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## Insurance Certificates, Endorsements, and COI Pitfalls


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# Certificates of Insurance ("COI") Evaluation

When evaluating COIs presented by a company being considered for a construction project, the following information is important to evaluate:

1. Name of the insured;
2. Address for the insured;
3. Date the COI was prepared;
4. The carrier's name for the types of coverage;
5. Whether the carriers are registered to do business in the project state;
6. The insurance coverage types;
7. The insurance coverage limits;
8. The policy timeframe;
9. Whether there are any aggregate policy limits;
10. Applicable endorsements;
11. Additional insured status;
12. Name of the certificate holder; and
13. Address for the certificate holder.

# COI Concerns

Simply receiving a COI from a prospective company is insufficient to ensure the company has the proper and required coverage for the project. There are important considerations to evaluate when looking at a COI.

1. Improperly identified insured;
2. Improperly identified certificate holder;
3. Expired COI;
4. Insufficient coverage types;
5. Insufficient coverage limits;
6. No additional insured status;
7. Improper or limiting endorsements; and
8. Aggregate policy limit concerns.

# Insurance Endorsements

An insurance endorsement modifies coverage on an existing insurance policy. This can include adding coverage not initially specified, removing or limiting coverage not initially specified, or altering people, companies, or locations covered. Insurance endorsements are also known and referred to as policy changes, riders, amendatory endorsements, and insurance riders.

1. Adding coverage;
2. Limiting or excluding coverage;
3. Adding or removing people, companies, or locations;
4. Standard endorsements (common policy changes);
5. Nonstandard endorsements (specially drafted or created);
6. Mandatory endorsements (required by the law of the jurisdiction);
7. Voluntary endorsements (not required by law but common for the jurisdiction);
8. Additional insured endorsement (adds coverage to another person or company);
9. Blanket endorsement (extends coverage to any unnamed person or company desired); and

10. Contractual liability endorsement.

## COI Pitfalls

Many issues may arise when working with a COI. Some of the most common issues are identified below and explained in more detail.

1. The COI may contain contradictory terms;
2. The COI may contain incorrect information;
3. The COI may not have clear disclaimers which lead to reasonable or unreasonable reliance on the COI;
4. The coverage identified within the COI may have lapsed;
5. The COI may misrepresent information which is relied upon; and
6. The COI issued by the agent may exceed the insurance carrier's authority.

*Dan Ryan Builders West Virginia v. Main St. America Assurance Co.*, 452 F. Supp. 3d 411, 423 (D.S.C. 2020). The court refused to apply the doctrine of estoppel, holding that because of the clear and conspicuous disclaimers on the COI, it was unreasonable for the general contractor to rely upon insurance requirements imposed on its subcontractor when the general contractor had the COI with full knowledge of the disclaimers included with the COI.

1. In this case, the insurance dispute arose from a construction project managed by DRB (plaintiff), who secured a contract to construct new homes in a subdivision.
2. AC&A Cement ("AC&A") was hired as a subcontractor to perform concrete work who carried insurance with Main Street Insurance ("Main Street").
3. There was no written contract between DRB and AC&A.
4. AC&A furnished DRB with a COI (as requested).
5. The COI stated it was for informational purposes only.
6. An issue arose when one family moved into the new subdivision and noticed their cement slab "moving and repeatedly cracking," causing structural damage to the home.
7. The family subsequently filed suit against DRB.
8. DRB notified Main Street of the claim with the expectation of Main Street indemnifying DRB under AC&A's policy since AC&A was the subcontractor who poured the cement.
9. Main Street denied the claim.
10. Subsequently, DRB filed a lawsuit against Main Street seeking a declaratory judgment claiming that Main Street had a duty to defend and indemnify DRB because of AC&A's botched cement work.
11. Due to no written contract being present, DRB relied on the theory of estoppel from COI issued by AC&A.
12. DRB claimed the COI conferred additional insured ("AI") coverage upon DRB and therefore Main Street was estopped from denying DRB AI coverage.
13. The court disagreed with DRB's argument.
14. The court noted that the COI came with clear and conspicuous disclaimers stating that it is issued "as a matter of information only and does not purport to amend, extend, or alter the terms of the insurance policy therein."
15. The court refused to apply the doctrine of estoppel, holding that because of the clear and conspicuous disclaimers on the COI, DRB's reliance on the COI for AI status was unreasonable, citing DRB did have full knowledge of the disclaimers, and should not have been naive to rely on the COI for AI status.
16. Ultimately, the court articulated that estoppel should only be used when (1) a party lacks knowledge of the truth as to the facts in question; (2) the party relies upon the conduct of the party estopped; and (3) the party in reliance suffered a prejudicial change in position.

