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Can You Trust A Certificate Of Insurance?


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Law360, New York (December 21, 2010) -- Picture this. Your young company, Stadium Seating Associates (SSA), just started work on a dream project: constructing a new professional baseball stadium in upstate New York. Much of the outdoor work will be in summertime and management gets season tickets for life. Of course, construction means risk, and already more than a dozen employees of one of your contractors have been injured in an accident. Each now brings a substantial claim against SSA, and you wonder how big a hit the new company can handle.

"But not to worry," you tell your attorney. You repeatedly reminded the contractor of his obligation under the agreement to add SSA as an additional insured on his general liability policies, and he repeatedly told you his broker was "working on it." What's more, the contractor did finally hand you a very official-looking "certificate of insurance," which indicates the name of your company in bold print in the box labeled "additional insured." "Obviously, coverage is in place and all is going to be okay," you say.

So why is your attorney groaning? It's because she is familiar with certificates of insurance, and how often their holders rely on them only to find that the coverage they describe was never in place. But depending on the facts of the situation, courts have sometimes bound insurers to extend coverage based on a certificate of insurance. The best practice, however, is to always be sure to obtain proof that you are an additional insured — including, at a minimum, a copy of the policy and all endorsements thereto.

Certificates of Insurance

A certificate of insurance (COI) describes the insurance policies that are maintained by an insured or insureds as of a certain date. COIs typically provide the policy number, the name of the insurance company providing the insurance, the name of the policyholder, the policy period, the type of insurance policy, the limits of liability, and the identity of additional insureds. Contracting parties often use COIs to, for example, prove that one party has insurance or to identify the other party as an additional insured under the policy in order to satisfy certain contractual requirements.

Securing coverage under a COI can be difficult. In fact, New York 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." Sevenson Envtl. Servs. Inc. v. Sirius Am. Ins. Co., 902 N.Y.S.2d 279, 280 (4th Dep't 2010) (quoting Tribeca Broadway Assoc. LLC v. Mount Vernon Fire Ins. Co., 774 N.Y.S.2d 11, 13 (1st Dep't 2004)). What's more, New York courts often refuse to bind the insurance company where a COI contains a disclaimer that, for example, it "is issued as a matter of information only and confers no rights upon the certificate holder," and that the certificate "does not amend, extend or alter the coverage afforded by the policies listed below."

In Tribeca Broadway Associates v. Mount Vernon Fire Insurance Co., the New York Supreme Court Appellate Division addressed the question of whether an insurance company had a duty to defend and indemnify a property owner that was the recipient of a COI designating it an "additional insured." In Tribeca, the insured was a contractor that had agreed, in its contract with the building owner, to maintain insurance in a specified amount that would indemnify the building owner for all liability arising from the contracted-for work. As required by the contract, the contractor's broker provided the building owner with a COI that listed the owner as an additional insured.

Thereafter, the owner was sued in a personal injury action by an employee of the contractor. When the owner asked the contractor's insurance carrier to confirm that the owner was an additional insured under the policy, the carrier refused. The owner then commenced a declaratory judgment action asserting that, among other things, the contractor's insurance carrier was required to provide a defense in the personal injury action. In its cross motion, the carrier argued that the policy insured only the contractor, that the owner was not identified on the policy as either a named or additional insured, that the certificate had not been issued by the carrier but only by the contractor's broker, and that the certificate clearly indicated that it did not extend coverage to the recipient. The trial court rejected these arguments, granting the owner's motion for summary judgment and declaring that the carrier had a duty to defend.

On appeal, the Appellate Division concluded that the carrier had no duty to defend the owner in the personal injury action because the COI did not extend coverage to the owner as an additional insured. The court held that the COI did not constitute conclusive proof that a contract for coverage existed between the owner and the carrier. Furthermore, neither the contractor nor its broker could create rights and obligations as between the owner and the carrier. The Appellate Division concluded that because the certificate contained a statement that it was issued "as a matter of information only" and "does not amend, extend or alter coverage afforded by the policies below," the language stating that the owner was an "additional insured" did not actually make the owner an additional insured. Tribeca, 774 N.Y.S. 2d at 199.

Despite the Appellate Division's holding in Tribeca, there are situations in which a COI holder can be covered. Indeed, each case 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.

When the Insurer is Estopped from Denying Coverage

In some situations, an insurer may be estopped from denying coverage where the holder has relied on a COI issued by the insurer. This was the result in Bucon Inc. v. Pennsylvania Manufacturing Association Insurance Co., 547 N.Y.S.2d 925 (3d Dep't 1989). In Bucon, a subcontractor agreed to add a contractor and the property owner to its insurance policy as additional insureds, and indemnify them against liability arising from its work. The subcontractor obtained a policy including an endorsement of the parties' indemnity clause, and issued a COI on a form prepared by the insurer.

