

Risk Monitor



Understanding Certificates of Insurance

When a construction firm wins a job or a retail store leases space in a mall, the person or company on the other end of the transaction typically imposes certain requirements. Chief among these is that the contractor, borrower or tenant provides evidence that he has appropriate insurance. One way to do that is to deliver copies of the insurance policies. However, a bank that has thousands of outstanding loans may not want copies of its borrowers' policies, for space reasons alone. A customary substitute for policies is a certificate of insurance. These documents are easy to complete and store. However, many insurance buyers and the firms with which they do business do not understand them.

An organization called the Association for Cooperative Operations Research and Development (ACORD) created the most commonly used certificate forms. ACORD's instructions state that certificates are for informational purposes only. Many businesses that receive certificates incorrectly believe that they are contracts between them, the policyholder, the named insurer, and the writing agent. In fact, the certificate is nothing more than a snapshot of the insurance coverages in place at the moment the agent issued it. While it represents the policies in force, it does not provide the insurance coverage. Only the policies, which are contracts between the insurance companies and the policyholder, can do that.

For example, standard ACORD certificates state that the insurance companies will endeavor to provide advance notice to the certificate holder if they cancel the listed policies. Many certificate holders rely on this wording, but it does not legally bind the companies. Only specific provisions in the policies can obligate the companies to provide advance notice.

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Businesses often require that certificates contain certain words, phrases or terms. It is important to know that insurance agents have legal boundaries that they must observe when they consider these requests. An agent may legally insert wording into a certificate only if the policies it lists contain that wording. For example, a general contractor may want a certificate it receives from a subcontractor to show that the sub's general liability insurance policy covers the GC as an additional insured. The ACORD Certificate of Liability Insurance has check boxes that an agent can use to designate the certificate holder as an additional insured. If the policy contains an endorsement that provides this coverage, the agent can check the box without violating his contracts or state insurance law.

However, most states forbid agents from issuing certificates that imply coverage the policies do not provide. For example, some certificate holders may want certificates to state that the policyholder's coverage applies on a "primary and noncontributory" basis. If the actual policies do not contain this language, the agent cannot properly add it to the certificates. Only endorsements issued by insurers can change insurance policies; certificates cannot. An agent who issues a certificate implying a false change in coverage may be breaking state insurance law and probably violating his contract with the insurer.

Before a business owner signs a contract for a construction job or a lease, it is important that she check with her insurance agent to make sure she has the coverage the contract requires. The agent can advise her about the availability and cost of any missing coverages. Only once the coverages are in place may the agent issue a certificate reflecting them.

When used appropriately, certificates of insurance are convenient business tools, but they can cause major problems otherwise. Remember, certificates are evidence of insurance coverage -- not the source of it.

Welcome to the Elliot Whittier Insurance Newsletter!

It is with great satisfaction that we bring this newsletter to you. In this issue and in coming months, we will discuss pertinent risk management topics which may affect your organization. We sincerely hope that you will find this newsletter informative and please do not hesitate to contact us should you have any questions or needs.



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Independent Contractors: Evaluate Business Contracts Carefully

In the U.S. today, one result of corporate downsizing, is that there are many independent contractors in the marketplace. After picking themselves up off the ground and dusting off their overcoats, many former members of “Corporate America” have struck out on their own. With that shift comes freedom, but also new anxieties, and, perhaps, new found insurance issues. One such issue is that of the business contract.

Detailed business contracts with explicit and often confusing legalese have become a common document for independent contractors to evaluate. The contractor must often either acquiesce to unfavorable terms dictated by corporate legal departments, or forego the contract. Below are some suggestions on how to resolve the contractual dilemma of whether or not to sign on the dotted line.

1. Speak with your attorney. Although it may not be practical to have a lawyer review every contract offered to you prior to signing, it is usually better than the alternative. It is probably better to limit the legal review to advice rather than negotiations, though there are some contract negotiations for which it would be appropriate to have a lawyer or a representative agent present. However, for a typical small contract where you are being asked to sign boilerplate language, it may send the wrong signal to your client.
2. Consult with your insurance agent. Contracts generally contain clauses that may impact your insurance coverage. They may require either indemnification, certificates of insurance, and/or additional insured status for the client (on your professional liability, general liability, and/or workers’ compensation policies to name a few). Each of these provisions may impact your insurance as follows:
 - a. Indemnifications - a typical indemnification provision looks something like this: “Consultant (or contractor or subcontractor)” shall indemnify, defend, and hold harmless Client against any and all claims, liabilities, losses and expenses arising out of or in connection with Consultant’s performance of the Services hereunder...” This is considered a unilateral indemnification. It is the least favorable to the contractor and you would do well to request a mutual indemnification provision where both parties agree to indemnify the other for liability arising out of their respective negligence. The worst that can happen is your suggestion being rejected.
 - b. Certificates of Insurance - it is quite common for certificates of insurance to be requested by your client. This documentation of your insured status serves as a confirmation to the existence of your coverage. With the request often comes a provision for notice to the client if coverage lapses. Check with your insurer to see if he will agree to this provision. Many insurers don’t have a mechanism for notifying certificate holders of the im-


minent lapse of a policy and will not agree to, though some will compromise with less onerous “endeavor to” wording, such as, “we will endeavor to notify you within 30 days of the termination of the policy...”

