

## Liability

# Contractual Risk Transfer Issues: Reviewing Certificates of Insurance

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## Abstract

Because many liability losses occur through the transfer of risk, it has become necessary for a Risk Control Consultant to assess the hazards and controls arising from contracts and agreements in a fashion similar to identifying other hazards, such as exposed wiring or missing guardrails.

This report provides guidance on how to use a Certificate of Insurance to audit the administrative and recordkeeping practices to verify recommended coverage limits meet requirements (as defined by insurer). This report relies on the use of a generally accepted form published by Agency-Company Organized Research and Development (ACORD). A revised version of the ACORD 25 Certificate of Insurance Form is provided in the Appendix with permission for educational use.

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## Background

The insurance industry has traditionally viewed contractual risk transfer issues as one of several general liability loss exposures. Contractually assumed liability—and especially the agreement to assume another person's or organization's tort liability for injury or damage to a third party—is an insurable contractual liability exposure. This report is designed to be used by those who are required, as part of the insurability survey, to review exposures and controls in place relative to contractual risk transfer issues. Reviewing certificates of insurance (COI) is not a substitute for the underwriter, insurance agent, and broker activities.

The purpose of reviewing a COI is to validate that contractually assumed liabilities are addressed. Insureds manage the process of contractually assumed liability by requiring those who work for them to provide a Certificate of Insurance (COI). The administrative tasks associated with monitoring COIs is explained in other publications. Part of the evaluation includes review of COIs and the section of their contracts that contain the insurance and waiver contract wording.

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## What Exactly Is a Certificate of Insurance?

The COI is a form that summarizes information relating to coverage(s), policy terms, limits of liability, and/or additional insured status. The insurance industry relies on using a standardized form developed by Agency-Company Organized Research and Development (ACORD), an insurance industry organization. ACORD revised the COI form in September 2009. The COI is considered a matter of information only and does not alter the coverage afforded by the purchased policies. The COI provides verification of the insurance and usually contains information on types and limits of coverage, insurance company name, policy number, named insured(s), and policy effective terms.

## The Purpose of the COI

The COI provides *information* to an interested third party that insurance is in force at the time of issuance. COIs are usually requested by opposite parties in an agreement, contract, or transaction to make certain

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the other party has appropriate insurance coverage. During a review of COIs, it is important that the COI does not have out-of-date policy information.

The ACORD form contains a provision regarding notification in the event of cancellation and indicates that it is a mere promise, unsupported by any consideration. To reinforce this statement and in response to case law resulting from litigation, the revised form has amended language. The form reads: *“should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.”* (Sample ACORD 25 Form available in Appendix.)

### Verify Compliance with Insurance Requirements

Although most businesses have a requirement that those who perform work for them provide evidence of coverage when they sign agreements, many do not monitor compliance. Reviewing COIs is a way to confirm that the requirements are being met. A completed ACORD certificate provides the names of the insurers providing the required coverage, policy numbers, effective dates, expiration dates, and applicable limits of liability. When reviewing a COI, be on the lookout for the following:

- It is possible that the COI on file is out of date and that the policy terms are expired.
- A quick review of the coverage and the corresponding limits of insurance by the risk control consultant can validate that the owner is addressing this concern.
- The certificate includes a column for noting whether the certificate holder is an additional insured under each listed policy and a box for listing any exclusions added by endorsement and other “special items.” The additional insured endorsement number may be noted here, among other things.
- One of the most frequently encountered problems with COIs occurs when the coverage represented in the certificate does not match that of the actual policy. For example, the certificate may indicate the certificate holder as an additional insured under the liability policy when in reality this modification was never made. That is why it is beneficial to see a copy of the endorsement attached to the COI or a very specific endorsement number.

### Managing the Paper Trail

Since the underlying coverage is the backbone of the risk transfer, a business owner should take reasonable steps to confirm that the required coverage is in place. COI administration is a way to maintain the essentials. There are software tools, letter templates, and organizing tips to help administer the program. It is recommended that the owner obtain COIs from any company who performs work for them prior to starting work. If the audit process uncovers that any of the following conditions are in place, then there are gaps in the program. Common conditions warranting corrective action include:

- COIs are out-of-date.
- COI does not clearly indicate that an Additional Insured (AI) endorsement was purchased by the subcontractor.
- Coverage limits purchased by the subcontractor do not meet requirements.

If any of these conditions are observed, then the consultant should notify the business owner so that proper corrective action can be taken. Some insurers have underwriting requirements that dictate additional corrective action.

Businesses rely on having a program in place that requires subcontractors to provide COIs detailing certain coverage(s) and limits of liability as well as name them as an AI. Too many owners have been *surprised* to learn of a claim because they were not primarily at fault. It was determined through claim review that they

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are responsible due to contractual risk transfer. During claims investigation, it is discovered that a subcontractor did not adhere to the contractual risk transfer requirements. Uncovering these *surprises* before there is a loss is to everyone's benefit.

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### Summary

Keeping operations running safely and efficiently is more critical than ever in the current economic and competitive environment. Quantifying the liability exposure using the COI can be challenging. The COI can be considered a predictive tool to help verify that those who perform work are in compliance with requirements outlined by a business owner. When the technique of transferring risk through written agreements is employed, then validating that the parties to the contract oblige is fundamental to risk control efforts.

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### References

1. ACORD Corporation. *Certificates FAQ*. July, 2010.  
[https://www.acord.org/standards/forms/Documents/ACORDCertificatesFAQ\\_201004.pdf](https://www.acord.org/standards/forms/Documents/ACORDCertificatesFAQ_201004.pdf).
2. Engineering and Safety Service. Client Handout CH-40-08. *Contractual Indemnity*. Jersey City, NJ: ISO Services, Inc. 2012.
3. ---. Client Handout CH-40-06. *Introduction to Certificates of Insurance*. Jersey City, NJ: ISO Services, Inc. 2014.
4. ---. Client Handout CH-40-07. *Reviewing Certificates of Insurance*. Jersey City, NJ: ISO Services, Inc. 2013.

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### 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 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):
	E-MAIL ADDRESS:	
	PRODUCER CUSTOMER ID #:	
	INSURER(S) AFFORDING COVERAGE	
INSURED	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.							
INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> 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						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE \$ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

ACORD 25 (2009/09)

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**Figure 1. Certificate of Liability Insurance**