

Connecting Contractual Risk Transfer, Insurance and Certificates of Insurance

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Contractual risk transfer (CRT) exists for one primary purpose: to place the financial responsibility for injury or damage on the individual or entity closest to and best able to control the results of a particular wrongful or tortuous act. Liability insurance provides a source for financing **some** of what is agreed to in the contract, subject to the policy language. A certificate of insurance (COI) is nothing more than a representation, in a one-page format, of the coverage carried by the entity entering into the contract.

Do not confuse or correlate the purpose or place of contractual risk transfer, insurance or a certificate of insurance. Effectually, each is subservient to the other in certain respects – but ultimately the insurance policy rules.

Subservient and Sequential Relationships

From the risk manager's perspective, the contract "sets the course"; insurance responds to the contractual indemnification requirements and the certificate of insurance attests to specific protections for contractually transferred and accepted risk. To the risk manager, this is a top-down relationship, with the contract at the top and the insurance and COI falling in line. But, in fact, the relationship among these three distinct tools is a functionally circular and subservient relationship.

Upper tier contractors attempt to contractually transfer down to the lower tier as much responsibility as possible. Some of the liability (responsibility) transferred away by the upper tier triggers the lower tier's insurance to respond. Thus, the contract initially sets the course for the insurance policy – but only to a point.

Although the lower tier **can** contractually accept responsibility for costs and losses NOT covered by its insurance policy, the **contract does not usurp the insurance policy's coverage provisions**. The upper tier can attempt to transfer away anything it desires but doing so does not require the insurance policy to respond to claims not covered by the policy – even though the lower tier accepted the transfer.

Contractually transferred and accepted risk becomes subservient to the insurance policy's grant of coverage – making the lower tier solely responsible for paying the cost of any uninsured or uninsurable accepted risk. When the contract transfers down more risk than is insured or insurable, the lower tier can be financially ruined because there is no outside source for financing the contractually agreed to expenses. Ultimately, the lower tier is bankrupted by the contractual risk transfer provisions.

Key point: The contract does not create coverage not contained in the policy. The policy responds only when the injury or damage is covered by the contract.

Further, the certificate of insurance is subservient to the relevant insurance policy it is "certificating." Regardless what the upper tier asks or requires be written on the COI, only what is in or attached to the policy can be included in the COI.

Upper tiers often ask or require agents to include special wording or special provisions in the COI. If the provisions are not in the policy such special wording **CANNOT** be included. Many states have laws supporting and enforcing this limitation. Ultimately, it does not matter what the upper tier asks for or

thinks it deserves in or from the COI; only what is included in the policy can be included on the certificate. Period!!

Likewise, agents cannot attest to anything in documents beyond COIs that is not specifically in the policy. Upper tiers have learned that some states do not allow COIs to be anything more than what they are – proof that coverage exists. This realization led to the creation of additional documents beyond the COI an agent may be asked to complete.

Agents must treat these “Addendum Requests” the same as a COI. Agents cannot attest to coverages, policy exclusions or the lack of exclusions in these documents. Many addendum requests ask agents to answer “yes” or “no” to questions that don’t have “yes” or “no” answers. Do NOT complete an addendum request; doing so may violate your agency contracts or even the COI law (varies by state).

Remember, the relationship between contractual risk transfer, the insurance coverage and the certificate of insurance is a subservient and sequential one. And from an external financing source perspective, the reality is: The insurance policy rules. The policy limits which transferred risks have a source of financing and what information can be placed on the certificate of insurance. So, tell the upper tiers to stop thinking their contract has any real power to alter coverage or change what can be written on the certificate! Tell them to get over themselves. (OK, maybe be more tactful.)