



PROTECTING YOUR INSURANCE PROTECTION E-UPDATE

CERTIFICATES OF INSURANCE ARE NOT ACTUAL PROOF OF INSURANCE

By Henry L. Goldberg, Esq. & W. Richard Kroeger, Esq.

NOVEMBER 2011

Everyone is familiar with the standard ACORD form certificate of insurance. Nearly every construction contract requires that all parties on a job site provide the construction manager and/or owner with such a certificate. While most contracts also require the parties to provide actual copies of the policies themselves, this requirement is often ignored. Accordingly, a certificate of insurance may be the only “proof of insurance” for a given project.

On many occasions, a party may not be permitted onto the job site unless and until they provide the contract manager and/or owner with a properly endorsed certificate of insurance. On other occasions, progress payments may be withheld until such a certificate is produced. In fact, there are companies which are dedicated to scanning, organizing and electronically managing certificates of insurance for project managers and owners.

Although most people believe that these certificates are proof of insurance, under New York law, they are not. With certain rare exceptions, the New York courts have repeatedly held that a certificate of insurance reflects nothing more than an insurer’s intent to provide coverage. You may be surprised to learn that an ACORD certificate is not an actual contract of insurance, or even proof that the indicated insurance actually exists.

Each and every certificate contains a small statement in the upper right-hand corner which provides:

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.

A similar statement lies beneath the heading “COVERAGES” near the center of every ACORD certificate.

In essence, these statements act as disclaimers, advising the certificate holder that the certificate itself is for information only. The certificate is generally not created by the actual insurer, but rather by the insured’s broker. It doesn’t alter any of the coverage provided by the policies identified therein. Consequently, unless the policy itself contains a given provision, the terms of that provision do not actually exist.

In a battle between a policy and a certificate, the policy controls. In the real world this means that a certificate of insurance may show that the general contractor is an additional insured under the policy of insurance issued to the sub-contractor. However, unless the policy actually contains the appropriate “additional insured” endorsement, there is no such coverage available to the general contractor.

Additionally, the certificate states that while the company shall try to provide the certificate holder with advance notice of a policy cancellation, the insurer actually assumes no such responsibility if it fails to do so. In fact, even just trying to do so is harder for the insurer than it might seem. Keep in mind



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that an ACORD certificate is usually drafted by the insured's broker. To the insurer, the certificate holder is a stranger. The insurer may be totally unaware of the existence and/or name of the certificate holder and, accordingly, unaware that it should even endeavor to provide notice of the termination to you. The only way to ensure that the insurer has a duty to provide notice to you as the certificate holder is to make certain that the policy contains a specific endorsement requiring that. Most do not.

Finally, the certificate must identify the certificate holder(s) with specificity. This information should be provided by the business which wants to be the certificate holder. For example, if you are performing work for Deutsche Bank, but the building where you are working is owned by a parent company or subsidiary (such as Taunus Corporation, DBAB Wall Street, etc.), it will be necessary to list all of the involved entities as "holders." If each of those entities is not listed, the unlisted entity will likely be denied coverage by the insurer if a claim is made against them. Under New York law, the party seeking insurance coverage bears the burden of proving that it is entitled to coverage under a policy. Generally, if you are not the Named Insured, or an Additional Insured, under the policy, you are not entitled to coverage under that policy. It is certainly difficult to be a named insured if your name is not listed.

or other) as an indicator that any particular coverage under the policy is available to you as the certificate holder. As a best practice, you should always insist that you are provided with an actual copy of the applicable insurance policy. Carefully compare the terms of that policy to the information contained on the certificate (which, in turn, should be checked against your project's insurance specifications). In the event of a conflict between those two documents, it is always the insurance policy that controls.

Just remember, a little planning and forethought can go a long way toward helping you "protect your insurance protection."

G&C COMMENTARY

You should not rely upon a Certificate of Insurance (ACORD