

FEBRUARY 2009



COHEN TAUBER SPIEVACK & WAGNER P.C.

CERTIFICATES OF INSURANCE ARE NOT ALWAYS EVIDENCE

As a loss payee or an additional insured under an insurance policy, please be alerted that some forms of certificates that you may receive as purported proof of your status are not enforceable as evidence of insurance coverage. For instance, some Acord Forms, such as Forms 24 (Certificate of Property Insurance) and 25 (Certificate of Liability Insurance), contain a disclaimer on the upper right hand corner:

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.

Certificates of insurance that contain this or similar disclaimers inform the holder of the fact and type of insurance described in the certificate only, and should not be relied on as evidence that the underlying policy has actually been amended to name the holder as additional insured or loss payee. In a 2003 New York case, *Benjamin Shapiro Realty Co., LLC v. Kemper National Insurance Cos*, a landlord received a certificate of insurance naming the landlord as an additional insured under the tenant's liability insurance policy. A claim occurred, and the landlord discovered the underlying policy was never amended to include him as additional insured, contrary to the information provided in the certificate. The landlord sued the broker for negligent misrepresentation, based on the certificate of insurance. The court dismissed the action because the insurance certificate contained a disclaimer that it was "for information only" and did not by itself amend the policy described by it. The landlord was not able to use the certificate as evidence that the landlord was or even should have been included as an additional insured under the policy.

To obtain comfort that you are in fact an additional insured or loss payee under a particular policy, it is advisable that you receive a copy of the endorsement to the underlying policy. If that is not feasible, you should insist on a form of insurance certificate that does not include the disclaimer described above, such as the Acord Form 75 (Insurance Binder) which will serve to evidence any kind of insurance.

This alert is only a brief overview of a narrow part of the complex world of insurance and should not be relied upon as advice in any specific transaction or situation. For further information, please contact Adam Stein (212 381 8748; astein@ctswlaw.com) or Y. Ting Riess (212 382 8737; triess@ctswlaw.com) of CTSW's corporate department.

This publication is intended to provide general information to our clients and friends. It does not constitute tax or legal advice, nor is it intended to convey a thorough treatment of the subject matter.