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Expert Analysis

Can Certificate of Insurance Estop Insurer From Denying Coverage?

Few documents have garnered more scrutiny from courts in the insurance coverage context than certificates of insurance. Generally, a certificate of insurance is a document issued to a named insured or additional insured under a policy of insurance as confirmation of the existence of coverage and at times the limits thereunder. These certificates often become the subject of coverage actions where a dispute arises over the existence of coverage under a policy. A party arguing for coverage will assert that the certificate of insurance is proof that coverage exists, while an insurer will assert that the certificate is for informational purposes only and cannot serve as evidence of coverage.

New York state courts have issued inconsistent rulings on the legal significance of a certificate of insurance in disputes over the existence of coverage. More specifically, the Third and Fourth departments of the Appellate Divisions have held that a certificate of insurance can estop an insurer from denying coverage to a party named in the certificate under certain circumstances, while the First and Second departments have declined to estop an insurer from denying coverage based on a certificate of insurance.

At the behest of the U.S. Court of Appeals for the Second Circuit in *10 Ellicott Square Court Corporation and 5182 Group, LLC, v. Mountain Valley Indemnity Company*, Docket



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No. 10-0799-CV, 2010 WL 5295420 (2d Cir. 2010) it appeared as though New York's highest court would rule on the issue. However, shortly after certification to the New York Court of Appeals, the parties in

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Ellicott Square settled, causing the Second Circuit to withdraw its certification. This issue, however, is certain to return to the Court of Appeals, and therefore, it's useful to examine how the Second Circuit framed the issue.

In *Ellicott Square*, the question certified to the Court of Appeals was whether a certificate of insurance issued by an agent of an insurer, which contains a disclaimer that states it is not evidence of insurance coverage, can estop an insurer from denying coverage under the policy named therein. In *Ellicott Square*, the plaintiffs, 10 Ellicott Square Corporation and 5182 Group, LLC, were the owner and

construction manager, respectively, for a commercial building located in Buffalo. On or about Aug. 13, 2003, plaintiffs engaged Ellicott Maintenance Inc., a general contractor, to perform interior demolition on the building. As a requirement of the construction agreement between plaintiffs and Ellicott Maintenance, the latter purchased insurance coverage, a primary and umbrella policy from defendant, Mountain Valley Indemnity Company, in which it was to designate plaintiffs as additional insureds.

The construction agreement also required that the coverage obtained by Ellicott Maintenance be "primary, rather than concurrent with or secondary to [the] Owner's own liability insurance." The construction agreement also required Ellicott Maintenance to obtain certificates of insurance naming plaintiffs as additional insureds prior to the commencement of work.

On Aug. 19, 2003, Mountain Valley's agent, LRMP Inc., issued a certificate of insurance to plaintiffs noting their status as additional insureds under the Mountain Valley policies. The certificate of insurance contained a disclaimer that stated it was for informational purposes only, did not confer any rights upon the certificate holder, and did not constitute a contract between the insurer and the certificate holder.

On Sept. 9, 2003, during demolition, a roof collapsed injuring an employee of a subcontractor hired by Ellicott Maintenance. By letter dated Oct. 22, 2003, plaintiffs notified LRMP of the injury and potential claim and requested that Mountain Valley defend and indemnify

them in connection with any suit brought by the employee.

The Mountain Valley primary policy contained a requirement that the construction agreement between plaintiffs and Ellicott Maintenance be “executed” in order for plaintiffs to be covered under the policy. Despite the fact that demolition had commenced, at the time of the employee’s injury the construction agreement had not yet been signed by either plaintiffs or Ellicott Maintenance. Therefore, Mountain Valley declined coverage, asserting that since the construction agreement had not been executed at the time of injury, plaintiffs did not qualify as additional insureds under either the primary or umbrella policies.

Was Agreement Executed?

