INSURANCE CERTIFICATES: WHAT THEY MEAN AND DON'T MEAN

The most common type of Certificate of Insurance is called the Acord, which lists the types of insurance, General Liability, Auto Liability, Umbrella policies, Workers' Comp and Employers Liability, Cargo. The form provides policy numbers, effective dates, expiration date, and the applicable monetary limits for each coverage type. The certificate of insurance is a usual proof document contractually required by shippers, brokers, 3PLS, and freight forwarders when hiring motor carriers. Obtaining a certificate of insurance is one way to verify a motor carrier has cargo insurance. Another is to obtain a copy of the policy. Case law teaches that hiring a motor carrier to transport freight without first obtaining proof of its cargo and motor vehicle liability insurance may be grounds to find the hiring party liable for cargo loss and damages and/or personal injury and death claims. Generally, shippers contractually require their freight brokers, 3PLS and forwarders to obtain a certificate of insurance on the freight carriers that the freight brokers, 3PLS, and freight forwarders hire. A certificate of insurance (or policy) on file from the insurance producer shows that reasonable efforts have been made to verify insurance on a freight carrier.

Usually, the entity which has requested and received the certificate is shown on the certificate as the Certificate Holder. The certificate provides some evidence that the designated policies have in fact been issued to the insured. The designation as "Certificate Holder" confers no legal rights on the recipient. The certificate provides some evidence that the listed policies which are identified have been issued. Note: The disclaimers at the top of the form provide, among other things, that the certificate (1) does not "amend, extend or alter insurance coverage provided by the policies", (2) is not a contract, between the insurance company and the certificate holder, (3) if the certificate holder is to be named an "additional insured", the policy must be endorsed.

At the bottom right section of the form, the "Cancellation" box provides that notice of cancellation will be sent according to policy provisions. Under most state's department of insurance guidelines, notices are only legally required to be sent to the first named insured (the freight carrier). Because a freight broker, 3PL, or freight broker is not the first named insured, the insurance company has no legal obligation to provide notices such as cancellations, reinstatements, coverage changes, etc. Again, wording on the certificate will not change this condition. A properly written endorsement from the insurance company would need to be on file for the notice requirement to hold up in court. Although most insurance companies are not legally required to send a cancellation notice unless contractually agreed upon or mandated by state statute, not sending notices can cause unwanted claims and frivolous lawsuits directed towards the insurance agencies and insurance companies. It may be in the insurance company's best interest to inform certificate holders that the policy they have on file is cancelled.

Assuming you are a shipper, freight broker, 3PL, or freight forwarder, and a motor carrier you would like to hire furnishes you with such a certificate, what are some of the things that can be done as a matter of due diligence in the carrier selection process?

1. The best practice is to always obtain a certificate of insurance (or policy) directly from the insurance company, or insurance agent, producer since certificates are easily modified/forged by an insured (freight carrier) or identity thief.
2. If you receive a certificate of insurance from a freight carrier, you should call the insurance producer and ask for verification that the policies have in fact been issued, are in effect, that the dates and policies numbers are correct, and that no notice of cancellation is pending or has been issued. If you are contacting the insurance agent to validate coverage, you should request a certificate (or policy) directly from them listing your company as the certificate holder.
3. Verify that the insurance producer actually signed the form. If it was not signed, investigate. The form might be a fake.
4. The address and phone number of the insured on the certificate should be the same as shown on the FMCSA website. If not, investigate.
5. The certificate will not show exclusions. All policies have exclusions. It is smart business to contractually require the carrier to represent that there are no exclusions in his policy that apply to the type of freight being offered for transportation, and/or that would preclude coverage for personal injury or death .No two policies are exactly the same and assumptions about common conditions and exclusions are dangerous and may be wrong! Don't be surprised!
6. Certificates that show "Scheduled Auto" should not be accepted unless there is a way to verify/match listed VIN numbers in the policy with the VIN numbers on the vehicles which are on a shipper's loading dock to pick up freight. Without the matching of VIN numbers, there is no way to know if the truck that picked up the freight is actually covered by the policy.

Regardless of the number of due diligence actions taken, a certain amount of administration, time and expense will need to be incurred to obtain a certificate of insurance (or policy) for a new freight carrier and for insurance monitoring. In order to be able to rely on due diligence actions, they must be consistently employed and recorded in the event they are needed for future proof purposes.

An effective alternative to conducting your own due diligence insurance monitoring, is to outsource the process. The utilization of a third party monitoring company,   may provide an efficient and effective method for exercising due diligence. Utilizing a professional insurance monitoring, third party company is an acceptable practice in the transportation industry. By utilizing a third party monitoring company, Freight Brokers, Freight Forwarders, 3PLS, etc. have their internal rules and practices unbiasedly monitored and tracked. Because of recent lawsuits, it is more important than ever for companies to show they have practiced proper due diligence when arranging the transportation of freight. Having a certificate of insurance on file listing your company as a certificate holder or having a certificate of insurance listing a monitoring company is equivalent. As long as a certificate of insurance is on file, the due diligence process for insurance purposes has been completed. Because transportation professionals are not insurance experts, companies may have defects in their protocols and procedures when it comes to obtaining and tracking their freight carriers' certificates of insurance. Consistency in the exercise of due diligence is key. As long as the monitoring service furnishes complete record of its actions for proof purposes, it can legally function as an important part of the exercise of your over all due diligence protocol.

As in any outsourcing, you must know your customer, so careful investigation of services, costs, length of time in business, reputation in the industry etc. should be conducted, in addition to conducting your own cost/benefit analysis.

2.11.14

Ronald H. Usem, Esq.
Transportation Attorney
Huffman, Usem, Crawford & Greenberg PA
5101 Olson Memorial Highway, Suite 1000
Minneapolis, MN 55422
Phone: 763-545-2720
Email: ron@usems.com