

# 300 WORDS (more or less) about CERTIFICATES OF INSURANCE

**THE ISSUE:** A practice of misuse of certificates of insurance has emerged that is of serious concern to subcontractors and the insurance agents who represent them. A certificate of insurance is not a contract between an insurance holder and the insurer; it only provides information to an interested third party that insurance is in force at the time of issuance. Unfortunately, certain large general contractors have used their unequal bargaining position to demand their subcontractors supply them with certificates containing non-standard and often unavailable specifications, even if the underlying insurance policies don't reflect those specifications. While that, in and of itself, is unfair, the way that it is done is downright unconscionable.

It begins with general contractors telling subcontractors that, in order to work on the general contractors' project, the subs must supply evidence of a liability policy with certain specifications—specifications carriers provide on either a limited or restricted basis, or not at all. The subs then buy standard liability policies, which may not meet the general contractors' specifications, give the certificate of insurance to the general contractor prior to starting the job, and complete the work, only to have their pay withheld until they get a "proper" certificate of insurance. Insurance agents commonly have their longtime customers appear in a panic late on a Friday afternoon saying they need a new certificate of insurance or they will be out of business.

The agents want to help their clients, but know that carriers won't honor certificates containing provisions different than the underlying policies. Agents may put their licenses in jeopardy by doing so because it is in violation of the insurance code. Also, there may be an "errors and omissions" problem. Since agents refuse to issue altered certificates, the general contractors, in a newly emerging tactic, ask the agents to issue a personal guarantee of the changes sought. If the insurers won't honor the changes, then the general contractors sue the agents. It puts agents in a "can't" win position: have clients go out of business if they obey the law or risk lawsuits and other adverse consequences if they issue the guarantee.

Adding insult to injury, general contractor representatives erroneously suggest our motives for reform somehow sanction, "...insurance agents issuing fraudulent certificates of insurance." They also allege the bill would allow unscrupulous sub-contractors to obtain "bogus" certificates, which would somehow cut off all objections to the lack of required coverage. Nothing could be further from the truth.

**OUR POSITION:** We need to enact legislation, which provides that if subcontractors supply certificates of insurance to the general contractors prior to commencing work and the general contractors allow the subs to do the work, then the general contractors are precluded from withholding payment for work already completed solely because the certificates do not meet the general contractors' specifications. To answer the general contractors' baseless allegations of fraudulent or bogus certificates and actions by unscrupulous subcontractors, the bill makes it absolutely clear that this **DOES NOT APPLY** to fraudulently issued or altered certifications; or in cases where the policy is cancelled, nonrenewed, or materially and adversely altered after acceptance; or if the certificate or policy does not comply with the insurance coverage limits as specified in the construction contract.

If the general contractors do not like the terms of the certificates, they can tell the subs they can't work for the general contractors until they get a "proper" certificate. The general contractors can even tell the subs where such a certificate (and policy) is available. However, the general contractors, who always seem to know after the fact that the certificate fails to meet the general contractors' specifications, should not be allowed to hold hostage the pay of their subcontractors until new certificates are supplied.

**CONCLUSION:** Support HB 173 by Rep. Ross and SB 682 by Sen. Bennett and prohibit this misuse of certificates of insurance.

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