



RIMS HAWAII CHAPTER

Honolulu, HI
February 21, 2019
12:00 pm – 1:00 pm

COMMON PITFALLS OF CERTIFICATES OF INSURANCE



Disclaimer

The views expressed by the participants in this program are not those of the participants' employers, their clients, or any other organization. The opinions expressed do not constitute legal advice, or risk management advice. The views discussed are for educational purposes only, and provided only for use during this session.

Presenter:



Robert M. Horkovich, Esq.
Managing Partner

Anderson Kill P.C.
(212) 278-1322

rhorkovich@andersonkill.com

Robert M. Horkovich is "the 'go-to person' in the area of insurance recovery," according to a client cited by Chambers USA, which has recognized Mr. Horkovich as a leading insurance recovery attorney every year since 2005. According to Chambers, Mr. Horkovich "has a strong 'client-first' attitude" and "is recognized in the market for his leading trial and negotiation skills, with an undisputed national presence."

Bob has obtained over \$5 billion in settlements and judgments from insurance companies for his clients over the past decade. Bob is a trial lawyer with substantial experience in trying complex insurance coverage actions on behalf of corporate policyholders and governmental entities. His victories include one of the top 10 jury verdicts in the United States in 2003, the top insurance recovery jury verdict in the United States in 2005, seven landmark state Supreme Court decisions, eight jury verdicts and nine bench trial decisions in favor of the policyholder since 1994.

Law360 named Bob as an "Insurance MVP" by Law360 in 2012 and 2018 and was named Lexis/Nexis "Policyholder Lawyer of the Year" in 2009. He is rated "AV® Preeminent™ Peer Review Rated" with a 5.0 out of 5.0 rating in Martindale Hubbell. Mr. Horkovich has been selected by his peers for inclusion in Best Lawyers for insurance law in every year since 2009 and Super Lawyers for Insurance Coverage since 2006.

He has been selected as a Fellow of the American Bar Foundation, the premier institute for social science research regarding law in the USA, an honor limited to one-third of one percent of the lawyers in America.

I. What Is A Certificate of Insurance?

- A document that purports to verify the existence of insurance.
- Association for Cooperative Operations Research and Development (ACORD) forms might be used.



II. Why Do Companies Require Certificates of Insurance?

- The Certificate usually is sent to a third party who wants evidence that an insurance policy protecting that third party has been issued.
- Shifts responsibility to buy insurance coverage and in that way reduces insurance costs.
- It gives comfort to the third party that there are financial resources available to pay a loss beyond those assets of the contractor or policyholder.



Certificates of Insurance Usually Are Issued By A Broker To Verify The Existence of Coverage.

The Certificate of Insurance Provides Limited Information Regarding Coverage, including the policy number, the policy period, the name of the insurance company providing coverage, the policy limit, the deductible, the type of insurance provided (e.g. general liability, workers compensation and employers liability, contractor's equipment, inland marine, directors and officers).



The Certificates of Insurance

- Do not set out all the contract terms, exclusions, or other conditions of coverage.
- Usually are not issued by the insurance company, but instead are issued by a broker.



III. Does It Matter that Brokers (Not Insurance Companies) Usually Issue Certificates of Insurance?



Certificates of Insurance May Be Pre-Printed ACORD forms. Those Contain A Disclaimer That States They Are Issued For Information Purposes Only and Do Not Confer Legal Rights.

CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YYYY)
				8/9/2012
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.				
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).				
PRODUCER	CONTACT NAME: _____ FIRM: _____ ADDRESS: _____ PHONE: _____ FAX: _____ E-MAIL: _____			
INSURED	INSURER(S) AFFORDING COVERAGE INSURER A: ABC Ins Co INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____			
CERTIFICATE NUMBER: 12/13 Max Case REVISION NUMBER: _____				
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PRIOR CLAIMS.				
FOR LINE	TYPE OF INSURANCE	POLICY NUMBER	POLICY PERIOD (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY PLANNED MAINTENANCE <input checked="" type="checkbox"/> OCCUR LIMIT: AGGREGATE LIMIT APPLIED PER <input checked="" type="checkbox"/> EACH <input type="checkbox"/> PERIOD <input type="checkbox"/> LOC	A1234	8/16/2012 8/16/2013	EACH OCCURRENCE \$ 1,000,000 TOWERS & EQUIPMENT \$ 100,000 MEDICAL & ADV. EXPENSE \$ 5,000 BODILY & ADV. EXPENSE \$ 1,000,000 OFFICIAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS NON-OWNED AUTOS HIREN AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> UNINSURED AUTOS UNINSURED LIME EXCESS LIME PERIOD <input type="checkbox"/> PERIOD <input type="checkbox"/> PERIOD <input type="checkbox"/> PERIOD	C03167229		LIABILITY - SINGLE LIMIT LIABILITY - BODILY INJURY BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE UNL. AGGREGATE \$ Uninsured motorist combined \$ EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY EMPLOYER/EMPLOYEE/RECURRING ANY CONTRACTOR/EMPLOYEE/RECURRING ANY CONTRACTOR/EMPLOYEE/RECURRING (Mandatory in NY) (Type, location, or other) (Indicate type of operations below)	A1234	8/16/2012 8/16/2013	LIMIT: 50,000 ded: 500 example limit and ded.
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101. Additional Remarks Schedule, if more space is required)				
Certificate holder is included as loss payee with respect to leased/rented equipment.				
CERTIFICATE HOLDER		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. AUTHORIZED REPRESENTATIVE		

“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.”

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Certificates of Insurance Do Not Guarantee That the Insurance Company Has Recognized the Existence or Nature of the Coverage to Be Provided.



EXCEPTIONS

- Insurance companies only might be bound by the representations made in the insurance companies' certificate of insurance, not those made in a broker's certificate of insurance.
- The insurance company will contend it is not bound by the broker's representations in the broker's certificate of insurance.
- This sets up an argument as to whether the broker is the agent of the policyholder or the insurance company.



DOCUMENTS

- Frequently, the certificate of insurance is the only document the additional insured will receive to confirm coverage.
- A copy of the insurance policy usually is not delivered to the certificate holder.



IV. Why It is Important to Get A Copy of the Insurance Policy Itself?



It is the additional insured endorsement to the insurance policy and the insurance policy itself that confers coverage rights.



V. The Additional Insureds Should Insist Precisely on the Type of Coverage They Need and Seek a Copy of the Insurance Policy Itself.

- Certificate holders should be proactive and seek a copy of the insurance policy before the loss occurs.



VI. Additional Insureds Should Make Sure Their Contracts Require The Delivery of the Insurance Policy Itself.



VI. Additional Insureds Should Make Sure Their Contracts Require The Delivery of the Insurance Policy Itself (Cont'd).

This may set up a conflict as the policyholder might not want to share copies of their insurance policy with others, especially in competitive industries.

VII. Generally, a Certificate of Insurance Does Not Confer Coverage.

“On the merits, the certificate of insurance naming Ginsburg as an additional insured is not, by itself, sufficient to raise a factual issue as the existence of coverage.”



Ins. Corp. of N.Y. v. U.S. Underwriters Ins. Co., 11 A.D. 235 (N.Y. 1st Dept. 2004).

What Happens if the Certificate of Insurance Says You Have Been Added To The Policy as an Additional Insured But The Policy Does Not Contain That Endorsement?

- There might be no coverage under policy.
- There might not even be a claim against Broker if statute of limitations has run out.

Via Net v. TIG Ins. Co., 211 S.W. 3d 310 (Tx. 2006).



What Happens If the Insurance Policy Has Conditions or Exclusions that Preclude the Coverage You are Seeking?

Example: Coverage Sought is Not Provided or Excluded. Cyber.



What Happens If the Insurance Policy Has Conditions or Exclusions that Preclude the Coverage You are Seeking?

Example: Location of Property Incorrectly Is Described.
Sterett Construction v. AmSouth Steel Erectors, et al.



What Happens If the Insurance Policy Has Conditions or Exclusions that Preclude the Coverage You are Seeking?

Example: Coverage Provided Only for Negligence of the Named Insured and Not the Additional Insured.



