

# Cray • Huber

## Illinois Coverage Basics

### When the Terms of a Certificate and a Policy Conflict, the Description of Coverage Contained in the Certificate Sometimes Controls.

Common sense and experience tells us that the language of an insurance policy describes the coverage provided to an insured, while a certificate of insurance is merely evidence that a policy has been issued. However, Illinois law provides that under some circumstances the terms of a certificate may govern the coverage to be provided to an insured, regardless of what the policy may state.

The Illinois courts' view on certificates of insurance is best understood in terms of its historical development. The earliest Illinois cases dealt with non-standard certificate language, which omitted the cautionary language commonly contained in certificate forms today. In early cases where an additional insured acknowledged receiving a certificate, but not the insurance policy itself, the courts held that the terms of the certificate governed the coverage to be provided to the additional insured. This approach usually benefited the additional insureds seeking coverage, because the certificates rarely if ever contained the exclusions and conditions that would otherwise limit the coverage provided by an insurer.

The rationale of the earlier rulings was that when a policy contains limitations that are not reflected on the certificate, an ambiguity is created. And, as any ambiguity concerning coverage must be construed in favor of the insured, this meant that the more generous terms of the certificate should govern. (*International Amphitheater Company v. Vanguard's Underwriters Insurance Company*, 177 Ill.App.3d 555, 532 N.E.2d 493 (1<sup>st</sup> Dist. 1988); *John Bader Lumber Company v. Employers Insurance of Wausau*, 110 Ill.App.3d 247, 441 N.E.2d 1306 (1<sup>st</sup> Dist. 1982).) Secondly, the courts perceived that where an additional insured was provided with a certificate of insurance but not a copy of the policy itself, it was appropriate for the additional insured to rely upon the terms of the certificate.

As similar rulings appeared in other jurisdictions, an increasing number of insurers began using standard certificate forms that contained express disclaimer language, such as the following:

**“THIS 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.”**

\* \* \*

**“THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.”**

Illinois courts have generally enforced the limiting language contained in modern certificate forms. Thus, the presence or absence of disclaimer language in a certificate determines whether an insured may rely on the descriptions of coverage made in the certificate. If the certificate does not include a disclaimer, the insured may rely on the certificate. On the other hand, if the certificate includes a disclaimer, the insured

may not rely on the certificate but must look to the policy itself to determine the scope of coverage. (*American Country Insurance Company v. Kraemer Brothers, Inc.*, 298 Ill.App.3d 805, 699 N.E.2d 1056 (1<sup>st</sup> Dist. 1998); *T.H.E. Insurance Company v. City of Alton*, 227 F.3d 802 (7<sup>th</sup> Cir. 2000).)

Because most modern certificates clearly indicate that they are not part of the policy and convey no rights to the policyholder, an additional insured is placed on notice that it must consult the policy to determine the extent of coverage and possible application of exclusions. Even when an additional insured is not given a copy of the policy, the language of these certificates reflects that the certificate must be read together with the policy itself in order to determine the scope and extent of coverage. In contrast to the earlier cases, Illinois courts construing modern certificates hold that there can be no conflict between a certificate and an insurance policy, because the certificate specifically references the policy itself.

The cases that gave certificates of insurance governing effect became something of an historical footnote, because virtually all certificates in common use today employ express disclaimer language. However, the most recent Illinois Appellate Court decision in this line of authority suggests that even a modern form certificate that contains disclaimer language may trump the terms of a policy under certain circumstances.

In *West American Insurance Company v. J.R. Construction Company*, 334 Ill.App.3d 75, 777 N.E.2d 610 (1<sup>st</sup> Dist. 2002), the Illinois Appellate Court was asked to decide whether the defendant construction company was an additional insured under a blanket endorsement in the plaintiff's liability policy. The blanket endorsement provided that the defendant was an additional insured, only if a written agreement required that the defendant be named as an additional insured. However, under the facts of the case, there was no written agreement, only an oral agreement to that effect. A certificate identified the defendant as an insured under the policy. However, the certificate contained standard disclaimers specifically stating that it was for information purposes only, conferred no rights, and did not amend the terms of the policy. Other evidence in the case included a letter and an internal memorandum authored by the plaintiff recognizing that the defendant as an insured under the policy.

Finding in favor of the defendant in *West American*, the Appellate Court acknowledged that coverage did not arise from the terms of the blanket endorsement. Yet, the Court found as a matter of law that the defendant was an additional insured under the policy, based upon the language of the certificate, a letter and internal memorandum authored by the insurer, and evidence that the named insured had orally agreed to procure insurance for the defendant. Notwithstanding the standard disclaimers contained in the certificate, the Appellate Court not only found the certificate to be probative on the issue of coverage, but gave the certificate (and the related writings) controlling effect in finding coverage for the defendant, regardless of the provisions of the policy itself.

The *West American* decision effectively reopens the door to arguments that a certificate of insurance confers rights to coverage, despite the fact that the standard certificate forms specifically disclaim such effect. This is an unfortunate result for insurers from whom coverage is sought. However, in situations where an insurer is seeking contribution from another insurer, the *West American* decision presents new opportunity where there is a certificate to support the claim for coverage.

\* \* \*

If you have questions or would like to discuss the subject of this article further, please feel free to contact James K. Horstman at Cray Huber Horstman Heil & VanAusdal LLC, 303 West Madison Street, Suite 2200, Chicago IL 60606; 312-332-8494; [jkh@crayhuber.com](mailto:jkh@crayhuber.com).