When the contractor objected that the COI did not name it as an additional insured, the insurer issued a second COI correcting the omission. Relying on this COI, the contractor allowed the subcontractor to work. After an on-site injury and subsequent suit, the insurer denied coverage to the contractor, who in turn filed suit seeking a declaration that it was entitled to a defense and indemnification. The trial court granted summary judgment for the contractor, finding that the insurer's endorsement and the COI conclusively showed the policy covered the contractor. Moreover, the insurer, having issued a COI naming the contractor, was estopped from denying that coverage.

On appeal, the Third Department did not agree that the insurer's endorsement extended to the contractor, and held that the COI did not require the insurer to defend: it was only evidence, not conclusive proof, that coverage for the plaintiff was intended. Nevertheless, the court upheld the trial court's decision that the insurer should be estopped from denying coverage. The insurer had issued a COI indicating the contractor was covered, and the contractor relied on this in working with the subcontractor.

Having encouraged this reliance with its own COI, the insurer could not hide behind the COI's language that it did not "amend, extend or otherwise alter the terms and conditions of" the policy. Bucon, 547 N.Y.S.2d at 927. Nor could it deny coverage based on its claim that adding the contractor's name to the COI was a clerical error. The contractor, which received only COIs and never a copy of the policy, was justified in relying on a certificate that the insurer itself issued stating that coverage was in place.

The Third Department again looked to the language of a COI in B.T.R. East Greenbush Inc. v. General Accident Co., 615 N.Y.S.2d 120 (3d Dep't 1994). In B.T.R., a steel fabricator obtained a policy from General Accident Co. naming the owner and general contractor on a construction project as additional insureds. Thereafter, the fabricator's employee was injured and sued the owner and the contractor, who impleaded the fabricator.

The defendants sought a judgment declaring that they enjoyed coverage and that General Accident was obligated to defend and indemnify them. The fabricator and insurer countered by pointing to the COI as grounds to deny coverage, claiming that since it was issued one day after the injury, that date did not fall inside the policy period. They argued that the issuance date was controlling, and that the language of the COI indicating coverage for the contractor and owner could not "amend, extend or alter the coverage afforded by the policies." Id. at 121.

The Third Department disagreed, upholding the trial court's decision on summary judgment that the policy period, not the COI date, controlled. The certificate clearly listed the names of the contractor and owner after the words "Additional Insured." According to the court, the only reasonable interpretation for this was that the insurer meant to extend coverage under the policy terms. Moreover, the COI itself listed the policy dates. As both the COI and the policy clearly indicated the policy was in effect at the time of injury, the court held that the claim was covered as a matter of law.

A court may also bind an insurer where the insurer's conduct reinforces the issuance of a COI as evidence that a party is insured. For example, in Long v. Liberty Mutual, 866 N.Y.S.2d 433 (3d Dep't 2008) a player for the Buffalo Destroyers was injured during an arena football game. The player's employer, a professional employment company, had obtained a COI one month prior to the injury identifying the team as an additional insured on its policy. The insurer had also met with the agency administering the policy; performed two audits on the employment company's payroll lists; discussed whether the team's personnel were on those lists; authorized the agent who had issued the COI to assume lead status on the policy; and acknowledged the later rewriting of the policy to cover the period of injury.

The insurer attempted to deny coverage by arguing that the player's employer was the team, and not the employment services company which actually held the policy. The court, however, rejected the insurer's arguments even though it found that the player was not an employee of the policyholder at the time of his injury. "Given this background," as well as the fact that "the certificate of insurance that Liberty Mutual now attempts to disavow" was issued one month before the injury, the court held that the insurer "cannot now deny its obligation to pay claimant workers' compensation benefits under the terms of this policy." Long, 866 N.Y.S.2d at 436, 437.

When the Insurer is Bound by the Actions of its Agent

An insurer may find itself bound to provide coverage even when it has not itself issued the COI in dispute. On several occasions, New York courts have found that an insurer's agent had sufficient authority to bind a carrier, simply by issuing a COI on the carrier's behalf. For example, in 10 Ellicott Square Court Corp. v. Mountain Valley Indemnity Company, 2010 WL 681284 (W.D.N.Y. Feb. 19, 2010), a general contractor agreed pursuant to its contract to add a developer and subcontractor as additional insureds on its insurance policy.

The contractor obtained from the insurer's agent a COI indicating that the owner and manager were additional insureds. An employee of one of the subcontractors was then injured while working on the building, but before the owner had signed its agreement with the contractor. When the employee sued, the owner and manager sought a declaration that the insurer was obligated to defend and indemnify them under the additional insured language of the policy by virtue of the contract requirements, and, if not under the policy, then under a COI that the insurer's agent provided to the developer and the subcontractor.