17. In this case, DRB did not lack knowledge of the truth because the COI disclaimers were clear and there was no information on the COI that indicated DRB was added as an additional insured.

*T-Mobile USA v. Selective Ins. Co. of Am.*, 450 P.3d 150 (Wash. 2019). The court held that T-Mobile had an "objectively reasonable" belief that the agent had the authority to issue the COI because the agent was purportedly acting on behalf of the insurance company and within the scope of its authority.

1. In this case, insurance issues arose when T-Mobile NE (a separate company within T-Mobile's corporate structure) hired a contractor to construct a cell phone tower on a rooftop.
2. The contractor and T-Mobile NE entered a contract requiring the contractor to obtain liability insurance and furnish T-Mobile NE with a COI evidencing the coverage.
3. The contractor obtained insurance through Selective Insurance Company of America ("Selective").
4. The parent company of T-Mobile did not have a contract with the contractor and was not covered under the Selective policy.
5. However, Selective's agent furnished T-Mobile with a series of COIs for a seven-year timeframe because the contractor informed Selective's agent that its contract with T-Mobile NE required T-Mobile to also be named as an additional insured under the policy.
6. The owner of the rooftop area sustained damages from the construction work and sued T-Mobile resulting in T-Mobile suing Selective because Selective failed to provide T-Mobile coverage.
7. The claims gave rise to two issues.
8. First, it gave rise to the issue of a company being bound by the representations of its agent.
    a. The court articulated within the holding that an insurance company is "bound by all acts, contracts, or representation of its agent, whether general or special...within the scope of the agent's real or apparent authority."
    b. Selective argued that T-Mobile's reliance on the representation and the theory of agency was unreasonable because, according to Selective, T-Mobile (not T-Mobile NE) was aware it was not a party to the contract and, therefore, should not be covered under the contractor's policy.
    c. The court did not agree with Selective's argument.
    d. The court held that T-Mobile had an "objectively reasonable" belief the agent had the authority to issue the COI granting T-Mobile AI status because the agent was acting on behalf of the insurance company and within the scope of authority.
9. Second, the policy contained contradictory language.
    a. The COI claimed T-Mobile was an additional insured under the policy.
    b. However, the COI's preprinted disclaimer stated that nothing changed in the policy from the issuance of the COI.
    c. Selective argued the preprinted disclaimer precluded T-Mobile from AI status.
    d. T-Mobile argued the preprinted disclaimer was ineffective because it was a general "boilerplate" disclaimer and the additional insured endorsement was specifically written onto the COI.
    e. The court ultimately ruled that the specific language on the COI controlled because "the average person's attention and understanding are likely better to be in focus when language is specific or exact."
    f. Preprinted disclaimers are general and appear to disclaim every piece of information provided in the certificate.
    g. The agent's additional insured statement explicitly refers to certain policy coverage areas and expressed that "T-Mobile...is included as an additional insured."

h. Because the statements were specific as to AI status, they prevailed, and T-Mobile was covered.
i. The court noted that giving effect to the "boilerplate" disclaimers would render the COI pointless, and the certificate would have no informational value. All it would do is "set a trap" for the certificate holder, believing they are covered when they are not.