What Happens If the Insurance Policy Has Conditions or Limits The Coverage You are Seeking?

Example: High Deductible or SIR.



Policy Period from Sept. 20, 1973 to Sept. 20, 1976 both days at 12:01 a.m. (Standard Time) at the location(s) of the risk(s) insured and in accord with the terms and conditions of the form(s) attached.

AMOUNT:	\$15,000,000	EXCESS OF
	\$10,000,000	EXCESS OF
	\$ 2,000,000	SELF INSURED RETENTION
COVERAGE:	EXCESS PERSONAL INJURY PROPERTY DAMAGE LIABILITY	

What Happens If the Insurance Policy Has BEEN CANCELLED?

Example: Insurance Company Cancellation of Insurance.



TIP – Contract should require that policy provides at least a 30 day notification of certificate holder by the insurance company.

Old Acord Form

The “old” ACORD certificate of insurance stated:

“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.”

New Acord Form

The “new” form now states:

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

Consequently, unless the insurance policy itself requires that a certificate holder receive notice of cancellation, no such notice need be provided by the insurance company.

Tip

Write contract to mandate that the policy purchased requires that the certificate holder get notice of cancellation directly from the insurance company in time to get new insurance or minimize risk of loss.



Tip

Contractors should check to see whether standard blanket additional insured endorsements are listed on the Certificate of Insurance.

CG 20 10 – addresses insured's ongoing work with a contractor.

CG 20 37 – addresses an insured contractor's completed operations.

Calendar When the Coverage Expires.

At the very least, require evidence of renewal for the subsequent periods.



IX. If Insurance Company Denies Coverage Under Policy, Consider Estoppel.



International Amphitheater Co. v. Vanguard Underwriters Ins. Co., 532 N.E.2d 493 (App Ct. Ill. 1998).

Where a contract of insurance consists of a policy and other papers or documents, executed as a part of one transaction and accompanying the policy or incorporated therein by attachment or reference, they must be construed together in order to determine the meaning and effect of the insurance contract. In the instant case, the **certificate of insurance** is an accompanying document since the main policy is referred to in the certificate by its number. . . . Therefore, the certificate incorporates the policy by reference and **the two documents must be read together in order to determine the meaning and effect of the policy.**

International Amphitheater Co. v. Vanguard Underwriters Ins. Co., 532 N.E.2d 493 (App Ct. Ill. 1998) (emphasis added).

. . . where the certificate and master policy conflict, the certificate generally controls. In this case, the policy contains, in endorsements numbers 3 and 4, significant limitations on coverage which are not contained in the certificate. . . . [T]he insureds should not be held to have knowledge of significant exclusions of which they were not made aware. **We find that since the policy containing the exclusions in endorsements numbers 3 and 4 was not tendered to the additional insureds here, the extent of coverage in the instant case was uncertain.**

It is well settled that all uncertainty in the construction of insurance contracts should be resolved in favor of the insured. Accordingly, the conflict created in the instant case between the policy and certificate regarding exclusions in coverage must be construed in favor of Amphitheatre. Therefore, we find that the trial court properly found that Vanguard could not rely on endorsements numbers 3 and 4 to deny coverage to Amphitheater.

Id. at 502 (emphasis added).

X. An Estoppel Argument is Possible, But Should Not Be Relied Upon Exclusively.



The Agency of Broker/Agent is Key.

If the broker does not have authority to bind the insurance company, the broker's promise does not provide a basis to estop the insurance company from denying the existence of coverage.

*Tribeca Broadway Assoc., LLC v.
Mount Vernon Fire Ins. Co.,
774 N.Y.S. 2d 11, 13 (1st Dept. 2004).*



Check Whether the Broker/Agent is the Agent of the Insurance Company.

: License Status - Name Search Page 1 of 1

License Name Search

Searching our database of licensees can be accomplished in one of two ways.

If you are using the proper name of an individual ('John Public', for example), enter the last name first, followed by a space, and the first name, (as in 'Public John'). You may search by last name only or last name and first initial ('Public' or 'Public J', for example).