- c. Additional Insured - additional insured status for your client may provide an acknowledgement of the liability that you have taken on in the contract and effectively transfers the liability to the insurer, subject to all the terms and conditions of the policy. Check with your agent to see if there is any cost for adding on additional insureds. If there is any charge at all, it is usually nominal.



3. Review your liability insurance contracts for exclusions. Many liability contracts exclude contractual liability with the exception of liability that would attach to you in the absence of the contract. An example of a contractual liability that might be excluded would be a penalty for failing to meet a deadline. On the other hand, indemnifications are often considered liability you would incur regardless of the contractual provision. For instance, if a suit is brought against you and your client, and it is clear that it was your work that was being questioned, your insurer may offer to defend your client to avoid the potential for a hostile witness.
4. Create your own engagement letter. It is always a good idea to spell out your thoughts regarding payment terms, work expectations, limitations of liability, and other aspects of the work you will perform. In lieu of or in addition to a client’s contract, this letter may help to prevent future misunderstandings.

Crime Insurance: A Vital Need in Today's Business Environment



According to a 2008 study conducted by the Association of Certified Fraud, U.S. businesses lose about 7% of their annual revenues to fraud. This equates to a staggering \$994 billion loss each year nationwide to employee fraud. Even worse, occupational fraud schemes are extremely costly to a company's bottom line, with the median loss in the 2008 study coming in at \$175,000!

The three most common categories of employee scams are: fraudulent statements; asset misappropriation; and bribery or corruption. Two out of five businesses suffer more than five instances of fraud, and one in four loses at least \$1 million as a result of fraud. For these reasons, crime insurance is a wise purchase, extending coverage to you and your business for fraud-related financial losses.



In addition to covering employee fraud, most crime insurance policies also cover third-party scams including forgery, counterfeit currency, and theft of company property. Many policies also cover money losses due to computer fraud by hackers who seek company funds, customer credit card numbers or other financial data.

In fact, as more and more business is done over the Internet, computer coverage and protection against unauthorized funds transfers or computer access are on the rise. Technology has opened the door to make some fraudulent schemes much easier to accomplish. For example, with a simple scanner, it is easy to forge a check, and many fraudulent Web sites attempt to collect personal data from unsuspecting victims.

Not all fraud-related crimes involve money. Some involve company goods that have no apparent value. Keep in mind, there are markets for many unusual items. One insurance company tells of a meat packing plant where an employee was stealing animal fat, and selling it for personal gain.

Although many employees carry out such crimes because they are disgruntled, the most common motivations for employee fraud are greed, vindication against the employer, and financial need. Regardless of motive, you need to be aware of the possibilities, and adequately covered.



When employees get caught for such crimes, they do jail time, but companies never fully recover the total amount lost. That's where crime insurance comes in. With proper coverage, you can recoup your financial losses.

In addition to crime insurance, it is also recommended to maintain a strong system of checks and balances to ensure unethical employee behavior doesn't pay off. Such controls can affect your company's insurability and premiums as insurers examine the extent of internal controls, as well as a company's history of fraud losses when determining whether the company is a good risk. With a combination of crime insurance as well as internal control procedures, you will protect your company as well as show dishonest employees that crime doesn't pay.

Are You Guilty of DWT – Driving While Texting?

Are you guilty of sending text messages from behind the wheel? If you are, you're not alone. Although hard statistics on the practice are scarce, it's clearly a growing problem. More than 150 billion text messages are sent annually, and a substantial percentage of those are sent from the driver's seat.

Anything that takes a driver's attention off the road increases the likelihood of an accident, including talking on a cell phone, eating, applying make-up or shaving. But text messaging may be especially dangerous since composing and sending a message requires a driver to look at the phone or device rather than at the highway and surrounding traffic for an extended period of time.

Texting while driving has been identified as a factor in several accidents, with police linking the time phone text messages were sent with the occurrence of fatal automobile crashes. It seems an especially prevalent practice among the young: One insurance company survey found that 19% of drivers admit to sending text messages while driving, and an alarming 37% of drivers between the ages of 18 and 27 engage in the practice.

The problem has become widespread enough for some states, including Washington and Oregon, to take notice and consider legislation that makes driving while texting a crime. Activists are lobbying to include specific texting-while-driving provi-

sions in existing laws that prohibit hand-held electronic devices to be use on the road.

In fact, a recent Harris Interactive poll revealed that 89% of Americans support legislation to ban texting while behind the wheel. And 91% of respondents believed that people who text and drive are just as dangerous as drunks on the road.

What can you do about this problem? Stay safe by resisting the temptation and encouraging others to do the same.



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