Client Alert

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Don’t Trust, Verify: What Every Business Needs to Know About Certificates of Insurance

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The general rule in New York is that a certificate of insurance (COI), by itself, does not provide insurance coverage. That means that businesses that rely solely on COIs as evidence of their status as additional insureds might not actually be covered in the event of a loss. A recent New York case, however, is a reminder that this general rule is not the end of the inquiry and that there are possible ways to still get recovery.

Certificates of Insurance

Certificates of insurance often are used in contracting relationships: the subcontractor might provide the contractor and owner with a certificate of insurance either to show that it has insurance or to demonstrate that it has listed the contractor, owner or another party as an additional insured as required by contractual provisions. COIs provide details of the insurance policies held by a policyholder as of a certain date, and usually include information such as the policy number, the name of the insurance company, the type of insurance, the limits of liability, the name of the policyholder, and a list of any additional insureds. COIs, however, do not usually indicate the policy deductible or what exclusions are included in the policy. COI holders should therefore make it a practice to request and review the actual insurance policy to confirm the existence and scope of coverage.

In New York, any party holding a COI, or any party relying on a COI to demonstrate coverage, must know that courts often view a COI merely as “evidence of a carrier’s intent to provide coverage but not [as] a contract to insure the designated party nor [as] conclusive proof, standing alone, that such a contract exists.” *Tribeca Broadway Assocs., LLC v. Mount Vernon Fire Ins. Co.*, 774 N.Y.S.2d 11, 13 (1st Dep’t 2004). This is especially true where the COI contains some variation of the following statements, of which any party reviewing a COI should be aware:

- “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 coverage afforded by the policies below";
- "If the certificate holder is an additional insured, the policies must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsements."

Despite this general rule in New York that COIs do not confer coverage, a decision from the New York County Supreme Court on April 13, 2015 serves as a reminder that, depending on the facts of the situation, there might still be options to acquire recovery. For example, a COI may at least be sufficient to raise an issue of fact as to coverage in order to defeat an insurance company's motion for summary judgment, especially when additional factors exist that favor coverage. *Southwest Marine & Gen. Ins. Co. v. Preferred Contractors Ins. Co.*, No. 153861/2014, 2015 N.Y. Slip Op. 30544(U) (N.Y. Cnty. Apr. 13, 2015). An additional insured who defeats an insurance company's motion for summary judgment increases its chances for a settlement with the insurance company. But defeating summary judgment alone does not guarantee coverage.

Agent's Actions

Southwest Marine also reaffirms that an insurance company may find itself bound to provide coverage even though it did not issue the COI, but where its agent, acting within its authority, issued the COI. This possibility is explained more fully in *Mohawk Power Corp. v. Skibeck Pipeline Co. Inc.*, 705 N.Y.S.2d 459 (4th Dep't 2000). The insurance company's agent issued a COI correctly listing the contractor as an additional insured, but then issued another COI that mistakenly removed the contractor as an additional insured. The court held that the agent "was acting within the scope of its actual or apparently authority" in adding the contractor as an additional insured. The agent's issuance of the COI therefore bound the insurance company to extend coverage, and the clerical error in removing the contractor as an additional insured on the second COI was not enough to deny coverage.

In many situations, however, neither the insurance agent nor the policyholder actually is authorized to issue a COI. Therefore, there may be a question as to whether a COI actually extends coverage, and if not, whether the insurance agent can itself be liable to the COI's recipient. Insurance agent liability, like insurer liability, can turn on complicated factual issues including the specific representations of the insurance agent, the reasonable reliance of the COI holder, and the insurance agent's actual or apparent authority to issue the COI.

When the Insurance Company Is Estopped

Additionally, an insurance company might be estopped from denying coverage on the basis of a COI—although appellate courts in New York are split over this question and so policyholders should investigate the law of their jurisdiction. See *10 Ellicott Square Court Corp. v. Mt. Valley Indem. Co.*, 634 F.3d 112, 122–23 (2d Cir. 2010).

In jurisdictions where an insurance company can be estopped from denying coverage, this outcome is factually specific, and whether the insurer must provide coverage turns on several different factors, including the specific language of the COI, the language of the insurance policy, the detrimental reliance of the recipient on the representations of the party providing the COI, the authority of the party that issued the COI, and the involvement, if any, of the insurance carrier in issuing or approving the COI. For example, in *Bucon Inc. v. Pennsylvania Manufacturing Association Insurance Co.*, 547 N.Y.S.2d 925 (3d Dep't 1989), a subcontractor agreed to add a contractor and the property owner to its insurance policy as additional insureds and to indemnify them against liability arising from its work. An initial COI did not name them as additional insureds, and so the insurance company issued a second COI correcting the omission. The Third Department found that the insurance company was informed that the contractor had required a

revised COI, had relied on the amended COI to permit the subcontractor to work, and that this reliance was reasonable despite language on the COI that it did not “amend, extend or otherwise alter the terms and conditions of” the policy. Moreover, the insurance company could not overcome the estoppel effect based on its conclusory averment that adding the contractor’s name to the COI was a clerical error. Accordingly, the insurance company was estopped from denying coverage because it had issued a COI indicating the contractor was covered, and the contractor relied on this in working with the subcontractor.

Conclusion

Although COIs are commonly requested as evidence that a contracting party’s coverage extends to include the COI holder as an additional insured, COIs may not always provide the coverage the parties think they have. Under the right circumstances, New York courts will find that a COI, even one prominently displaying disclaimer language, binds the insurer to provide coverage. But those circumstances are fairly narrow. Nonetheless, contracting parties should be wary of COIs. The best practice is to always be sure to obtain a copy of the actual policy, including all endorsements, and to carefully review the terms and conditions to make certain that the insurance company is providing the required coverage.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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