Insurance Law – Certificates of Insurance—What They Are Not

by Ken White

Clients frequently seek a certificate of insurance (COI) from someone with whom they do business as proof that the other party has certain insurance coverages or limits in place. In business transactions, clients also often negotiate to be made an additional insured on some other party's insurance policy and request that a COI be issued declaring that they have been so named.

But what happens if the COI is inaccurate, and the coverages, limits or additional insured provisions represented in the COI are not actually provided by the underlying insurance? Is the client to whom the COI was issued--the certificate holder---afforded some protection by the misleading COI? Probably not.

A COI is not a policy of insurance. True, often it is issued by an insurance agent at the request of the policy owner for the ostensible benefit of the certificate holder. As a general rule, however, typical COIs do not confer on the certificate holder any particular coverage rights. Language included at the very top of a standard COI reads:

"THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER."

Regarding additional insured representations, a typical COI states:

"IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. … A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s)."

In Ohio, these disclaimers are further reinforced by statute in R.C. 3938.02 as follows:

"A certificate of insurance is not a policy of insurance and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policy to which the certificate of insurance refers. A certificate of insurance shall not confer to any person new or additional rights beyond what the referenced policy of insurance expressly provides."

Thus, if the correct coverages, limits or additional insured endorsement are not contained in the actual underlying policy, a typical COI probably cannot be used to "boot strap" such into existence. And as an aside, at least according to one Ohio court, an insurance agent who provides an inaccurate COI is not liable to the certificate holder regarding that error. *Lu-An-Do, Inc. v. Kloots*, 131 Ohio App.3d 71 (5th Dist. 1999).

So how does a certificate holder protect themselves from the prospect of an inaccurate COI? The best practice is to ask for a copy of the policy and review it to confirm what is stated in the COI, or at a minimum, ask to see the policy's declaration page(es) and the specific additional insured endorsement if applicable. Blind reliance on a COI can lead to disastrous consequences if a claim arises and the party with whom the

certificate holder is doing business is judgment proof, or if the certificate holder forgoes obtaining their own insurance believing coverage is being provided via a non-existent additional insured endorsement represented in an inaccurate COI.

And speaking of prudent business practices, clients should safeguard and retain the COIs with which they are provided. Hopefully, any given COI is accurate, and the coverages and limits represented therein actually exist. In the event of a claim, a COI provides a very valuable source of information for purposes of identifying the insurers which need to be noticed and the types of coverages which may be available for any particular claim.

Long term retention of a COI is particularly important in the event the underlying insurance policy was issued on an "occurrence" basis and a claim is made - sometimes years - after the policy expires. Broadly speaking, a general liability "occurrence" policy responds to a claim for property damage or bodily injury which happens, i.e. "occurs", during the policy period even if a claim is made thereafter. In the event such an occurrence policy is lost or misplaced, the COI can be used as a secondary source in attempting to establish the existence of the now unavailable policy, the proof of which usually falls to the one claiming the existence of the insurance.

The take aways in dealing with a COI: 1. It is not an insurance policy and generally cannot be used to establish rights to whatever insurance is represented therein. 2. Ask for and review a copy of any policy and endorsement represented in a COI. 3. Safeguard and retain long term any COI.