*Sumitomo Marine & Fire Ins. Co. of Am. v. S. Guar. Ins. Co. of Georgia,* 337 F.Supp.2d 1339 (N.D. Ga. 2004). The court held that it was clear that the carrier's agent had the express and actual authority to issue a COI and name a party as an additional insured. Therefore, the three COIs issued by the agent clearly named the party as an additional insured. Thus, the carrier was responsible for defending and indemnifying the company even though the agent did not have actual authority to add AI coverage for the specific policy.

1. SMG Development Associates ("SMG") owned a residential housing development outside of Atlanta, GA.
2. SMG hired Arris Contracting ("Arris") as a general contractor for the project.
3. SMG required all contractors, including Arris, to provide SMG with additional insured status.
4. Arris's responsibilities included clearing, grubbing, and erosion control work.
5. Homeowners surrounding the project site filed lawsuits alleging the construction and development activities of Arris and SMG led to property damage in the form of water flowing into a boundary stream, and the stream began eroding and filling their properties with large amounts of sediment.
6. SMG received their insurance coverage from Sumitomo, who defended and indemnified SMG during the legal proceedings.
7. Arris received insurance coverage from two companies, Southern Guaranty Insurance Company of Georgia ("Southern") and Columbia Insurance Group ("Columbia"); both companies defended and indemnified Arris through the legal proceedings.
8. Southern and Columbia denied coverage for SMG.
9. An agent of Columbia and Southern named Dean Hayes ("Hayes") issued three COIs identifying SMG as the certificate holder.
10. Hayes further included on the COI, "[c]ertificate holder is named an additional insured as their interest may appear."
11. The court noted that Hayes was initially employed by Banks-Moneyhan-Hayes, who had an agency agreement with Southern and Columbia which gave Hayes the authority to bind and execute insurance contracts placed with Southern and Columbia.
12. Ultimately, SMG's carrier filed a lawsuit against Southern and Columbia to recover all of its defense and indemnity costs incurred during the claim and lawsuit since SMG was supposed to have AI status.
13. SMG contended that because they received the COI from both Southern and Columbia adding SMG as an AI, Southern and Columbia should have indemnified SMG during the legal proceedings, not Sumitomo, SMG's carrier.
14. Southern and Columbia tried to rely upon the boilerplate disclaimer that the COI issued to SMG was merely for informational purposes and did not confer rights upon SMG, the certificate holder. Also, Columbia and Southern contended that Hayes never had actual authority to bind either company to the AI status on the COI given to SMG.
15. The court noted that the principal is bound by the acts of its agent in the insurance industry. The principal may disagree with the acts of its agent and may find the actions of its agent exceed the contractual authority. However, the disagreement in this situation should be addressed between the agent and the principal (carrier), not between the agent and the entity relying on the agent's representation.

*Mountain Fuel Supply v. Reliance Ins. Co., 933 F.2d 882 (10th Cir. 1991).* Despite notice of expiration of the policy from the COI, the contractor took no affirmative steps to have a new certificate issued. The carrier was not obligated to notify the contractor of the expiration of the policy (it was not cancelled). Therefore, the injury sustained by the contractor's employee was not covered because the policy expired seven months prior.

