management program. Detailed next are the primary areas for review as part of a robust risk vs. coverage assessment.

Extent of Coverage

The information in a certificate of insurance is so limited that it is not even comparable to a table of contents for a book; it is more like the book cover. While the certificate will tell you what type of liability insurance is in place, it provides no information about the exclusions, endorsements, and conditions of that coverage. Remember, the insured can change its coverage at any time without any notice to (or consent from) a certificate holder. Also, if there is a conflict or discrepancy between a certificate and the policy itself, then the terms of the policy will always prevail.

Disclosure of Deductibles & Self-Insured Retentions

Certificates do not reveal the deductible or self-insured retention (SIR) that may be carried by the named insured on CGL or automobile policies. When assessing project risk, there can be a significant difference between a \$1 million limit subject to a \$500,000 SIR or deductible and the same limit with a \$50,000 SIR or deductible.

Payments Against Limits

A certificate will not reveal how much of an insured's stated policy limits actually are available to satisfy claims that may arise during the policy period. A stated aggregate limit may have been reduced by prior claims, meaning that the coverage remaining to respond to new claims may be much less than appears on the face of the certificate. The certificate also does not reveal a "declining limits" policy in which defense costs for a claim are deducted from the total policy limit.

Notice of Cancellation

If an insured's coverage is cancelled (or if the insurance is not renewed over the course of a project), then the certificate is meaningless. A certificate does not and cannot extend the right to receive notice of cancellation to the certificate holder. Rather, as most certificates state, notices of cancellation are delivered only as required by the policy – and often

only to the named insured, not certificate holders or even additional insureds. This language specifically appears on the ACORD form in the lower right hand corner.

Certificates Cannot Grant Additional Insured Status

Perhaps the biggest overreliance on certificates is as proof of additional insured status. An insurance policy covers the named insured stated in the Declarations and, in some circumstances, also may extend coverage to others as additional insureds. For those seeking to be covered as an additional insured, however, the certificate is almost always meaningless. Additional insured status springs only from a policy's insuring provisions or an endorsement, not a certificate of insurance. Remember, an insurance policy is a contract. To add an additional insured requires the contract to be amended in most instances.

Additional insured protection may come in the form of a blanket endorsement to a policy or an endorsement specific to a particular additional insured. A blanket endorsement, such as the new Insurance Services Office, Inc. (ISO) CG 20 33 04 13 *Additional Insured Owners, Lessees Or Contractors – Automatic Status When Required In Construction Agreement With You* provides additional insured status to those whom the insured "ha[s] agreed in writing in a contract or agreement" to add as an additional insured. A specific endorsement, such as the new CG 20 10 04 13 *Additional Insured Owners, Lessees Or Contractors Scheduled Person Or Organization*, is issued to cover only the entities listed on a schedule. In every case, however, there must be a provision or endorsement to the policy that creates additional insured coverage.

A typical certificate of insurance contains a box that can be checked to show that additional insured coverage is part of a policy. However, a checkmark in that box does not guarantee that an additional insured endorsement was issued and cannot reveal the type of additional insured endorsement carried by the policy.

The ISO lists 35 different types of additional insured endorsements (as of its most recent April 1, 2013 revision date). Adding to the confusion, the type of additional insurance protection required by a contract or sought by a party may require more than one endorsement.

For example, additional insured status for both ongoing operations plus completed operations requires the use of two endorsements from the most recent ISO form set – CG 20 33 04 13 (as indicated previously) and CG 20 37 04 13

Anatomy of an Insurance Policy

To understand why it is troubling to rely only on certificates, it helps to understand the anatomy of an insurance policy. A policy may have many components, including:

- **Declarations Page:** Identifies the named insured, policy type, limits, and deductible or SIR
- **Insuring Agreement or Coverages Section:** Generally explains coverage and how it is applied
- **Exclusions:** State what will not be covered and can take away from coverage otherwise described in the Insuring Agreement section
- **Conditions or Insured's Obligations:** Explains requirements an insured must follow and other conditions to coverage
- **Endorsements:** Can add, subtract, or alter any other components of the policy



Additional Insured – Owners, Lessees Or Contractors – Completed Operations. Additional types of endorsements exist for situations in which additional insured status is to be extended to a party with whom the named insured does not have a contract (such as an owner seeking such protection under a downstream subcontractor’s policy).

