

# Certificate of Insurance Disclaimer...Not Bulletproof

By

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In construction defect claims, certificates of insurance (“COI”) routinely accompany additional insured tenders. During the normal course of business, at the time a construction contract is made, the general contractor will typically require a COI from the subcontractor and usually the sub’s insurance agent provides it. The COI includes policy information important to the general contractor such as named insured, names of insurers, types of coverage, policy periods, limits, and other basic information.

In other words, the COI provides the general contractor with confirmation that the subcontractor is insured, and what the terms of the policy are. The COI only provides information at the point in time that it is issued. It is a snapshot. But whether this snapshot is accurate is another matter. It is not infrequent that an insurance agent will provide information on a COI that does not comport with the policy nor the insurer’s records, a disappointing revelation to the certificate holder and prolific source of coverage disputes.

Furthermore, the COI does not/should not amend or change the policy in any way, explicitly stating so in the form of a disclaimer. However, the disclaimer is proving not to be bulletproof, at least in Washington.

*In T-Mobile USA Inc. v. Selective Insurance Co. of America*, Slip. Op. No. 96500-5, 2019 WL 5076647 (Wash. Oct. 10, 2019), the Washington Supreme Court, on a certified question from the Ninth Circuit, held that despite the disclaimer, Selective’s agent, under apparent authority, bound Selective to cover T-Mobile USA as an additional insured; and even though T-Mobile USA was not a signatory to the construction contract that contained the additional insured obligation.

Selective’s named insured contracted with T-Mobile Northeast, not T-Mobile USA, for the construction of a cell tower and the former was required to be an additional insured on the policy. Initially, T-Mobile USA was named as the defendant in a subsequent construction defect lawsuit. Since T-Mobile was not a signatory to the construction contract and, therefore, not an automatic additional insured, Selective denied coverage.

Significantly, the COI identified “T-Mobile USA Inc., its Subsidiaries and Affiliates” as the additional insureds. The agent, Selective’s “authorized representative”, repeated this practice over a period of seven years. T-Mobile USA approved the form of the policy and was aware that the COI identified it as the additional insured notwithstanding it not being a signatory to the subcontract (Selective should have been aware of it as well).

While the disclaimer was clear, the representation by the agent with apparent authority from Selective trumped the disclaimer, requiring Selective to cover T-Mobile USA as an additional insured even though it did not make the contract with the named insured which would have qualified it as an automatic additional insured, nor was it specifically scheduled as an additional insured.

The take-away is that a certificate of insurance disclaimer is not bulletproof. **Accuracy matters.**