

September 26-29, 2024 | Sheraton Boston Hotel



09/27/2024

Certificates of Insurance – The Struggle is Real

9:00 AM - 10:00 AM

Catherine Trischan

1 CEU

Certificates of Insurance - The Struggle is Real



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The Role of the Certificate

- Informational
- Does it change the policy?
- Disclaimer language



“Given the numerous limitations and exclusions that often encumber such policies, those who take such certificates at face value do so at their own risk.”

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



Disclaimers ACORD 25 (2016/03)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

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 have ADDITIONAL INSURED provisions or 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:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
INSURED	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A:		
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES	CERTIFICATE NUMBER:	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 PAID CLAIMS.		



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Case	Ruling
<p>Higgins v. H.H.I. Corp., 2011 Mass. Super. LEXIS 360 (Mass. Super. Ct. Mar. 4, 2011)</p> 	<p>Unsigned certificate of insurance with disclaimers issued to contractor was not a part of the underlying policy and, consequently, was "inadequate evidence" that the contractor was an additional insured under the subcontractor's policy.</p>



Case	Ruling
<p>G. Conway, Inc. v. Tocci Bldg. Corp., 18 Mass. L. Rptr. 565 (Mass. Super. Ct. 2004)</p> 	<p>Certificate of insurance containing disclaimers was an informational document evidencing the existence of the electrical subcontractor's policy. The certificate did not "extend, amend or alter" the engineering subcontractor's policy. In addition, the certificate of insurance had no effect on the limitation of liability provision in the parties' contract. Accordingly, the certificate of insurance did not govern the amount of the engineering subcontractor's liability, nor did it change the amount of the engineering subcontractor's liability from \$50,000 (per the contract's limitation of liability provision) to \$2 million (the engineering subcontractor's policy limits).</p>

Certificate Holder Expectations

I will get an accurate representation of coverage.

- Certificate may include incorrect information.
- Certificate may be issued on a cancelled policy.
- Certificate may include language inconsistent with the policy.
- Aggregate limits may be impaired.

Any important restrictions or exclusions will be disclosed to me.

- Policy exclusions are rarely listed on a certificate.
- Exclusions may be added after the certificate is issued.



Certificate Holder Expectations

If the certificate says I am additional insured, I am.

- A "Y" in the AI box gives little information.
- Has an endorsement been issued?
- Has the proper endorsement been issued?
- Have the terms of the additional insured coverage been made clear?

I will be notified if the policy cancels.



Old COI Cancellation Clause

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer 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.~~



Current COI Cancellation Clause

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



Cancellation Notice

- Will the insurer add a NOC endorsement?
- Will it apply if insured initiates cancellation?
- Will it apply to non-pay cancellation?



Insured Misconceptions



If my broker issues a certificate, I'm in compliance with the requirements of the certificate holder.

Policies rarely conform exactly to contracts

- Outdated contract language
- Unrealistic requirements
- Required coverage is more than the insured carries.

If the certificate holder accepts the certificate, I don't have to worry about the contract requirements.

Common Contract Language:

Contractor shall not be obligated to review the Certificate of Insurance or other evidence of insurance, or to advise the Subcontractor of any deficiencies in such documents, and receipt thereof shall not relieve the Subcontractor from, nor be deemed a waiver of Contractor's right to enforce the terms of the Subcontractor's obligations hereunder.



Acord 25 – Certificate of Liability Insurance

- Issue forms in compliance with Acord's Forms Instruction Guide
- Do not use for auto/equipment lessors/finance companies

To provide information to the owner of a leased motor vehicle or equipment, or the lender about both liability and physical damage or property coverages applying to a vehicle or equipment, use ACORD 23, Vehicle or Equipment Certificate of Insurance.



Acord 25

- **Insurer information**

The insurer's full legal company name(s) as found in the file copy of the policy...This is not the insurer's group name or trade name.

- **Insured information**

The named insured(s) as it/they will appear on the policy declarations page.



Acord 25

INSR LTR	TYPE OF INSURANCE	ADDL SUBR (INSR) (WVD)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	(Empty cell)				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPIOP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED: \$ RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)						



Acord 25

- **Additional Insured - Y or N**
Enter Y for a "Yes" response. Input N for "No" response. Indicates if the certificate holder has been named as an additional insured on the general liability policy.

- **Waiver of Subrogation- Y or N**
Enter Y for a "Yes" response. Input N for "No" response. Indicates if subrogation has been waived on the general liability policy.



“Blanket” Additional Insured

Commonly Used Language

XYZ is included as additional insured if required by written contract.

What do you think?



Blanket” Additional Insured

The NYDFS provides the following sample language to address “blanket” or “automatic” additional insured situations:

"Named Entity is an additional insured to the extent covered by the CG 20 33 ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS—AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU endorsement"

"ABC Company is an additional insured if required by written contract, per endorsement number XX XX XX (copy attached)" or

"ABC Company would be covered as an additional insured per endorsement X, to the extent provided therein."



NOTE: This language may not be acceptable in all states. Know the COI law!

Acord 25

- **Policy Number**
- **Effective Dates**

The date on which the terms and conditions of the policy commence/ will expire.



Acord 25

Policy Limits

e.g. The general liability, each occurrence limit amount. Any questions about appropriate limits or applicable policy coverage(s) should be answered by the issuing insurer(s). As used here, the limit should be listed as a whole dollar amount, as governed by the policy.



