Do Certificates of Insurance Matter?

By Brian S. Martin | November 14, 2010

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For many years it has been generally understood by agents, insurers, and insureds that Certificates of Insurance are very limited in their purpose. That view may be under assault.

Generally, a Certificate of Insurance is a summary document usually issued by an agent on behalf of an insurer that says a policy has been issued to an insured for a general type of risk. The Certificate is usually issued to a third party, who wants some evidence or assurance that a policy has been issued. The Certificate itself is usually a small paper naming the insured (or additional insured), identifying the insurer issuing the policy, the type of policy and the limits of insurance. On some occasions it may identify some types of exclusions, but the Certificate never provides all of the contract terms, exclusions, or other conditions of coverage. For that reason, the Certificate usually has language to the effect that:

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS ON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE REPORTED BY THE POLICIES DESCRIBED BELOW.

This qualifying language is not ambiguous. The language is stark in stating the Certificate is an informational document and is not a contract. It does not take the place of the insurance policy and confers no rights on any third party, who would be a stranger to the actual insurance contract in any case.

So, what is the purpose of a Certificate of Insurance? In reality, the Certificate is quite an important document in that it serves as the insured's evidence to customers, contractors or other third parties that the insured has obtained insurance. It indicates that the business or individual named as the insured or additional insured has the financial resources available to protect those who may come to harm through their own negligence. It is less cumbersome than an actual policy and can be produced more quickly and efficiently. It serves the same purpose that a driver's proof of insurance serves to the victim of an auto accident whose car has been damaged – it shows that somewhere an insurance company issued a document saying there is a policy that may cover the loss.

Historically, if the insured is a business that does business with other companies in any number of industries where subcontractors are utilized, many of the general contractors,

owners or intermediate contractors require the insured to make them an additional insured on the insured's policies. However, the mere issuance of the Certificate of Insurance that states that a particular type of policy exists, and that the recipient has been added as an additional insured is not enough to confer insured status. Policies are written with language and definitions of additional insured designed to limit the coverage provided to additional insureds. These limitations can be very specific.

Consequently, any third party who wishes to rely upon the actual availabilities of insurance under a policy should insist that any Certificate be attached to the policy or policies in question, so that they can read and determine the actual terms of the policy. This conduct does not change whether the policy covers any specific loss, but at least it provides a better opportunity for the additional insured to verify that the potential risks are covered.

Texas Law on Certificates of Insurance

Until recently, the limited utility of Certificates of Insurance was hardly an issue at all. In 2002, the U.S. Fifth Circuit Court of Appeals, in TIG Ins. Co. v. Sedgwick James, confirmed that a Certificate of Insurance will not suffice in itself to create insurance coverage if coverage is precluded by the terms of the policy. So, even if a Certificate of Insurance contains statements that are incorrect, it could not be relied upon by the third party to extend coverage that was not actually contained in the policy. Simply put, the disclaimer language in the Certificate that expressly states that it does not amend, extend, or alter the coverage provided by the policy precludes a third party's reliance on the Certificate.

Later, the Texas Supreme Court, in Via Net, US v. TIG Ins. Co., 211 S.W.3d 310 (Tex. 2006) rejected a third party's claim that it was injured because it relied upon a Certificate of Insurance to show that it was provided additional insured coverage. In that case, the third party argued that it had acted diligently by obtaining a Certificate of Insurance listing it as an additional insured. The Texas Supreme Court rejected this argument stating:

"[The third party] argues, with some force, that there is little use for Certificates of Insurance if contracting parties must verify them by reviewing the full policy. But the purpose of such Certificates is more general, 'acknowledging that an insurance policy has been written and setting forth in general terms what the policy covers.' Black's Law Dictionary, 240 (8th Edition

2004). Given the numerous limitations and exclusions that often encumber such policies, those who take such Certificates at face value do so at their own risk. Via Net, 211 S.W.3d at 314."

In other words, the Texas Supreme Court explained that the purpose of a Certificate of Insurance is to provide a simple and efficient way to provide some proof of insurance, but that recipients of such Certificates cannot rely upon them to prove or establish coverage. The third party must follow through and obtain copies of the insurance policy if there is any question as to the scope or applicability of coverage as the policy itself controls.

Brown & Brown: Can a Certificate Bind?

The law seemed relatively settled on these issues until very recently when the Houston Court of Appeals issued the opinion in Brown & Brown of Texas, Inc. and Transcontinental v. Omni Metals, Inc., 317 S.W. 3d 361, (Tex. App.-Houston [1st Dist.] 2010). In this case, which is on appeal to the Texas Supreme Court, much of the settled law on Certificates of Insurance has been put in question. Keep in mind that an appellate court cannot overrule the opinions of the higher court, the Texas Supreme Court. Nevertheless, in Brown & Brown there has arguably been a change in the effect and responsibilities arising from issuing a Certificate of Insurance.

The Brown & Brown opinion includes many significant holdings on various issues that reach far beyond Certificates of Insurance. However, the facts relating to the Certificate of Insurance showed that Brown & Brown (actually its predecessor, Pie & Brown) issued several Certificates of Insurance to Omni Metals Inc. (Omni) after receiving a request. During trial, testimony established that Omni's president spoke on numerous occasions with the president of Port Metal Processing and received assurances that Omni's steel stored at Port Metal's warehouse was insured. Omni requested and received the certificates documenting coverage that referenced "All Risk" insurance. The certificates all included disclaimer language similar to that described earlier.

Omni's president testified that he did not personally read and review every Certificate and did not ask for the actual insurance policies because the company believed that the Certificates would be adequate. He said he looked at the "All Risk" language in the Certificate and believed that would satisfy their needs.

The "All Risk" language in the actual policy was subject to limitations, exclusions, and other terms. Omni argued that the "All Risk" language in the Certificates of Insurance indicated that it was fully covered for a fire that occurred at the location that resulted in a $2.6 million loss of steel.

The Court of Appeals accepted Omni's argument that the "All Risk" language in the Certificate of Insurance was a partial disclosure that conveyed a false impression and was therefore problematic. The Court of Appeals also found that there was evidence to support a jury finding that Brown & Brown had made a negligent misrepresentation in using the term "All Risk" when it did not really cover all possible risks, and therefore was confusing.

What Will the Texas Supreme Court Do?

The Court of Appeals, ignoring the disclaimer language, stated that:

"We reject appellees' arguments that, as a matter of law, issuance of an insurance certificate does not create a duty; presence of disclaimers precludes the creation of false impression; no duty to disclose should arise because there is not duty to explain policy exclusions to an insured; and the use of 'All Risk' cannot convey a false impression."

The appellate court, in other words, refused to give the disclaimer language its clear meaning, despite the prior Texas Supreme Court guidance in Via Net. Does this mean that agents who issue Certificates of Insurance now run the risk of being held responsible for any administrative or ministerial error on the Certificate? Will insurance carriers be held to provide coverage to third parties, which would be precluded by the terms of the actual policies because of mistakes in Certificates provided by their agents?

While it may be premature to assume that insureds or third parties can now rely on certificates as a basis for coverage or a claim of misrepresentation, good judgment dictates that greater care be taken until this issue is more fully addressed.