

As most students of Roman history or Shakespeare would confirm, the underlying meaning of “Beware The Ides Of March” was not so much about what was going to happen to Caesar, rather it was referencing a point in the middle of the month upon which something may happen. Much like the reliance around this famous quote, **Certificates Of Insurance** are much like the warning, they are simply a representation of how something that may happen in the future – they are not a guarantee of outcome.

As a business owner and members of the CTA, we often rely on **Certificates of Insurance** as either contractual backstops to a lease or a contract obligation, or simply a comfort knowing that we are insured. For what we are exactly insured against may never be known - until claim time. However, as business people who rely on **Certificates of Insurance**, there are few risk management concepts to consider:

1. **Certificates of Insurance** are simply representations of coverage at a given point in time, however the **Certificate** itself confers no rights. Usually the insurer company’s only obligation is to notify the **Certificate Holder** of a change in coverage as result of the cancellation of the represented coverage, not a change to or renewal of the coverage itself. Certificates can evidence a wide array of insurance coverage ranging from Products Liability and Recall to Property and Transit Insurance.
2. **Additional Insureds** are usually Big Box retailers, landlords or a lenders. As an **Additional Insured** they are afforded rights to protection for the “liability” (ie. responsibility) from the “negligence” (ie, unintentional harm) stemming from the “operations, services, products or work” of the **Named Insured** , up to the policy limit as defined by the insurance policy. However, the right does not afford coverage when “negligence” is also alleged against the **Additional Insured** for their own “operations, services, products or work”.
3. Being named as an **Additional Insured** not only should be evidenced in the **Certificate of Insurance**, it should also be evidenced by an “endorsement” to the insurance policy itself, or there should be omnibus language in the insurance policy that can be evidenced.
4. The term **Additional Insured** is not the same as **Additional Named Insured**. An **Additional Named Insured** means the “operations, services, products or work” of the **Additional Named Insured** are fully covered for negligence resulting in some harm. It also confers significant additional rights and usually an additional premium charge comes with it.
5. A **Loss Payee** may also be noted on **Certificate Of Insurance** however they are not an **Additional Insured** and vice versa. A **Loss Payee** is only provided coverage for their **Insurable Interest** in first party **Property Insurance** coverage (e.g. Inventory, Manufacturing Equipment and Improvements). Even though another party may be named as a **Loss Payee**, (e.g. against

inventory,) if they have no **Insurable Interest** in that identified property then the policy does not have an obligation to pay them in the case of a claim. Another example may be where a Landlord asks a Tenant to insure their building however no insurable interest exists, unless of course the Tenant is a lender to the Landlord in which case they would have an **Insurable Interest** up to the outstanding principle of the loan.

6. A **Waiver of Subrogation** noted in a **Certificate Of Insurance** should be confirmed as agreed by the insurer via a certified copy of the underlying policy or a certified copy of a policy endorsement. Given the potential financial impact of not having an insurer agree in the underlying policy to what has been certified by an insurance broker can be avoided through this easy housekeeping advice.
7. **Insurance brokers are not representatives of insurers, they are representatives of insureds, thus their primary professional duty is not to the insurance company.** Given this fact, their representations are not binding on an insurance company unless agreed to by contract. The best practice is to have evidence of potentially contentious coverage issue come directly from the insurer via your insurance broker.
8. **Tenant's Legal Liability** coverage is usually requested by a lease to be certified however it is often misunderstood. The coverage intent is to protect the tenant from a negligence claim stemming from damage to the leased premises they caused, not for negligence to other tenants or damage to other parts of the non-leased property. The limit of the coverage should be more than adequate to rebuild the damaged leased premises based on the square footage occupied times the rebuild hard and soft costs. **Tenants' Legal Liability** coverage is "liability based" such that a landlord would have to make a successful claim of negligence to get recovery, usually via subrogation from their own property insurer.
9. Not only should the policy **Territory Definition** include Canada, USA and the Rest Of The World it should also be provided by a **Canadian Licensed Insurer**. If coverage is from an unlicensed foreign insurer disputes may need to be litigated or even arbitrated in a foreign jurisdiction, an expensive proposition - even though the claim is otherwise covered. While Excise Tax and Sales Tax are not the subject matter of this article, unlicensed insurance also has additional tax liability consequences that are often missed where a subsidiary has a foreign parent providing evidence of coverage.
10. A contractual or lease indemnity that is relying on insurance protection should be confirmed as accepted by the various insurers in question. While some contract indemnities are allowed by insurance contracts, not all are.
11. **The limits of coverage defined in a lease that are required to be certified are simply that.** They are not a warranty of the adequacy of coverage, which should be a decision made based on your own risk profile, in concert with their legal and risk advisors.

In conclusion, **Certificates Of Insurance** were introduced to facilitate the speed of commerce, helping tenant's take occupancy and allow great fun products to be put

on shelves. However, much like a letter of intent or a term sheet, the real enforceability comes when knowing what will happen – defined in the enforceable contract itself, not what may happen.

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