The insurer denied coverage because the owner and contractor had no agreement at the time of injury and refused to honor the COI. The district court held, however, that the developer and manager were covered under the policy even though the contract had not been officially signed because the definition of "additional insured" was ambiguous and therefore must be interpreted in favor of coverage.
With respect to the COI, the court found, relying on Niagara Mohawk Power Corp. v. Skibeck Pipeline Company Inc., infra, that the developer and the subcontractor were "entitled to rely" on the COI because it had been issued to the contractor by the insurer's agent and identified both developer and subcontractor as additional insureds. 10 Ellicott Square Court Corp., 2010 WL 681284 at *10. The court found it significant that the insurer did not dispute that the insurance agent was acting within the scope of its authority in issuing the certificate. Thus, the district court held that the insurer was bound by its agent's action and, as a result, waived its argument that the contract needed to be signed before coverage was in place. Id.

The actions of an insurer's agent bound the insurer in Niagara Mohawk Power Corp. v. Skibeck Pipeline Company Inc., 705 N.Y.S.2d 459 (4th Dep't 2000), even though one of two issued COIs failed to designate the requesting company as an additional insured. There, two employees of a contractor were injured while working on a power company's construction

project. The agent for the power company's insurer had issued a COI designating the power company as an additional insured, but just prior to the accident it issued a second certificate omitting this designation. When the insurer settled the employees' litigation, the power company sued to have the settlement paid from the contractor's policy and not its own. The insurer denied the company was an additional insured on that policy, but the trial court disagreed, and the Fourth Department affirmed.

The court held that there was uncontroverted proof that the agent was acting within the scope of its agency to add the power company as an additional insured. The agent's issuance of the COI therefore bound the insurer to extend coverage. Moreover, even though the second certificate clearly did not include the power company, neither the insurer nor its agent intended that the power company be deleted from the COI, and such a clerical error was not enough to deny coverage. With the power company as additional insured, the case was remanded to apportion the settlement payments between the policies. Niagara Mohawk Power Corp., 705 N.Y.S.2d at 461.

Similarly, in Lenox Realty Inc. v. Excelsior Insurance Co., 679 N.Y.S.2d 749 (3d Dep't 1998), an owner and a manager of real property hired an ice removal company in reliance on a COI that was issued by the ice removal company's insurance agent, naming the property owner and manager as additional insureds on the company's policy. Although the agent had actual authority to bind the insurer under an agreement between them, the insurer argued that the agent exceeded that authority in issuing the COI. Nevertheless, the Third Department affirmed the trial court's order estopping the insurer from denying coverage.

The court based its decision on the insureds having relied on the agent's apparent authority, regardless of whether the agent had exceeded its actual authority. Moreover, the court was not persuaded by the insurer's argument that unlike in Bucon, where the insurer had direct knowledge of the contractor's request for a new certificate, here it did not know that the property owner and manager had requested to be added to the policy. The court found that, regardless of what the insurer did or did not know, the property owner and manager had relied on COIs indicating that coverage was in place, and those COIs had come from a company with authority to bind the carrier. Lenox Realty, 679 N.Y.S.2d at 751.

Procedurally, many cases involving COIs are decided at the summary judgment level and often turn on the specific facts of the case, including the existence of a disclaimer in the COI and the authority of the broker to issue the COI as well as the reasonable and detrimental reliance of the recipient.

When the Insured's Agent Exceeds its Authority

Some insurance policies contain provisions authorizing an insurance broker or the insured to issue COIs. Some insurance agents have express authority to issue them, as was the case in Lenox Realty. Yet in many situations, neither the insurance agent nor the insured 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. Indeed, as in Lenox Realty, a insurance agent may still be found to have bound a carrier where that insurance agent has apparent or actual authority to act on the insurer's behalf and issue a COI and/or a policy.

Thus, discovery can often be critical here. The party should therefore seek both the insurance agent's files and the insurer's — and not merely those involving the particular insured on the disputed COI. Other files, as well as correspondence and e-mails, all might contain evidence showing that the insurance agent communicated with the insurer regarding its authority to issue COIs. Agency agreements with the insurer are also important. And discovery may also show that the insurance agent frequently issued COIs and that the insurer was aware of the insurance agent's actions and acquiesced in them. The insurance agent's files can also be important, especially if there are situations where the insurance agent issued a COI and the insurer ultimately acknowledged that the COI bound it to provide coverage.

When a COI Extends Coverage

If a COI extends coverage, a number of challenges may nonetheless stand in the way. For example, COIs often do not indicate what exclusions are included in the policy, an endorsement, or "manuscripted" sections. Therefore, it is difficult to

glean from a COI what a policy actually covers. COIs also do not always reflect the deductibles or self-insured retentions under a policy. As a result, the policy may actually provide less than these limits because of deductibles, retentions or eroded limits. COI holders should therefore make it a practice to request and review the actual insurance policy to confirm the existence and scope of coverage.

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 that 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. Nonetheless, contracting parties should be wary of COIs and the best practice involves a careful review of the terms and conditions of the actual policy to make certain that the expected and bargained for coverage is available.

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