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When is an insurance certificate not an insurance certificate?

When is an insurance certificate not an insurance certificate? Unfortunately, the answer is "most of the time."

It is becoming increasingly common for parties to commercial contracts to shift risks amongst themselves to defray the cost of doing business. Insurance certificates are prepared, presumably, to reflect the apportionment of responsibility in the event of property damage or personal injury claims arising in the workplace or jobsite. Often, they are the only documents that change hands to confirm the provision of insurance coverage.

By LOUIS B. CRISTO
Daily Record Columnist

Commercial landlords require their tenants to maintain adequate coverage for casualty losses that might occur by reason of their operations. Plaza owners require their plowing contractors to procure coverage protecting them from personal injury claims arising from slip and falls and vehicular accidents. General contractors on construction jobs require similar protection from their subcontractors, as well, for falls or falling object liability. Unfortunately, the protection a business or property owner thinks they are getting may be illusory.

Frequently, a building owner or contractor requires the subcontractor or tenant to obtain a simple insurance certificate proving the existence of the tenant's, subcontractor's or vendor's own coverages and that is where the process ends — until a personal injury action is commenced.

When that happens, the true nature of the insurance coverage is examined and often it is revealed that no insurance coverage exists or the coverage does not extend to parties relying upon it.

Contrary to what a property owner might think, an insurance certificate is not a contract of insurance. It confers no rights on the certificate holder, *Sevenson Environmental Services, Inc., v. Sirius America Insurance Co.*, 902 NYS 2d 279 (4th Dept. 2010). Most certificates specifically state that they are issued for informational purposes only. In a perfect world, the actual policy endorses the party requesting the coverage as an additional named insured or the insurance company generates the certificate itself to establish coverage.

The problem lies when the certificate is drafted by a local insurance agent or broker (as most certificates are). Local agents or brokers, however, do not have the authority to bind the insurance company. They may only request coverage. Often they act through intermediary brokers to place coverage with an insurance company with whom they have no agency agreement. These certificates are frequently the only documents that are exchanged purportedly reflecting the provision of coverage for the benefit of the property owner or contractor.

It does not matter if the cooperative tenant, subcontractor or vendor thought they were satisfying a property owner's request to provide them insurance coverage by obtaining a certificate of insurance. The insurance company, itself, must take some action to acknowledge that it accepted the risk to be bound to cover the losses before coverage attaches, *Bucon, Inc. v. Pennsylvania Manufacturing Association Insurance Co.*, 547 NYS 2d 925 (3rd Dept. 1989).

In the absence of some agreement by the insurance company to provide additional insured coverage, none exists.

Armed only with an insurance certificate without an additional named insured clause, the effort to obtain coverage may be futile. An insured is conclusively presumed to have read and assented to the terms of coverage, *Maple House, Inc. v. Alfred F. Cypes & Co. Inc.*, 914 NYS 2d 912 (2nd Dept. 2011). You are assumed to know that no coverage extends to parties you intended to cover if no insurance policy endorsement has been written by your insurance carrier, absent other factors.

Even an action against the broker who issued the certificate may not be fruitful unless it is established that a specific request was made to provide coverage to the landlord, owner or contractor as an additional named insured.

In certain exceptional cases, the broker has a "presumed obedience" to the policyholder's instructions that may overcome the

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policyholder's obligation to read the policy itself, *Kyes v. Northbrook Property and Casualty Insurance Co.*, 717 NYS 2d 757 (3rd Dept. 2000). If the broker is specifically requested to obtain "additional insured" coverage, and fails to do so, the broker may be held responsible for the failure to do so, but not the insurance company.

In a case of mistaken issuance of an insurance certificate failing to name a party, often the battle centers on the authority of the agent or broker to bind the insurance company.

Creative lawyers will examine the agency agreements between the broker and the insurance company. They will further explore whether the insurance company's underwriting department placed a monetary value on the risks and, most importantly, accepted a premium payment relative to those risks, See *A. Meyers & Sons Corp. v. Zurich American Ins. Group*, 546 NYS 2d (NY 1989) (the insurance carrier's intent must be examined when construing ambiguous policy terms). If the carrier has accepted a premium for coverage of additional insureds, the insurer will be *estopped* from denying the existence of such coverage.

Even the issuance of an insurance "binder" may not operate to create insurance coverage where the terms of the policy itself exclude coverage. An insurance binder is a temporary insurance policy issued until all risks might be assessed by the insurance company, *Springer v. Allstate Life Ins. Co. Of New York*, 710 NYS 2d 298 (NY 2000). In short, the policy controls, and it is a heavy burden to overcome the policy language, even in the face of an certificate of insurance seeming to indicate the existence of coverage.

Insurance policies themselves need to be examined and exacting compliance with insurance procurement requirements is necessary. Unfortunately, more often than not, nobody reads the certificates and policies carefully until after a loss occurs. Common are cases of lost insurance coverage where, through oversight alone, somebody failed to compare their insurance certificate with the actual insurance policy endorsements.

Prudence and caution should be the mantra of those seeking to protect themselves during the hectic pace of a construction project or management of a commercial property.

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