

Navigating New York State's Treatment of Certificates of Insurance

Can a certificate of insurance convey coverage under New York state law? The answer depends on the venue in which coverage is sought.



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This question often arises when an agreement between a property owner and a contractor includes an insuring clause, requiring the contractor (and its subcontractors) to provide insurance to the owner by way of the owner being named as an "additional insured" on the contractor's insurance policy. Typically, the evidence of the contractor's compliance with the insuring clause is a "certificate of insurance" (COI). Rarely does an owner receive a copy of the insurance policy. This article addresses the question of whether the COI is sufficient to convey coverage.

The Supreme Court of the State of New York Appellate Division, which is divided into four judicial departments, is split on this question.



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The First and Second Departments have both held that a COI is not sufficient to convey coverage, placing special emphasis on the language found in the COI, which typically states "this certificate is issued as a matter of information only and confers no rights upon the holder."

The Third and Fourth Departments focus less on the certificate's language and instead look to whether the common law doctrine of equitable estoppel applies. Both Departments have held that an insurer is estopped from denying coverage to a party where that party is listed as an additional insured on a certificate, the party was added to the certificate by the insurer or by an agent of the insurer, and if the party reasonably relied on the certificate. Reliance typically takes the form of performing work under a contract where proof of insurance coverage was a prerequisite for performance.

The First and Second Departments

The First and Second Departments focus on the language displayed on the COI. In *Buccini v. 1568 Broadway Associates*, the First Department held that while a "certificate of insurance is evidence of the insurer's intent to provide coverage," it is not an insurance contract, "nor is it conclusive proof, standing alone, that such a contract exists." In *Three Boroughs, LLC v. Endurance American Specialty Insurance Co.*, the First Department focused on the language displayed on the COI itself when it held that a COI is "insufficient to

establish additional insured status under the policy," because the certificate displayed a legend stating that "this certificate is issued as a matter of information only and confers no rights upon the certificate holder." Similarly, in *Progressive Casualty Insurance Co. v. Yodice*, the Second Department stated that "where the certificate states that it is provided as a matter of information and confers no rights upon the certificate holder ... the certificate is simply notice to the insured that a policy has been issued."

The Third and Fourth Departments

The Third Department recognizes certain situations where an insurer may be estopped from denying coverage regardless of the language on the COI. In *Lenox Realty Inc. v. Excelsior Insurance Co.*, the court held that an insurer "may be equitably estopped from denying coverage where the party for whose benefit the insurance was procured reasonably relied upon the provisions of [the] insurance certificate to that party's detriment." Reasonable reliance can occur where the provisions in question were included by the insurer or the insurer's agent. Notably, the doctrine of equitable estoppel applies even where the language of a certificate states that the certificate does not amend, extend or alter coverage under the policy.

The Fourth Department also adopts an equitable estoppel approach to the question of whether a COI conveys coverage. In *County of Erie v. Gateway-Longview, Inc.*, the court held that that "an insurance company that issues a certificate of insurance naming a particular party as an additional insured may be estopped from denying coverage to that party where the party reasonably relies on the certificate of insurance to its detriment." Similar to the Third Department, for estoppel based upon the issuance of a COI, "the certificate must have been issued by the insurer itself or by an agent of the insurer." The court will look to an insurer's actions, along with other relevant facts, in order to determine whether the agent has general authority to represent the insurer.

In *Lenox*, the court held that the insurer was estopped from denying coverage to the plaintiff, who was named as an additional insured on a COI. The plaintiff, an owner of a parking lot, entered into a maintenance agreement with a contractor. The agreement required the contractor to obtain a liability insurance binder, naming the plaintiff as an additional insured. The contractor's insurance agent provided the plaintiff with a certificate naming it as an additional insured. Relying on this status, the plaintiff allowed the contractor to conduct parking lot maintenance. In a subsequent personal injury action, the plaintiff sought indemnification from the insurer. The insurer refused, stating that the contractor's agent lacked authority to name the plaintiff as an

additional insured. The contractor's insurance agency argued that adding additional insureds was within the scope of authority conferred upon it by an agency agreement it had executed with the insurer. The court held that the agent had, at the very least, apparent authority to act on behalf of the insurer.

Federal Court

The U.S. Court of Appeals for the Second Circuit, in *10 Ellicott Square Court Corporation v. Mountain Valley Indemnity Co.*, citing the "diversity of authority among the Appellate Divisions," and "absence of guidance from the Court of Appeals," refused to address the question. Instead, the Second Circuit certified the question to the New York Court of Appeals. The parties, however, settled the litigation, and the Second Circuit withdrew its certification.

In 2018, the U.S. District Court for the Eastern District of New York relied heavily on case law from the Third and Fourth Departments in *Lopez v. Rutgers Casualty Insurance Co.* Notwithstanding its denial of coverage, the Court considered the case under an estoppel theory, but concluded that the plaintiff "produced no evidence from which a rational finder of fact could find that [the insurance broker] had such apparent authority to act on behalf of defendant in this case." Thus, there was no "basis to estop defendant from denying the existence of coverage."

Conclusion

While all four Appellate Divisions agree that a COI, on its own, does not convey coverage, the Third and Fourth Departments will prevent insurers from denying coverage to a party where the common law elements of equitable estoppel are met. The First and Second Departments, however, have not adopted an estoppel approach. Instead, these courts will look only to the language of the certificate, which typically states that the certificate is for informational purposes only and confers no rights to the holder. Note that, regardless of what Department you are located in, the best approach is to obtain a binder of insurance and a copy of the policy.

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