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Client Advisory

Insurance Certificates Do Not Ensure “Additional Insured” Status

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The requirement that one party name another as an “Additional Insured” on an insurance policy is common. For example, oftentimes as part of lease a landlord will require that it be added as an “Additional Insured” to a tenant’s liability policy. In a construction setting, typically the owner will require “Additional Insured” status under the general contractor’s or subcontractors’ liability policies. Consultants are often asked to name a project owner as an “Additional Insured.” As an “Additional Insured,” one can make a claim directly against the policy even though it is not the policy holder. An “Additional Insured” can also demand direct indemnity and defense rights by the insurer should they be sued.

In order to confirm that one has, in fact, been named an “Additional Insured,” insurance agents often issue a certificate of liability insurance, sometimes referred to as a “binder.” The person to whom the certificate is issued is usually identified at the bottom of the page as a “Certificate Holder.” Note, however, that being a “Certificate Holder” is not the same as being an “Additional Insured.” Typically, although an insurance company will “endeavor” to provide notice to a “Certificate Holder” of any policy cancellation, beyond that, no rights are conveyed nor liability incurred. A “Certificate Holder” and an “Additional Insured” are not the same thing. Even if you are also listed on the certificate as an “Additional Insured,” most certificates make it clear that unless you are also named as an “Additional Insured” by a rider or endorsement to the actual policy, the mere fact that the certificate lists you as an “Additional Insured” confers no rights whatsoever. This point was driven home in the recent case of [Suffolk Construction Company, Inc. v. Illinois Union Insurance Company](#).

Suffolk was the general contractor on a construction project. It subcontracted concrete work to S&F Concrete, Inc. (“S&F”). The subcontract required S&F to have its lower tier subcontractors name Suffolk as an additional insured on their general liability policies. S&F sub-subcontracted to Hallamore Corporation for the rental and operation of two cranes. Although the written sub-subcontract did not contain the requirement to name Suffolk as an “Additional Insured,” Hallamore considered it a contractual duty to so name Suffolk. It arranged for its insurance agent to issue a certificate identifying Suffolk as an “Additional Insured.” On the actual policy, the “Additional Insured” endorsement, however, did not actually name Suffolk or S&F but rather

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merely recited that “Additional Insureds” would be “as required by contract, provided the contract is executed prior to the loss.”

An employee of Hallamore was injured on the job. He sued Suffolk and S&F, and they demanded that, as “Additional Insureds,” Hallamore’s insurer, Illinois Union, provide them with indemnity and a defense. Illinois Union refused to indemnify and defend as there was no written contract with Hallamore requiring that Suffolk and S&F to be named as “Additional Insureds.” Illinois Union argued that notwithstanding what the insurance certificate said, the policy endorsement trumped the certificate with its requirement that to be an “Additional Insured,” there must be an executed contract, prior to the loss, containing that requirement.

The appeals court agreed with Illinois Union. It said that the plain meaning in the policy endorsement requiring an “executed contract” as a condition to obtaining “Additional Insured” status meant there had to be a signed, written contract which specified the requirement of naming S&F and Suffolk as “Additional Insureds.” Here, at best, there was an oral contract. So, notwithstanding what the certificate may have said, the policy itself controlled and the condition precedent for “Additional Insured” status had not been met.

This case stands as a stark reminder that if you desire to obtain “Additional Insured” status, you must make sure that the underlying policy, with endorsements, actually names you as an “Additional Insured.” Even if listed as an “Additional Insured” on the insurance certificate, without looking at the policy itself you cannot be certain that you actually have that status. When negotiating a contract, make sure that if requesting “Additional Insured” status, you put in the corresponding obligation that, if requested, you be provided with a copy of the actual policy so that you can confirm your status. Alternatively, before commencing work on any project specify that the other side provide a copy of the insurance policy itself, not just the certificate. You do not want to find out too late that you are not an “Additional Insured.”

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