On Oct. 28, 2004, the injured employee brought suit in New York state court against plaintiffs and Ellicott Maintenance. Plaintiffs in turn filed a declaratory judgment action in the U.S. District Court for the Western District of New York seeking a declaration that they were entitled to coverage under the policies issued by Mountain Valley. Plaintiffs argued that because of the parties’ partial performance, the construction agreement had been “executed” for purposes of the primary policy. Plaintiffs further asserted that the certificate of insurance issued by LRMP bound Mountain Valley to provide coverage.

The District Court held that the construction agreement had been “executed” despite the fact that it had neither been signed nor fully performed and that, consequently, plaintiffs were entitled to coverage under the policies. The court further held that Mountain Valley was estopped from denying coverage because its agent issued a certificate of insurance naming plaintiffs as additional insureds upon which plaintiffs were entitled to rely.

On appeal, the Second Circuit disagreed with the District Court on the issue of whether the construction agreement was “executed” as that term is defined under New York law. The Second Circuit held that New York courts require that a contract either be signed or fully performed before it can be considered executed. Since

neither occurred in *Ellicott Square*, the court held that the District Court’s finding that plaintiffs were entitled to coverage because the construction agreement was “executed” was made in error.

Estoppel

As a general matter, New York contract law provides that a certificate of insurance is merely evidence of a contract for insurance and not proof the contract actually exists. However, in examining the issue on appeal, the Second Circuit recognized a split of authority among the four Appellate Departments over whether a certificate of insurance can estop an insurer from denying coverage. The Third and Fourth departments have held that a certificate of insurance can estop an insurer from denying coverage if the certificate was issued by an agent within the scope of its authority and if the certificate was reasonably relied upon by the party seeking coverage.

Conversely, the Second Department has declined to hold that an insurer can be estopped from denying coverage based upon a certificate of insurance where the party seeking coverage was erroneously named on the certificate and the certificate stated it was for informational purposes only. It’s notable that the disclaimer language contained in the certificate of insurance in the Second Department case cited by the Second Circuit is also contained in the certificate of insurance at issue in *Ellicott Square*. In addition, the First Department has also refused to estop an insurer from denying coverage based on a certificate of insurance.

In certifying the question to the Court of Appeals, the Second Circuit appeared to favor the application of estoppel on facts such as those presented in *Ellicott Square*. The Second Circuit stated that “insurers typically have greater control over the terms of insurance contracts and certificates of insurance than their insureds, along with greater knowledge of the applicable law.” Thus, the Second Circuit reasoned that estoppel may be appropriate in the same way that ambiguities in insurance contracts are construed against insurers.

Moreover, the Second Circuit stated that in *Ellicott Square*, estoppel would not

expand the scope of coverage, but would simply impose coverage as contemplated in the certificate of insurance. Conversely, the Second Circuit acknowledged that a certificate of insurance is generally issued as a matter of course upon request of the primary insured and that an argument can be made that it should be the responsibility of the primary insured to ensure all conditions to providing additional insured status have been met. After all, it was Ellicott Maintenance, the primary insured, who agreed to execution of the construction agreement as a condition of coverage for additional insureds.

Looking Ahead

Even though *Ellicott Square* has been resolved, the split among the four Appellate Departments still remains and this issue is ripe for consideration by the New York Court of Appeals. Furthermore, given the amount of litigation surrounding certificates of insurance, it’s likely the Court of Appeals will be compelled to consider the issue in the very near future. If that court were to hold that estoppel can be applied based upon a certificate of insurance, insurers will likely be forced to alter their protocol regarding same.

Insurers may no longer grant agents the authority to issue certificates or may be stricter in doing so, or insurers may go to greater lengths to ensure that all conditions have been met in order to confer additional insured status under a policy. On the other hand, if estoppel cannot be applied based upon a certificate of insurance, an innocent third party who believed it was an additional insured under another’s policy, may be left without coverage and without recourse. It’s also possible that the application of estoppel will have unintended consequences, such as causing disputes over the limits of coverage when the limits in the policy differ from those in the certificate of insurance. In any event, a decision from the Court of Appeals will likely have significant ramifications for insurers, insureds and agents alike.