For other searches, such as aliases, type the name including spaces (as in 'Public Insurance Agency').

Tip: The more specific your search criteria, the faster the data will be returned.

Enter query criteria for License Status - Name Search

License Name:

Avoid Delays! Do you need to renew your license? Go to [FREE APPLICATION ONLINE RENEWAL SERVICE](#) to renew your license now!

[Need Help?](#)

Last Revised - November 07, 2015 03:58 PM
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https://interactive.web.insurance.ca.gov/webuser/licw_name_search5.startup 10/18/2018

Example

: License Status - Agency Details

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Agency License Details

The license status information shown below represents information taken from the California Department of Insurance (CDI) licensing database at the time of your inquiry. This information may not always be current. For example, items sent to the CDI may be pending review or simply may not have yet been entered into our licensing database. For instance, continuing education hours quoted may not reflect courses taken in the last 45 days. This database will reflect concluded disciplinary actions against licensees. Complaints and ongoing investigations are confidential and, therefore, not available.

Section 12938 (a) of the California Insurance Code, in part, requires the CDI to make all fully executed stipulations, orders, decisions, and settlements available to the public on its Web site. You can search for key documents regarding any enforcement action the department has filed against this licensee on the [Enforcement Action Documents Search Page](#). Please note [Enforcement Action Documents](#) (i.e. legal pleadings and orders generated during the enforcement action) are available on this Web site only for enforcement actions taken on or after July 1, 2001. If an enforcement action was taken prior to July 1, 2001, this Web site will only provide a summary description of the enforcement action. Documents relating to actions taken prior to July 1, 2001 may be obtained by submitting a written request to the CDI. If there are enforcement actions, they will be displayed below. Please scroll down to view.

Glossary of Terms

Name: AON RISK SERVICES NORTHEAST, INC.

License#: 0786920

FMR: ALEXANDER & ALEXANDER OF NEW YORK, INC.

DBA: AON RISK INSURANCE SERVICES NORTHEAST, INC.

FMR: AON RISK SERVICES, INC. OF NEW YORK

Comments:

"AON RISK INSURANCE SERVICES NORTHEAST, INC." MUST BE USED FOR ALL INSURANCE BUSINESS CONDUCTED IN CALIFORNIA

License type: Life-Only	Status: Active	Status Date: 12/07/2010	Exp Date: 12/31/2019
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License type: Casualty Broker-Agent	Status: Active	Status Date: 12/16/1999	Exp Date: 12/31/2019
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License type: Accident and Health	Status: Active	Status Date: 12/07/2010	Exp Date: 12/31/2019
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License type: Property Broker-Agent	Status: Active	Status Date: 12/16/1999	Exp Date: 12/31/2019
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https://interactive.web.insurance.ca.gov/webuser/Licw_Agy_Details.STARTUP?Z_ORG_ID... 10/18/2018

Example

: License Status - Agency Details

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METROPOLITAN LIFE INSURANCE COMPANY		
MTSUI SUMITOMO INSURANCE COMPANY OF AMERICA	For: Accident and Health Agent	Effective: 10/26/2005
MTSUI SUMITOMO INSURANCE COMPANY OF AMERICA	For: Casualty Broker-Agent	Effective: 10/26/2005
MTSUI SUMITOMO INSURANCE COMPANY OF AMERICA	For: Property Broker-Agent	Effective: 10/26/2005
MTSUI SUMITOMO INSURANCE USA INC.	For: Casualty Broker-Agent	Effective: 10/26/2005
MTSUI SUMITOMO INSURANCE USA INC.	For: Property Broker-Agent	Effective: 10/26/2005
NATIONAL FIRE INSURANCE COMPANY OF HARTFORD	For: Casualty Broker-Agent	Effective: 03/28/2015
NATIONAL FIRE INSURANCE COMPANY OF HARTFORD	For: Property Broker-Agent	Effective: 03/28/2015
NATIONAL SURETY CORPORATION	For: Accident and Health Agent	Effective: 07/10/2009
NATIONAL SURETY CORPORATION	For: Casualty Broker-Agent	Effective: 07/10/2009
NATIONAL SURETY CORPORATION	For: Property Broker-Agent	Effective: 07/10/2009
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA	For: Casualty Broker-Agent	Effective: 09/09/2014
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA	For: Property Broker-Agent	Effective: 09/09/2014
NATIONWIDE INSURANCE COMPANY OF AMERICA	For: Casualty Broker-Agent	Effective: 08/08/2018
NATIONWIDE INSURANCE COMPANY OF AMERICA	For: Property Broker-Agent	Effective: 08/08/2018
NATIONWIDE MUTUAL INSURANCE COMPANY	For: Casualty Broker-Agent	Effective: 01/16/2018
NATIONWIDE MUTUAL INSURANCE COMPANY	For: Property Broker-Agent	Effective: 01/16/2018
NEW HAMPSHIRE INSURANCE COMPANY	For: Casualty Broker-Agent	Effective: 09/09/2014
NEW HAMPSHIRE INSURANCE COMPANY	For: Property Broker-Agent	Effective: 09/09/2014
NEW YORK MARINE AND GENERAL INSURANCE COMPANY	For: Casualty Broker-Agent	Effective: 01/15/2016
		Effective: 01/15/2016