Acord 25

CGL

- Claims Made/Occurrence
- Open options
Indicates other coverage not found on the form exists for the general liability policy.
- How does the aggregate apply?
- Is there an overall policy aggregate?



Acord 25

INSR LTR	TYPE OF INSURANCE	ADDL/SUBR INSD. WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					PRODUCTS - COM/PO/AGG \$
	OTHER:					\$
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS, NON-OWNED AUTOS ONLY					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident) \$
						\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR					EACH OCCURRENCE \$
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$
	DED <input type="checkbox"/> RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A					E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)



Acord 25

Auto

- Which box(es) to check
- Leased/Financed Autos (use Acord 23)

Excess Liability

- Umbrella or Excess Liability
- Claims Made or Occurrence
- Deductible or Retention



Acord 25

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					EACH OCCURRENCE: \$ "DAMAGE TO RENTED" PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPIOP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
<small>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)</small>						



Acord 25

WC

- Per Statute or Other?
- Employers' Liability Limits
- Is anyone excluded?
- Is subrogation waived?

Other Liability Policies



Acord 25

- **Description of Operations/Locations/ Vehicles**

The Certificate of Liability Insurance general remarks. The additional comments or special conditions that may exist upon the policy. Acord 101, Additional Remarks Schedule, may be attached if more space is required. As used here, records information necessary to identify the operations, locations and vehicles for which the certificate was issued.

- **Authorized Representative**



Acord 25

Description of Operations/Locations/Vehicles

They want me to say WHAT?!?!?!?!?!?

- Option 1 - Resist
- Option 2 - If resistance is futile, proceed with caution!



Acord 25

- Make sure that any language added is not a violation of state certificate of insurance laws or DOI bulletins.
- Make sure that any language added is not contrary to any directives issued by the insurers.
- Make sure that any statement added is truthful.
- Do not attempt to explain coverage.
- Do not paraphrase policy language.
- Do not warrant that coverage complies with any particular contractual requirement.
- Do not warrant that coverage applies to any particular hold harmless/indemnification agreement.
- If it's not on the policy, don't put it on the certificate!
- Be prepared to justify your decision to use particular language.
- Have agency guidelines concerning what is acceptable and not acceptable to include on a certificate of insurance.



DOO – Let's Practice

Contractual Liability is included.

- Is this better? CGL contractual liability is per the terms of the CG 00 01 04 13 as modified by the CG 24 26 04 13.

The CGL policy covers residential work.

- Is this better? No endorsements that exclude coverage for residential work have been added to the CGL policy.

Umbrella/Excess is follow form.

- Is this better? The CGL, Business Auto and Employers Liability coverages above are included on the Umbrella/Excess schedule of underlying insurance.
- Is this better? (If the form calls itself follow form) Excess Liability is follow form per the terms of coverage form XS 00 00 00 00.

30 days notice of cancellation will be provided.

- Is this better? Notice of cancellation will be provided per the terms of endorsement NC 00 00 00 00 (copy attached)



State COI Laws/DOI Bulletins

What may be addressed:

- What can and can't be done
- Which COI forms can be used
- To whom the law applies
- What the penalties are






COMMONWEALTH OF MASSACHUSETTS
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AND BUSINESS REGULATION
DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

BULLETIN 2015-02

To: Insurance Companies Offering Insurance Policies in Massachusetts and Insurance Producers
From: Daniel R. Judson, Commissioner of Insurance 
Date: May 8, 2015
Re: Implementation of Massachusetts General Laws Chapter 175L, Concerning Certificates of Insurance



Massachusetts

Massachusetts General Laws 175L highlights

2 (b) A certificate of insurance shall not be represented as nor construed to be a policy of insurance and may not affirmatively or negatively amend, extend or alter the coverage afforded by the policy to which the certificate of insurance makes reference.

A certificate of insurance shall not confer to any person new or additional rights beyond what the referenced policy of insurance expressly provides.





37

Massachusetts

Massachusetts General Laws 175L highlights

3 (a) No person shall: (i) knowingly prepare, issue, request or require the issuance of a certificate of insurance that contains any false or misleading information concerning the policy of insurance to which the certificate of insurance makes reference; or (ii) prepare, issue, request or require the issuance of a certificate of insurance that purports to affirmatively or negatively alter, amend or extend the coverage provided by the policy of insurance to which the certificate of insurance makes reference.



38

Massachusetts

Massachusetts General Laws 175L highlights

3 (b) A certificate of insurance may not warrant that the policy of insurance referenced in the certificate comply with the insurance or indemnification requirements of a contract and the inclusion of a contract number or description within a certificate of insurance may not be interpreted as doing so.





39

Massachusetts

Massachusetts General Laws 175L highlights

4. A person shall be entitled to notice of cancellation, nonrenewal or any material change and to any similar notice concerning a policy of insurance only if the person has such notice rights, under the terms of the policy of insurance or any endorsement to the policy. The terms and conditions of the notice shall be governed by the policy of insurance or endorsement and shall not be altered by a certificate of insurance.



40

Massachusetts

Massachusetts General Laws 175L highlights

5(a) This chapter shall apply to all certificates of insurance issued in connection with property, operations or risks located in the commonwealth regardless of where the policyholder, insurer, insurance producer or person requesting or requiring the issuance of a certificate of insurance is located.

6(b) The commissioner shall enforce this chapter and may issue orders to cease and desist and impose fines of up to \$500 per violation against any person who violates this chapter.



Thank You for Being Here!



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