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Washington Supreme Court Finds Agent's Representations in Certificate of Insurance Bind Insurance Company to Additional Insured Coverage

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In *T-Mobile USA Inc. v. Selective Ins. Co. of Am.,* 450 P.3d 150 (Wash. 2019) the Washington Supreme Court addressed whether an insurance company is bound by its agent's written representation—made in a certificate of insurance—that a particular corporation is an additional insured under a given policy. The question arose in a case where: (1) the Ninth Circuit had already ruled that the agent acted with apparent authority, but (2) the agent's representation turned out to be inconsistent with the policy and (3) the certificate of insurance included additional text broadly disclaiming the certificate's ability to "amend, extend or alter the coverage afforded by" the policy. According to the Court, under Washington law the answer is yes: an insurance company is bound by the representation of its agent in those circumstances. Otherwise, the Court reasoned, an insurance company's representations would be meaningless and it could mislead without consequence.

At the heart of this case were two T-Mobiles entities: T-Mobile USA and T-Mobile Northeast ("T-Mobile NE"), which were distinct legal entities. T-Mobile NE engaged a contractor to construct a cell phone tower on a rooftop in New York City. The contract between T-Mobile NE and the contractor required the contractor to obtain a general liability insurance policy, to annually provide T-Mobile NE "with certificates of insurance evidencing [that policy's] coverage," and to name T-Mobile NE as an additional insured under the policy. T-Mobile USA was not a party to the contract, but was nonetheless aware of it and approved the contract as to form.

The contractor obtained the required insurance policy from Selective. The policy provided that a third party would automatically become an "additional insured" under the policy if the contractor and the third party entered into their own contract that required the contractor to add the third party to its insurance policy as an additional insured. Because T-Mobile USA did not have a contract with the contractor, it did not automatically become an additional insured under the policy. Nevertheless, over the course of several years, Selective's agent issued a series of certificates of insurance to "T-Mobile USA Inc., its Subsidiaries and Affiliates" that stated that those entities were "included as an additional insured [under the policy] with respect to" certain areas of coverage. The agent signed those certificates as Selective's "Authorized Representative."

Eventually, the building owner sued the contractor and T-Mobile USA for damages -- but did not sue T-Mobile NE. Selective accepted the contractor's defense, but rejected T-Mobile USA's tender. T-Mobile USA brought a declaratory suit against Selective, which made its way to the Ninth Circuit Court of Appeals.

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Like many states, Washington recognizes a general rule that "an insurance company is bound by all acts, contracts, or representations of its agent, whether general or special, which are within the scope of [the agent's] real or apparent authority notwithstanding they are in violation of private instructions or limitations upon [the agent's] authority, of which the person dealing with [the agent], acting in good faith, has neither actual nor constructive knowledge." *T-Mobile*, 450 P.3d 150 (Wash. 2019) (citations omitted). The Ninth Circuit held that the agent acted with apparent authority in issuing the certificate of insurance, which "clearly lists T-Mobile USA as an additional insured under the policy." As Selective never objected to the agent's issuance of the certificates, the Ninth Circuit found that the agent was acting on behalf of Selective, and therefore, was its agent. The Ninth Circuit then certified a question for the Washington Supreme Court as to whether the insurance company was bound by representations in the certificate of insurance, which contained pre-printed disclaimers that the certificate does not alter or amend the policy or confer rights on the certificate holder.

In these circumstances, the Washington Supreme Court held that Selective was bound by the representations its agent made in the certificate of insurance. Selective argued that its agent's representation should not bind it because T-Mobile USA's reliance on the representation was unreasonable. For example, because T-Mobile USA knew that it was not a party to a contract with the contractor, it also knew that it was not an additional insured under the contractor's policy. Moreover, the certificate of insurance was issued on an industry-standard form and included preprinted industry-standard disclaimers stating in bold capital letters that the certificate "is issued as a matter of information only and confers no rights upon the certificate holder," "does not affirmatively or negatively amend, extend or alter the coverage afforded by the" insurance policy, and "does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder." It also stated in bold, "If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed….A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s)."

The Washington Supreme Court noted that the certificate of insurance contained contradictory representations. On the one hand, the certificate listed T-Mobile USA as an additional insured. On the other, however, it says that nothing in the certificate changes the policy—and the policy does not cover T-Mobile USA. Ultimately, the Court rejected the argument that the certificate was for "information only" or merely evidence of insurance, ruling that the certificate bound Selective to the coverage stated.

In making its ruling, the Court relied upon a basic rule of textual interpretation: the specific prevails over the general. According to the Court, the preprinted disclaimers are general in nature. They purport to disclaim virtually every bit of information provided by the certificate. By contrast, the additional insured statement that the agent wrote in specifically refers to certain areas of policy coverage and makes a discrete representation that "T-Mobile USA Inc., its Subsidiaries[,] and Affiliates" "[are] included as an additional insured." The Court reasoned that the specific written-in additional insured statement thus prevailed over the preprinted general disclaimers. Giving effect to the disclaimers, by contrast, would render issuance of the certificate—and the specific representation within it—pointless said the Court. "Contrary to Selective's argument, the certificate would have no informational value at all. All it would do is 'set a trap' for the certificate holder." *Id*. at 156.

The fact that the agent was acting *as agent of the insurance company*, and not the insured, was key to the Court's decision. At its heart, this case was about an agent's representation—which the agent happened to make in a certificate of insurance—that explicitly named T-Mobile USA as the additional insured, and not about the purpose of a certificate of insurance. According to the Court, an agent's authorized or apparently authorized representation is a representation, whether it is transmitted via letter, e-mail, certificate of insurance, or something else. Or more succinctly, "an insurance company's agent who makes an authoritative representation binds the insurance company, even when that specific representation is transmitted via a certificate of insurance and accompanied by general disclaimers." *Id*. at 157.

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