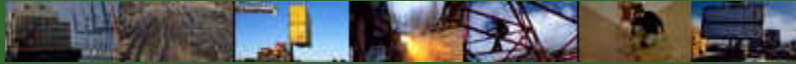




# Supervisors' Safety Update

## Ideas and Strategies for Leaders



SSU 2003-01

## CERTIFICATES OF INSURANCE FINANCIAL PROTECTION YOU NEED

*By SeaBright Insurance Loss Control*

**M**ost managers and lead supervisors should understand the value of Certificates of Insurance, or “Certs” as they are commonly called. These are critical for companies that hire subcontractors. You may have heard stories about firms that did not acquire them. Failure to do so can result in serious financial exposures for your company. Some firms have even been forced into bankruptcy after suffering a loss from an independent contractor who operates without insurance coverage. A Certificate can confirm that the company has appropriate coverage and that the account is in good standing.

There is history behind this need. Under English Common Law, a master was responsible for the torts or injurious acts done by his servant. This precedent carried over into American jurisprudence during colonial times. It continues to be reflected in modern civil law, and the principle has been upheld many times by the U.S. Supreme Court.

As an example of this dilemma: Consider a general contractor who hires a subcontractor to perform a portion of the project’s scope. For whatever reason, the subcontractor did not obtain workers compensation insurance coverage, or possibly let the coverage lapse prior to or during the project’s life. Now let’s presume an employee of this “uninsured” subcontractor becomes injured on the job. Who will pay the medical bills and time-loss payments for this employee? Not the subcontractor, because at the time of the injury they did not have any coverage. The costs of this incident falls to the general contractor that contracted the sub. (*See note regarding industrial insurance coverage in monopolistic states at the end of this article.*)

In another example, suppose a third party suffers an injury or had equipment damage as a result of the work the subcontractor is doing on a project. If the subcontractor has no insurance policy to cover this general liability exposure, who do you think will end up paying the bill? You’ve got it! The “general contractor.” This may not be fair, but that’s the way it is—all because Englishmen at one time owned indentured servants.

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The Certificate of Insurance can capture coverages such as General Liability, Automotive Liability, Excess Liability, Employer's Liability, Workers Compensation, USL&H coverage, plus any others as they are named on the certificate.

However, there is a way for a business—that's any business, not just general contractors—to have protection from these types of loss. Before your company allows a contractor of any size to begin work, a Certificate of Insurance must be obtained to verify evidence of insurance. This document attests that the policies listed are in force and lists any special conditions of coverage. These Certs can be obtained with a mere phone call and, believe it or not, they cost nothing. The contractor's insurance agent or broker will usually provide them.

So once you've received the Certificate, is that the end of the matter? Unfortunately, "No." There are several things you must look into, to assure that you are properly protected. As with any legal document, you should scrutinize it carefully. A sample Certificate of Insurance is provided at the end of this article. Whenever you receive a certificate study it and verify that the following questions are answered:

### **1. Who is the Certificate Holder?**

Check the box at the lower left to see that your firm is named as the "Certificate Holder." A Certificate that was issued to someone else gives you no protection. In the text at the lower right, the carrier makes a promise to attempt notification within the designated time-frame in the event the policy is cancelled before the expiration date shown. But you must ask for such notification at the time you request the Certificate itself. In addition, notification will be given only to the "Certificate Holder." If the subcontractor's policies are cancelled before expiration, and you are not a "holder," you will not receive notification. In this event, a sub's coverage could lapse, and you wouldn't find out until after some type of loss occurred. By then it is too late.

**Important:** When Certificate Holders are named as "An Additional Insured," the policy or policies must be endorsed as such. In addition, if "Subrogation is waived," subject to the terms and conditions of the policy, certain policies may require an endorsement added to the policy as well. Check with your broker or agent to confirm your status in these matters.

### **2. When is the expiration date of the policies?**

Note policy expiration dates. When you first receive the Certificate of Insurance review the policy expiration dates. Establish a suspense system that will remind you to check the status of coverage before expiration and assure that it was renewed for another term. Before expiration, the contractor should obtain a new Certificate with your company named as a Certificate Holder from his agent.

### **3. Are the policy limits and the coverages adequate?**

Check the individual coverages and limits on the various policies. If you are unsure if the amounts listed are adequate, contact your broker for his/her advice. As a rule of thumb, usually you'll want your contractor's policy limits to equal or exceed your own for each type of insurance coverage. In fact, some firms mandate this by spelling out required limits within the contract documents.

If your subcontractor does not have General Liability, Automobile Liability and Workers' Compensation, you need to ask some hard questions. Failure to assure that the necessary coverages are in place could be an expensive omission.

#### 4. Are you a maritime employer?

If you are a maritime employer who falls under the auspices of the U.S. Longshore and Harborworkers' Act (USL&H), make sure the Certificate of Insurance indicates "USL&H Coverage Included" in the block of the form titled "Workers' Compensation and Employer's Liability." If it is not there, most likely USL&H coverage has not been endorsed onto the subcontractor's policy. If the subcontractor is working in shipyard or other maritime operations this essentially means that they have no coverage for the work. USL&H is different than land-based workers compensation. Make sure it is listed if you are a maritime employer or maritime contractor. This detail can be easily overlooked.

