

## Never Gonna Give You Up

I try not to reference Rick Ashley lyrics for any article. However, it does seem to fit this month's topic. The issue at hand remains in most contracts, despite a change that occurred six years ago in the insurance industry. Drafters of construction contracts continue to require that your certificate of insurance contain a 30 day notice of cancellation.

The insurance industry introduced a revised certificate form in 2009. Why is that an issue? Because you sign contracts everyday (well, perhaps once or twice a month) that obligate you to provide 30 days notice if your policies are being cancelled. This must be referenced on your certificate. The revised certificate form has changed the cancellation clause on the bottom right of the certificate.

It previously stated:

"...the issuing insurer will endeavor to mail \_\_\_\_ 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."

It now states:

"...notice will be delivered in accordance with the policy provisions."

Note, the wording states "according with the policy provisions"; **not** "according to the contracts you sign". What is the big deal? Why is that of concern to you as a subcontractor? Because, your contract requires 30 days notice of cancelation. The certificate no longer provides this, even with the previous wishy washy language. Your agent cannot change that wording. ACCORD (the folks that publish the standard certificate form) has stated unequivocally that agents cannot alter the cancellation wording. Your contract requires 30 days notice from your carrier and your certificate does not provide for 30 days notice.

Think a GC / Owner will use that to hold payment? Some will not. Others will. I have heard it already. "Your certificate is non compliant. We are holding payment". We know many good GC's/ Owners that will not use this as an excuse to withhold payment. We also know GC's / Owners that will use this as a reason to withhold / reduce payment. With the explosion of ISNetworld, CertFocus, and other such certificate review programs, the rejection of your certificate is almost assured until this issue is resolved.

As you sign contracts in the future, you will want to strike out the requirement for a 30 day notice. It is no longer possible to reference this on a certificate. If you receive push back, offer to make your company responsible for the 30 day notice and not the insurance carrier.

Someday, contracts may finally recognize the reality of the situation. But, for now, it seems they are "Never gonna give you up".