The only way to confirm that appropriate additional insured protection has been extended is to obtain and review not only a certificate of insurance but also each additional insured endorsement of the policy. If the endorsement applies only to scheduled entities, then it is also necessary to obtain and review the listing of entities granted additional insured status through the schedule. Without an endorsement, the chance of obtaining additional insured status is slim – regardless of what a contract may require or what a certificate may say.

An additional insured should not rely upon the certificate as the sole source of evidence but should demand to see the endorsement issued by the insurer. If the broker issues a certificate but fails to have the policy endorsed, then it is very likely that no additional insured coverage has been created.

Finally, a company should never rely on additional insured status as its sole source of insurance coverage. In many instances, additional insured coverage only applies for matters arising out of the negligence of the named insured. Rarely will additional insured status on another’s policy provide coverage for the additional insured’s own direct negligence.

Examples of Wrongful Reliance on a Certificate of Insurance

To put this issue in context, consider the following examples from lawsuits over certificates, which underscore how little reliance should be placed on certificates of insurance as guideposts for evaluating the actual coverage in place.

No Policy Endorsement Means No Coverage

The gap between certificates and modification of a policy through an endorsement is a common battleground. In *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Allstate Construction, Inc.*, 761 F. Supp. 2d 1306 (M.D. Ala. 2011), a GC formed a joint venture (JV), “Allstate/JCI,” and the JV in turn entered into a subcontract with a glass company for the installation of windows at a project.

During the multi-year course of the project, the glass subcontractor requested that the GC be added as an additional insured under the subcontractor’s business liability policy. The policy required issuance of an endorsement before

additional coverage would become operative. For one policy year, both a certificate of insurance and a policy endorsement were issued by the insurer to include “Allstate” as an additional insured, but not the JV. In other years, certificates of insurance were prepared and provided to the JV, but no endorsements to the policy were issued.

When an employee of the glass subcontractor sued the JV for injuries sustained on the project, the JV sought a defense and indemnity under the subcontractor’s business liability policy as an additional insured. Unfortunately, while the JV had certificates of insurance listing it as an additional insured, no policy endorsements in the name of the JV were ever issued. The insurer moved to toss out the demand, pointing out that the policies were never endorsed to include additional insured status for the benefit of the JV, regardless of what the certificate of insurance may have suggested. The court agreed and entered judgment for the insurer, finding that there never were any policy endorsements issued in favor of the JV with whom the glass subcontractor had its contract.

An Unknown Policy Endorsement Bars Coverage

Evidence that a liability policy is in place as shown by a certificate of insurance does not reveal what exclusions from coverage may exist within the policy. In *Pekin Ins. Co. v. American Country Ins. Co.*, 572 NE 2d 1112 (1991), a GC required its roofing subcontractor to carry CGL insurance and to include the GC as an additional insured. The subcontractor provided the requested certificate of insurance and additional insured coverage. When the roofing subcontractor’s employee was injured on the project, the GC requested indemnity as an additional insured under the CGL policy.

Unfortunately, what the certificate did not reveal was that the CGL policy included an endorsement that excluded coverage of any bodily injury arising out of the subcontractor’s roofing work. The court rejected the GC’s pleas that coverage should be extended because the certificate was misleading or ambiguous in suggesting that liability coverage existed for the subcontractor’s roofing work. The incongruity of a roofing subcontractor excluding its own work from liability coverage was irrelevant because the policy prevailed.

Certificates Do Not Reveal Policy Conditions to Coverage

Certificates of insurance cannot advise how or under what conditions a claim may be filed against a policy. Often, policies contain specific requirements that must be fulfilled before additional insured status will be recognized. In *Ohio Cas. Ins. Co. v. Chugach Support Services, Inc.*, 2011 WL 4712234 (W.D. Wash. 2011), Chugach, as GC, entered into a

subcontract with SRI, by which SRI was to obtain insurance and provide additional insurance coverage to Chugach. SRI, in turn, subcontracted with R-Custom. SRI did not have insurance, but R-Custom had a policy with Ohio Casualty. Chugach then sought additional insured coverage under R-Custom's policy. R-Custom's policy, however, extended additional insured protection only to those with whom the named insured (R-Custom) was required in a written contract to name as an additional insured.

