

BEWARE THE USELESS INSURANCE CERTIFICATE

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Merely being listed as an additional insured on the certificate of insurance does not mean insurance coverage. Some find this out the hard way by not reading the fine print and instead assuming that being listed on the certificate is sufficient for coverage. This practice would have made a huge difference in the case of *Mulvey Construction, Inc. v. Bituminous Casualty Corp.*, 2011 U.S. Dist. Lexis 35209 (S.D. W. Va.) (March 31, 2011).

The web of characters in this story is somewhat complicated, but what insurance arrangement is simple? Mulvey, a general contractor and New York corporation, was to construct a McDonald's restaurant in Bluefield, West Virginia. Mulvey subcontracted with DCI/Shires, Inc., a Virginia corporation, to build a retaining wall. Before work began, DCI agreed to add Mulvey and McDonald's to its insurance policy, issued by Bituminous Casualty Corporation. Accordingly, DCI sent the subcontract to its insurance agent, Brown & Brown, a Virginia corporation.

Brown issued certificates of insurance listing Mulvey and McDonald's as "additional insured[s]" on DCI's policy. However, the certificate of insurance also stated that "[T]his certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below." Brown sent the certificate to Bituminous. However, for unknown reasons, Mulvey and McDonald's were never added to DCI's policy.

Later, it was alleged that the failure of the retaining wall constructed by DCI caused the breakage of a sewage line at the project site. A trench was dug to repair the sewage line. When the sidewall of that trench collapsed, an employee of the City Sanitation Board died while working inside that trench to repair the sewage line. In a wrongful death action, Mulvey and McDonald's requested that DCI defend. Bituminous denied the request to defend. Although Mulvey and McDonald's were listed on the certificate of insurance, they were never added to the policy. Consequently, Mulvey and McDonald's own insurer settled the wrongful death action for \$400,000.00.

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Generally, courts are divided on whether a certificate of insurance is sufficient without actually adding the additional insureds to the policy. The minority view is that an insurer may not deny coverage when a certificate of insurance includes the additional insureds. The majority view, and the view applied in *Mulvey*, is that a certificate alone is insufficient for coverage “where a certificate of insurance . . . expressly indicates it is not to alter the coverage of the underlying policy.” *Mulvey* at 12. Accordingly, the disclaimer language on this certificate of insurance was controlling and not the mere listing of Mulvey and McDonald’s as additional insureds.

Mulvey and McDonald’s also sought indemnification from DCI. However, since Virginia law and not West Virginia law applied to the indemnification issue, DCI did not have to indemnify Mulvey and McDonald’s.

Parties wishing to be listed as additional insureds should take away two points from this case:

First, check the actual insurance policy. Never trust the mere inclusion on the certificate of insurance as an additional insured. Rather, acquire a copy of, read and understand the insurance policy before actual work begins.

Second, know what law applies and understand the potential application of that law. For example, although the project (i.e. the McDonald’s restaurant) was situated in West Virginia, the court applied Virginia law to decide the indemnification issue.

Bottom Line: Do not take the insurance certificate for granted. Read it and understand what is written.

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