1. The action arose when Darenco, Inc, a general contractor (and insured by Reliance), was employed by Mountain Fuel to construct a gas sweetening plant in Wyoming.
2. Mountain Fuel sued Reliance (Darenco, Inc.'s carrier) to obtain reimbursement for settlement and defense costs incurred during a personal injury suit filed by an employee of Mountain Fuel after an accident in Wyoming.
3. Reliance issued a COI to Mountain Fuel outlining Darenco's liability coverage.
4. The certificate ran for one year, expiring in June of 1978. Subsequent certificates were issued to Mountain Fuel until June 1980, outlining a sixty-day notice period to cancel and conspicuously stating on the policy "expiring" on June 9, 1980.
5. Additionally, on June 9, 1980, a renewal policy was issued to Darenco that was set to expire on June 9, 1981. However, this new certificate did not mention Mountain Fuel or indicate they were covered under the new policy.
6. Mountain Fuel contacted Darenco six months after the June 9, 1980 issue date to inform them the coverage on the COI was insufficient and differed from the prior COIs.
7. Reliance (the insurance company covering Darenco) endorsed Mountain Fuel on the policy as an additional insured effective January 27, 1981.
8. This date came one day after an accident of a Mountain Fuel employee, leaving the court to evaluate whether the policy covered Mountain Fuel on the day of the accident.
9. The court articulated that the majority view is that the insurer is obliged to notify the insured of any changes in the coverage or conditions of a renewed policy, but the insurer is not obligated to give notice of the policy's expiration date.
10. This rule is predicated upon the fact that the insured typically renews the contract with the insurer and, absent contrary intent, is deemed to have desired to retain the same coverage as previously held.
11. The court noted Mountain Fuel had no basis for assuming the coverage would continue unchanged after June 9, 1980, because Mountain Fuel had proper notice that the COI and policy was "expiring" on June 9, 1980. Mountain Fuel's addition as an AI on the renewed policy one day after the accident did not trigger coverage.

*Marlin v. Wetzel Cnty. Bd. of Educ.,* 569 S.E.2d 473 (W. Va. 2002). The Court held the COI issued by Commercial Insurance's agent did extend coverage to the Board because of the agent's "clerical error" and misrepresentation in failing to update the policy to reflect the COI. The Board's reliance on the COI was reasonable, and Commercial Insurance was estopped from denying coverage.

1. Wetzel County Board of Education ("Board") entered into a construction contract with a general contractor, Bill Rich Construction ("Bill Rich").
2. The contract was for Bill Rich to renovate a high school in West Virginia, which required Bill Rich to indemnify the Board against claims arising from Bill Rich's performance.
3. Bill Rich obtained insurance through B&W Insurance Agency, an authorized agent for Commercial Union Insurance Company ("Commercial Union").
4. Bill Rich added the Board to its liability insurance policy and furnished the Board with a COI indicating the Board had been added to the policy as an additional insured.

5. Renovations of the high school began, and soon after, the workers sued the Board and Bill Rich, claiming they were exposed to asbestos.
6. The Board demanded that Commercial Union indemnify them in the litigation filed by the workers.
7. Commercial Union refused to provide coverage, claiming it was only obligated to provide coverage to Bill Rich.
8. Specifically, Commercial Union asserted that its agent did not notify them that the Board was to be added to the insurance policy as an additional insured, and the COI stated (a preprinted and general disclaimer) that the COI is merely informational and does not extend or modify coverage.
9. Commercial Union contends no coverage was available to the Board under the certificate because it issued no alterations to the insurance policy to extend the coverage.
10. In this case, the court looked to an exception to the general rule of estoppel, citing that insurance may be extended to the aggrieved party when "an insurer, or its agent's, misrepresentation made at the policy's inception resulted in the insured being prohibited from procuring the coverage's he/she desired."
11. The court articulated issues with COI arise when an insurance agent issues a COI detailing a particular coverage formula but then fails to inform the insurance company of the need to alter or amend the coverage to match the certificate. When a situation like this occurs, the court notes the doctrine of estoppel may be applied.
12. The Board contends that because an agent for Commercial Union issued a COI listing the Board as an additional insured, the Board reasonably relied upon that representation to its detriment, even though the policy did not fully extend to the Board.
13. The Board claimed Commercial Union misrepresented the coverage through its agent, and as a result, Commercial Union should be barred by the doctrine of estoppel from denying the Board coverage.
14. The court agreed with the Board and held that Commercial Union owed coverage.