The court concluded that this policy condition to additional coverage had not been met. Despite the contract between SRI and Chugach, R-Custom had not agreed in writing to provide Chugach with additional insured coverage. Because Chugach could not show compliance with this requirement, its claim for additional insured status was denied.

An Ounce of Prevention

There are many ways a company can mitigate risk on certificates, beginning at the contract negotiation stage and continuing until at least the last day completed operations coverage is required for a project.

Negotiate a Specific Type of Coverage

At the outset, contract language requiring and describing insurance coverage must be clear. It is important to negotiate the specific types and levels of insurance coverage required to match the project team's risk allocation goals. For example, contracts should not only specify CGL insurance but also

state the type (occurrence or claims made), minimum available limits per claim in the aggregate, and restrictions on deductibles. Exclusions or endorsements that are not appropriate for the nature of the project should also be limited by contract. Whenever possible, identify the specific type of coverage or endorsement by name.

The party providing insurance also should be contractually required to provide a copy of the entire policy (or at least the endorsements and exclusions) to allow the project team to review the nature of the coverage and assess whether it aligns with the contract and project requirements. Finally, parties should not rely on insurance companies or brokers to provide notices of cancellation or changes; the insured also should be contractually required to provide advance notice of any changes to its insurance program.

Review the Policy

After contracting, it is critical for all parties to obtain and review the policy or endorsements and exclusions to confirm them against the contractual commitments. Certificates of insurance also must be obtained. While a certificate cannot provide coverage, it is a representation by the insured to the project team that it had coverage as of a certain date. Many policies also require an additional insured to obtain and tender a certificate as a precondition to seeking coverage under the insuring policy. Certificates also are important documents to maintain as a record of the carriers, coverages, and parties involved on a project should a claim arise.

Resolve Any Discrepancies

If possible, confirm that the insurance company is aware that a certificate of insurance or specific endorsement has been issued. After review, promptly follow up with the insured and its company to resolve any discrepancies and obtain any missing coverage or endorsements. Failing to do so may find you down the road without the coverage you wanted in place.

Track Coverage Throughout the Project

A program should be put in place to track that the necessary coverage and certificates of insurance to be obtained by others are in place on a project-by-project basis. Management of this information requires comparison of policies and certificates as well as tracking renewal dates.

Diligence must be exercised to track and follow up on any notice of cancellation or change in coverage. When a project outlasts a policy period, it is also important to ensure that the insurance is renewed and your company is added as an additional insured on the new or renewal policy. Home office

Laws to Limit Certificate of Insurance Misuse & Abuse

While there are notable limits to the amount of information that can be gleaned from a certificate of insurance, the representation of coverage they can provide has made them ripe for fraud and misuse in the past. In recent years, many states have adopted laws or regulations to prevent unscrupulous fabrication or alteration of certificates.

While the laws vary from state to state, a common goal is to promote a fuller understanding of what certificates are and to prevent fraud, misrepresentation, and unfair practices in the issuance and use of certificates. These laws should help promote clarity in certificates by requiring them to be accurate and preventing the modification of certificates in an effort to alter, amend, or extend the coverage provided by a policy.



personnel may also need to collaborate with field management to verify that the required certificates have been received from all trades working on a project.

Records of the project insurance should also be maintained over the long term in the event of a post-completion problem or lawsuit. Companies of all sizes must monitor and track compliance with insurance requirements to have an effective risk management program.

Look Before You Leap

Contractors should never make it their practice to routinely rely on certificates of insurance as the sole evidence of insurance in place, the scope of coverage, and additional insured status. A certificate of insurance provides little information about whether a risk is insured and if the coverage in place matches the contract or project requirements.

A little extra effort can help prevent unwelcome surprises, financial losses, and protracted litigation should a claim arise. Establishing a company protocol to manage the receipt, review, and retention of certificates and endorsements is a vital component of an effective risk management program.

The checklist on the last page can be utilized to ensure proper use of certificates of insurance without overreliance for what they can do. Policyholders can be sure of one thing: The cost and time to secure proper coverage is far less than sorting it out after a loss. ■

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Differences in ISO Additional Insured Endorsements

The following examples are just some of the endorsement forms issued by ISO effective April 1, 2013.
Many different types of additional insured endorsements are in use.
This summary provides only highlights of the forms and does not include all elements of the endorsements.

