

The Melito & Adolfsen Law Firm

New York's Highest Court Asked By Federal Court: Can Certificates of Insurance Estop An Insurer From Denying Coverage Under a Policy?

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Insurance brokers, which may or may not be agents of an insurer, commonly issue certificates of insurance to policyholders, like subcontractors, who then furnish the certificates to third parties, such as owners or contractors, as evidence of insurance or that a particular policy of insurance also covers the third parties. However, certificates of insurance, on the commonly used ACORD form, generally contain a disclaimer which states:

"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 the coverage afforded by the policies below."

Whether a certificate of insurance can bind the insurance company to provide coverage, for example, additional insured coverage to an owner or general contractor, is often a subject of dispute. This issue arose in an opinion in the case of *10 Ellicott Square Corp. v. Mountain Valley Indemnity Co.*, 10-0799-CV, which was issued on December 28, 2010 by the United States Court of Appeals for the Second Circuit. The case concerns a certificate of insurance which lists certain Mountain Valley insurance policies and shows 5182 Group and Ten Ellicott as additional insureds on the policies. The Mountain Valley primary policy required that the construction agreement be executed before the additional insureds could be defended indemnified under the primary policy. The agreement was not signed until September 12, 2003 which was after a September 9th roof collapse at the construction site injuring one of the workers of a subcontractor.

The Second Circuit held:

"...under its terms, the primary policy's additional insured coverage did not become effective prior to the accident in question. We conclude, however, that the plaintiffs nonetheless were covered under the terms of the umbrella policy because that policy did not require "execution" of an underlying written agreement to take effect."

The trial court ruled that Mountain Valley was estopped from declining coverage because it had issued a certificate of insurance identifying the owner and the general contractor as additional insureds. The Second Circuit also observed that the Third and Fourth Departments of New York's Appellate Division have held that a certificate of insurance can estop an insurer from denying coverage but that the Second Department has "declined to conclude that insurer was stopped from denying coverage to a party that was erroneously named on a certificate of insurance."

To resolve this conflict, the Second Circuit certified a question to the highest court of the State of New York, requesting that the New York Court of Appeals answer the following question:

"In a case brought against an insurer in which a plaintiff seeks a declaration that it is covered under an insurance policy issued by that insurer, does a certificate of insurance issued by an agent of the insurer that states that language is in force but also bears language that the certificate is not evidence of coverage, it is for informational purposes only, or other similar disclaimers, estop the insurer from denying coverage under the policy?"

The question certified by the Second Circuit to the New York Court of Appeals expressly concludes, without explaining its conclusion, that the certificate of insurance was "issued by an agent of the insurer." In the opinion Judge Sack states that defendant Mountain Valley, "by its agent LRMP, Inc., issued a certificate of insurance evidencing the policies and the status of the plaintiffs as additional insureds, after receipt of which Ellicott Maintenance began the demolition work."

Judge Sack, writing for the three judge Second Circuit panel, stated that the "insurer has an obligation not to issue false or potentially misleading certificates of insurance -- or to permit an agent to issue them -- if it or the agent is aware that parties may rely upon the certificate despite disclaimers to the contrary."

Certificates of insurance are generally issued by brokers, but insurance companies often contend that the brokers are not their agent. If the person issuing the certificate of insurance is an agent, despite any disclaimer in the certificate, arguably, the agent has the power to bind the insurance company. On the other hand, if the person issuing the certificate is a broker who the insurance company contends is not its agent, then the broker should have no authority to bind when it issues the certificate of insurance.

We will have to wait until the New York Court of Appeals addresses this important issue to find how it views the subject and whether the facts in this case will be applicable to other cases where brokers who were not "agents" issue the certificate of insurance.