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Constructing Additional Insured Coverage From A Certificate Of Insurance

December 19, 2019 | [Construction Law](#), [Policyholder Protection](#), [Contracts](#), [Additional Insured](#), [Policy](#)



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If your company receives a certificate of insurance that says your company is an additional insured on someone else's policy, can you rely on it? A recent decision from the Supreme Court of Washington suggests you can, at least if the certificate was prepared by the insurance company's agent.

T-Mobile Northeast wanted to build a cell phone tower in New York City. It hired a contractor and entered into an agreement that, among other things, required the contractor to obtain general liability insurance, provide a certificate of insurance, and name T-Mobile Northeast as an additional insured. This is all very common practice with any construction project.

The contractor's general liability policy provided that anyone would be an additional insured if so required by a written contract with the contractor. Therefore, T-Mobile Northeast was an additional insured. Again, very common.

The certificate was prepared on a standard insurance industry form. Preprinted portions near the top stated:

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES

BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed...

Once again, this form and the language quoted here are very common.

Other key facts are only slightly less common. The owner of the rooftop on which the cell tower was constructed sued the contractor and T-Mobile USA (T-Mobile Northeast's parent) for damage allegedly caused by the construction work. T-Mobile USA, which was not a party to the construction contract, tendered the claim to the contractor's insurer because the certificate of insurance stated that "T-Mobile USA Inc., its Subsidiaries and Affiliates" were additional insureds. The certificate was issued by an insurance agency that was authorized to issue certificates of insurance under the terms of its agency agreement with the insurance company. Citing the disclaimer language in the certificate, the insurance company denied coverage to T-Mobile USA because it was not a party to the contract that required T-Mobile Northeast to be an additional insured. T-Mobile USA sued the insurance company.

Ultimately, the [Supreme Court of Washington held](#) that an insurer is bound by the representation of its agent despite the certificate's disclaimers. The court acknowledged its prior precedent that the purpose of a certificate of insurance is to provide information, and that it is not the equivalent of an insurance policy. Nevertheless, the court relied on the rule of textual interpretation that the specific prevails over the general. It viewed the preprinted disclaimers as general and the additional insured statements entered by the agent as specific and controlling.

Parties involved in construction can take at least four valuable points from this case. First and foremost, certificates of insurance typically contain disclaimer language that may be surprising, but there can be ways to defeat those disclaimers.

Second, when the contract requires one party to provide a certificate of insurance to the other, it can be worthwhile for both sides to review the certificate carefully to make sure it reflects all the coverage required by the contract.

Third, one or both parties may want to look beyond the certificate and review the policy to see if it actually provides the required coverage. Interestingly, nothing in the T-Mobile case suggests that any party to the contract failed to take these steps.

Fourth, when a claim arises, each defendant can benefit from taking another look at all the contract and insurance documents, as T-Mobile USA apparently did in this case to find coverage even though it was not a party to the construction contract.