#### 5. Any restrictions or special conditions noted?

Finally, look in the block titled, "Description of operations/locations/vehicles/exclusions added by endorsement/special provisions." There may be language here that completely voids some types of coverage, or severely limits it. Language seen in this block might be something like: "Reference Workers' Compensation: USL&H coverage applies only for job #90-1654." That's bad news if the contract with your sub is for a different maritime job than this. Liability coverages may be limited as well. For example, included details might say, "Auto liability does not apply to owned 1999 Porsche 911 Carrera." You better hope the contractor's son doesn't run over anyone in your parking lot in "Dad's car," or you might find yourself in a messy, costly lawsuit.

If all of this sounds like a lot of hassle, rest assured it is nothing compared to the cost of an injury that occurs to some else's worker or the hassle of a lawsuit. To add to your woes, you could also be charged additional audit premium for each uninsured subcontractor regardless of whether or not any loss actually occurred. The amount of workers compensation audit premium so developed would depend upon the actual subcontractor payrolls and the classification of his employee during the time they were uninsured and on your job. If you cannot furnish payroll records, the full subcontract price of the work performed may be established as the payroll of the subcontractor's employees. Additional premium is then charged on that amount. Ouch!

And this is not the end of it, financially speaking. Uninsured subcontractor losses are also included in the data used to compute the general contractor's Experience Modification Rate for workers' compensation insurance. This will impact future premiums and will have a direct effect on net cost insurance plans such as a retrospective rating or a deductible plan. Ouch again!

In view of the potential liabilities that arise from the use of uninsured subcontractors, this is an area of serious concern. Everyone on the management team should be aware of this financial hazard. With proper Certificates of Insurance, your company doesn't take on the risk; it remains where it belongs—with your independent contractor. Certificates can save you a bundle. Failure to acquire them and monitor them is a high stakes gamble no firm can afford to take!

#### NOTE:

- *If your firm does business in many states, you may find different workers compensation coverage provisions, such as when a subcontractor's employee is injured under Monopolistic State Fund insurance. If the sub has no industrial insurance policy with the State, the injured employee will usually receive medical and time loss benefits, but the employer will be charged for the direct costs of the claim plus back premiums.*
- *Sometimes there is discrepancy about whether an injured person is a subcontractor, an independent contractor or an employee of the general. If documentation of the independent contractor status hasn't been produced, the claim costs could be charged back to the general contractor who may be defined as the employer. For industrial insurance protection, a general contractor should acquire a copy of the independent contractor's license, or request a subcontractor's Certificate of Insurance from the State insurance provider.*

<b>ACORD, CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 01/15/03											
<b>PRODUCER</b> ABC INSURANCE AGENCY 124 Main Street Seattle, WA 98111	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
<b>INSURED</b> SUBCONTRACTOR, INC. 222 South 50th Street Seattle, WA 98124	<b>INSURERS AFFORDING COVERAGE</b> INSURER A: <u>ULTIMATE INDEMNITY INS.</u> INSURER B: <u>NEW WORLD INS. CO.</u> INSURER C: INSURER D: INSURER E:	<b>NAIC #</b>     											
<b>COVERAGES</b>													
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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.													
INSR ADD'L TR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS								
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	GL 127198	1/01/03	1/01/04	EACH OCCURRENCE \$ <u>1,000,000</u> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <u>50,000</u> MED EXP (Any one person) \$ <u>0</u> PERSONAL & ADV INJURY \$ <u>1,000,000</u> GENERAL AGGREGATE \$ <u>2,000,000</u> PRODUCTS - COMP/OP AGG \$ <u>1,000,000</u>								
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	GL 127198	1/01/03	1/01/04	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ <u>1,000,000</u> BODILY INJURY (Per accident) \$ <u>1,000,000</u> PROPERTY DAMAGE (Per accident) \$ <u>1,000,000</u>								
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$								
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$								
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	WC 1160-47M  USL&H Coverage Included	1/01/03	1/01/04	<table border="1" style="width:100%; border-collapse: collapse; font-size: x-small;"> <tr> <td style="width: 50%;"><input type="checkbox"/> WC STATU-TORY LIMITS</td> <td style="width: 50%;"><input type="checkbox"/> OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$ <u>500,000</u></td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$ <u>500,000</u></td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$ <u>500,000</u></td> </tr> </table>	<input type="checkbox"/> WC STATU-TORY LIMITS	<input type="checkbox"/> OTH-ER	E.L. EACH ACCIDENT	\$ <u>500,000</u>	E.L. DISEASE - EA EMPLOYEE	\$ <u>500,000</u>	E.L. DISEASE - POLICY LIMIT	\$ <u>500,000</u>
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E.L. DISEASE - EA EMPLOYEE	\$ <u>500,000</u>												
E.L. DISEASE - POLICY LIMIT	\$ <u>500,000</u>												
<b>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS</b> Evidence of insurance regarding Job #3259-B.													
<b>CERTIFICATE HOLDER</b> ABC Marine Works 765 Sloop Street Seattle, WA 98001			<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> 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. AUTHORIZED REPRESENTATIVE										