

LEGALLY SPEAKING: Additional Insured Status: Legal Issues Involving Certificates of Insurance

By Matthew J. DeVries and J.D. Humphries, III

"Certificates of Insurance" are used in the construction industry in every state to reflect the identity of insurance carriers, types of coverage, policy numbers and policy limits. Historically, these Certificates of Insurance have also been used to provide time limits for notices of cancellation requirements to "additional insureds" and certain other information.

Construction contracts are sometimes prepared by attorneys and contract managers with a goal of requiring certain insurance coverages on ISO forms that, for one reason or another, are no longer available in the market. Other times, the ISO forms require notices of policy cancellation to additional insureds that are not provided for in the insurance policies themselves. Contractors may be contractually required to supply, and, insurance agents are sometimes requested to issue, Certificates of Insurance indicating that the insurance coverages in force coincide with and comply with the insurance coverages required by a given construction contract. Difficulties arise when information contained on a Certificate of Insurance varies from insurance coverage actually provided by the insurance policies themselves. Recent legislation and recent changes in most forms of Certificates of Insurance preclude using a Certificate to provide additional information not in the policy itself or to express an opinion as to coverage.

What is a Certificate of Insurance? Certificates of Insurance are not policies of insurance. They do not amend, modify, endorse, constitute a rider, or provide insurance coverage not provided in the policies of insurance themselves. Certificates of Insurance are informational. Certificates do represent that coverage exists, but the coverage is provided by the policy, not the Certificate.

The Legal Concerns. Disputes arise when a Certificate provides something that varies or differs from the insurance policy. All states have a regulation, statute, Insurance Commissioner direction, Attorney General opinion, or case which addresses or involves Insurance Certificates. The insurance industry and state legislatures have both become increasingly more aggressive in regulating the use and abuse of Certificates of Insurance.

The 2010 form of ACORD Insurance Certificate (2010/05) explicitly states that Insurance Certificates do not amend, modify or add coverage not afforded by the policies. On its face such form states:

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.

Additionally, the new ACORD form provides the following information as it relates to notice of cancellation:

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

This is much different than the old version which provided:

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail ____ days written notice to the Certificate Holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

Most states provide a time period by statute for such cancellation notification periods applicable to policies issued in that state. Sometimes agents may undertake notification obligations beyond policy requirements, but do so at their risk.

The Legislative Response. To address the use of Certificates of Insurance, four states have recently enacted Certificates of Insurance statutes. Among other things, these statutes prohibit insurance agents from issuing, and prohibit owners or contractors from requiring language on a Certificate of Insurance which reflects that insurance policies identified conform to any contract or provide insurance required by a contract.

The four states which have recently enacted legislation are Louisiana and North Dakota in 2010, and Utah and Georgia in 2011. This new legislation is reflective of a national trend to expressly limit what can be accomplished through the use of an Insurance Certificate. Certificates verify existence of policies but do not provide coverage. These recent statutes address, among other things, advance notice of policy cancellation, references to compliance with contracts, providing false or misleading statements on Certificates and, in some instances, impose fines and sanctions for violations of the statute(s).

About the Authors: Matt and J.D. are members of the Construction Service Group of Stites & Harbison, PLLC. Matt is a LEED® Accredited Professional, he lives in Nashville and he is the founder of www.bestpracticesconstructionlaw.com. J.D. is the Executive Member of the Atlanta office, he is rated AV by Martindale and he is listed in the Best Lawyers. You can reach the authors at mdevries@stites.com and jhumphries@stites.com.