Additional Insured (AI)

	Owners, Lessees or Contractors Scheduled Person or Organization	Owners, Lessees Or Contractors – Automatic Status When Required In Construction Agreement With You	Owners, Lessees or Contractors – Completed Operations	Owners, Lessees Or Contractors – Automatic Status For Other Parties When Required In Written Construction Agreement	Engineers, Architects or Surveyors	Engineers, Architects or Surveyors Not Engaged by the Named Insured
	CG 20 10 04 13	CG 20 33 04 13	CG 20 37 04 13	CG 20 38 04 13	CG 20 07 04 13	CG 20 32 04 13
Persons Covered	Extends AI status only to persons listed in the required schedule; no requirement for written contract for AI status to be extended	Extends AI status to direct contracting parties for whom insured is performing operations and are required to be covered per a written construction agreement	Extends AI status only to persons listed in the required schedule but only for work at the locations designated in the schedule	Extends AI status to direct contracting parties and persons insured must cover per written construction agreement, even if they have no contract with insured (i.e., upstream parties)	Extends AI status to architect, engineer, or surveyor engaged by insured	Extends AI status to architect, engineer, or surveyor listed in the required schedule
Type of Work	Applies to ongoing operations only	Applies to ongoing operations only	Applies to ongoing operations only	Applies to ongoing operations only	Applies to ongoing operations only	Applies to ongoing operations only
Extent	Coverage will be no broader than that permitted by law and required by the contract	Coverage will be no broader than that permitted by law and required by the contract	Coverage will be no broader than that permitted by law and required by the contract	Coverage will be no broader than that permitted by law and required by the contract	Coverage will be no broader than that permitted by law and required by the contract	Coverage will be no broader than that permitted by law and required by the contract
Additional Exclusions		Excludes architectural, engineering, and surveying services		Excludes architectural, engineering, and surveying services	Excludes damage arising out of professional services	Excludes damage arising out of professional services
Limits	Payments limited to amount of insurance required by contract or available under policy limits, whichever is less	Payments limited to amount of insurance required by contract or available under policy limits, whichever is less	Payments limited to amount of insurance required by contract or available under policy limits, whichever is less	Payments limited to amount of insurance required by contract or available under policy limits, whichever is less	Payments limited to amount of insurance required by contract or available under policy limits, whichever is less	Payments limited to amount of insurance required by contract or available under policy limits, whichever is less



Best Practices Checklist

When Relying on Another's Insurance

■ Obtain Certificates of Insurance from Each Party Obligated to Provide Coverage

- ✓ Request certificates from each project team member who has insurance on which you intend to rely to cover a project risk

■ Promptly Review the Certificates of Insurance

- ✓ Does the certificate look authentic?
Is it signed by an authorized representative?
- ✓ Have all portions of the certificate been completed?
Are company names, policy numbers, policy periods, limits, etc. all stated?
- ✓ Does the certificate contain any notations? If so, do you understand their meaning and how they impact your project's insurance program?
- ✓ Do you have evidence that the insurance company was notified of the issuance of the certificate?

■ Request the Declarations Page

- ✓ For each policy listed in a certificate, request a copy of the declarations page showing the named insured, policy limits, deductible, etc.

■ Request the Schedule of Forms

- ✓ For each policy listed in a certificate, request a copy of the schedule of forms so you can understand the exclusions and endorsements contained within the policy

■ Request Proof of Additional Insured Coverage

- ✓ Insist on receiving a copy of the policy's additional insured endorsements
- ✓ Confirm that the endorsement(s) conform to your contract requirements
- ✓ Confirm that the endorsement(s) are the right ones for your relationship with the named insured (i.e., you cannot rely on an endorsement that requires a written contract with the insured if you are an upstream party with no direct contract with the insured)

■ Request Information Regarding Cancellation and Non-Renewal Notices

- ✓ Ask to see the policy provisions or endorsements regarding how notice will be given and to whom

■ Review and Record All Policy Period Expiration Dates

- ✓ Designate a person responsible for tracking expiration dates and notices
- ✓ Calendar a date at least 60 days before an expiration date to follow up with the insured or its company to confirm renewal
- ✓ Promptly follow up on any notice of cancellation or non-renewal and insist on replacement coverage