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Sometimes Estoppel Does Work.

Court equitably estopped insurance company from denying coverage where evidence was that broker acted within authority of insurance company and that insurance company was sent a copy of the certificate of insurance.

Lenox Realty v. Excelsior Ins. Co., 679 N.Y.S. 2d 749 (3d Dept. 1998).

Court recognized additional insured status when broker/agent of insurance company first issued a certificate of insurance designating the entity as an additional insured and then (just prior to an accident) “issued another certificate of insurance that mistakenly omitted that designation.”

Niagra Mohawk Power Corp. v. Skibeck Pipeline Co., 705 N.Y.S. 2d 459 (4th Dept. 2000).

“We reject appellees’ arguments that, as a matter of law, issuance of an insurance certificate does not create a duty; presence of disclaimers precludes the creation of false impression; no duty to disclose should arise because there is not duty to explain policy exclusions to an insured; and the use of ‘All Risk’ cannot convey a false impression.”

Brown & Brown of Texas, Inc. and Transcontinental v. Omni Metals, Inc., 317 S.W. 3d 361 (Tex.App. – Houston [1st Dist.] 2010).

“We hold that, in knowingly misrepresenting the scope of Port Metal’s bailee coverage, Sparks was acting within the scope of his duties as a Poe & Brown agent, and therefore his representations and the knowledge of their falsity are both attributable to Poe & Brown, his principal. In turn, Poe & Brown’s knowledge of the falsity can be attributed to Transcontinental, its principal, which had appointed Poe & Brown as its recording agent with authority to make representations about the terms of the insurance policies it sold.”

Brown and Transcontinental, at 398.

Estoppel is Easier When The Insurance Company Itself Issues The Certificate of Insurance.

“By issuing the certificate of insurance in which plaintiff was named as an additional insured, PMA was estopped from denying coverage for plaintiff...[t]he elements of common law estoppel against PMA’s denial of coverage were established by plaintiff.”

Bucon, Inc. v. Penn. Mfg. Assoc. Ins. Co., 547 N.Y.S. 2d 925, 927 (3d Dept. 1989).

Court granted summary judgment to certificate holder where the insurance company issued the certificate of insurance even though the policy did not identify the certificate holder as a named insured.



B.T.R.E. Greenbush v. General Acc. Co., 615 N.Y.S. 2d 120 (3d Dept. 1994).

Steps To Take



1. Make sure the contract requires delivery of the actual insurance policy.
2. Get a copy of the insurance policy ITSELF.
3. Compare the insurance policy to the contract requirements.
4. Check the additional insured endorsement to make sure it satisfies your needs.
5. Check the environmental coverage (and coverage generally) to make sure it meets your needs.
6. Make sure the contract requires that you get at least 30 days' notice of cancellation.

Questions?



Thank You.

Robert M. Horkovich, Esq.
Managing Partner
Anderson Kill P.C.
(212) 278-1322
rhorkovich@andersonkill.com

