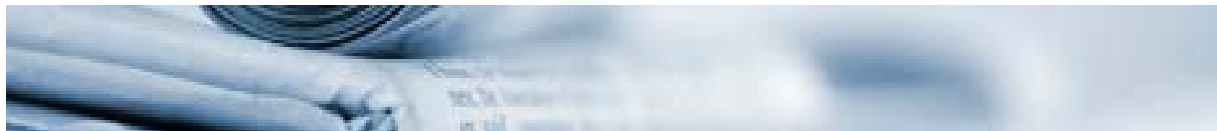


Beware! Certificates of Insurance Are Hardly Worth The Paper They Are Written On

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07.25.2013

Every day companies throughout the nation enter into contracts that require their business partners to list them as an additional insured under the business partner's insurance policies. Having your company listed as an additional insured under a policy purchased and paid for by another company can have significant benefits, such as providing your company with access to a line of insurance other than its own so that any resulting claims will not impact your company's loss history, larger insurance limits than what your company may have purchased, and potential coverage for your company's own negligence that may not be available through indemnification. However, many companies fail to ask for reliable proof of the additional insured placement and instead merely require their business partners to provide them with "certificates of insurance." This is a mistake.

Examine The Language On The Certificate

The current standard "certificates of insurance" are not worth much more than the paper on which they are written. Such certificates are merely informational and create no contract between your company and the insurance company, even when provided to you by the insurance company itself. In fact, right on the face of a standard certificate of liability insurance it is stated in capitalized and bolded text:

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 COVERAGE AFFORDED BY POLICIES.

Despite this language, certificate holders often believe the certificate conveys rights under an insurance policy, but instead the certificate is meaningless to would be additional insureds in the absence of an actual policy containing appropriate additional insured language or additional insured endorsements. All too often, companies realize late in the day—or even worse, after significant litigation costs—that even where the certificate specifically lists a policy number and an additional insured endorsement number, it is still only an informational statement about an insurance policy that may or may not exist.

The certificate conveys no rights to any actual insurance policy. It is well established that where certificates of insurance contain express language that disclaims any coverage other than that stated in the insurance policy itself, as today's standard certificates do, the policy governs the extent and terms of the coverage and the certificate is meaningless. *E.g. United Stationers Supply Co. v. Zurich Am. Ins. Co.*, 386 Ill. App. 3d 88, 102 (2008); *Tribeca Broadway Assocs., LLC v. Mount Vernon Fire Ins. Co.*, 774 N.Y.S.2d 11, 13 (App. Div. 2004). While your company may have a valid breach of contract claim against a company that contracted to provide you additional insured coverage, and failed to do so, this cause of action is worthless if the company no longer exists or, in essence, judgment proof.

How To Protect Your Company

So how does your company protect itself and ensure it is actually listed as an additional insured? You need to require in the initial contract that your business partner provide you with a copy of the insurance policy itself. Then, upon receipt of the policy, you must verify that the policy does indeed contain an endorsement signed by the insurance company that names your company as an additional insured. This is the only way to truly have comfort that the coverage your company expects actually exists. There are many situations, however, where a company may refuse to provide you with a copy of its policy. What do you do in this instance? At a minimum, you should request that your business partner provide you with a copy of the policy declarations page and the signed endorsement. While these documents will not provide your company with a full picture of the coverage to which it is entitled under the policy, at least your company will know that some form of coverage does, in fact, exist. If this is not sufficient, or in a case where you are unable to obtain at least the declaration page and the endorsement, you should examine your overall risk allocation. If you are unable to verify whether you are added to an insurance policy as an additional insured, do you need to revise other portions of the contract, i.e., increase indemnification obligations, increase limits of liability caps, or revise other contractual terms including pricing for the deal? This is a business decision each company will need to make depending on its own tolerance for risk. One thing, however, is clear—a company that relies solely on a certificate of insurance has no assurance that any of its risk has been transferred.

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