

CERTIFICATES OF INSURANCE: Understanding the Difference Between What Is Requested and What The Insurance Company Provides

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Many business contracts require one or both parties to maintain a certain level of general liability, commercial automobile, umbrella/excess liability, and other specialized forms of insurance coverage. There can also be a further requirement that one or both parties be added as an additional insured to the liability policies of the other party. The most common way to determine if the other party maintains the required insurance coverages and has carried out its obligation to name the other party as an additional insured is to require that the other party provide it with a Certificate of Insurance. There are frequently provisions in business contracts that attempt to dictate the type of information that must be included on a Certificate of Insurance. The following is a commonly worded provision in a business contract:

Before [Company A] commences performance under this Agreement, [Company A] shall deliver to [Company B] certificates of insurance evidencing the insurance coverage listed below and [Company A] shall add [Company B] as an additional insured on the policies providing liability coverage. The certificates of insurance and policies shall contain a provision that no cancellation or non-renewal of, or material changes in, the policies shall become effective except upon thirty (30) days written advance notice thereof by the insurance company to [Company B], and that unless such notice is given, the purported cancellation will be ineffective.

Although these type of provisions requiring that the insurance company notify the certificate holder or additional insured in advance of the cancellation, non-renewal or material change in the insurance policies are quite common, they are contrary to the terms of the current standard Certificate of Insurance, and frequently in conflict with the express terms of the insurance policy and governing law. As such, they may provide no actual protection to either contracting party.

For many years, the standard Certificate of Insurance contained a provision providing that the insurance company would provide notice of cancellation to the certificate holder or additional insured. More recently, the standard certificate was modified to state that

the insurer would “endeavor to” provide notice of cancellation to the certificate holder or additional insured. The language from the standard ACORD Certificate of Insurance in use from the early 2000s until September 2009 provided as follows:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 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.

The ACORD Certificate of Insurance was changed in September 2009 to eliminate any requirement that the insurance company “endeavor to” provide notice of cancellation. The ACORD Certificate of Insurance currently in effect provides as follows:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

The change in the ACORD Certificate of Insurance was brought about in part because of changes in many state laws that recognized the conflict between the wording of the insurance policies and the language of the Certificate of Insurance indicating that the insurance company would “endeavor to” provide notice of cancellation to the certificate holder or additional insured. The standard liability insurance policy generally provides that the insurance company only needs to notify the first named insured as to the cancellation of the insurance policy, and puts no obligation on the insurance company to notify any additional insureds or certificate holders. Further, the standard liability insurance policy typically permits the insurance company to cancel the policy upon ten (10) days notice for nonpayment of premiums, which was in conflict with the standard language in the Certificate of Insurance providing for thirty (30) days notice.

As a result of the change in the ACORD Certificate of Insurance and law, a certificate holder and additional insured cannot plan on receiving any notice from the insurance company if the liability insurance coverage is being cancelled or non-renewed. This can potentially cause serious problems should the other contracting party not take steps to secure other insurance coverage upon cancellation of its liability insurance.

By attempting to eliminate their obligation to notify certificate holders and additional insureds of the cancellation of an insurance policy, insurance companies have placed certificate holders and additional insureds at risk of having no insurance coverage for serious bodily injury and property damage claims. The problem does not have a one-size-fits-all solution. Experienced insurance counsel is needed to negotiate and protect the interests of certificate holders and additional insureds. The McNees Insurance

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