STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

ROYE INVESTMENT GROUP, LLC,
a Michigan limited liability company,

Plaintiff,

Case No. 20-183517-CB

Hon. Michael Warren

v

AMCO INSURANCE COMPANY,
a foreign insurance company,

Defendant.

OPINION AND ORDER GRANTING THE
DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the
County of Oakland, State of Michigan
February 1, 2022

PRESENT: HON. MICHAEL WARREN

OPINION

I
Overview

In this declaratory action, the Plaintiff Roye Investment Group, LLC ("Roye Investment") alleges that it is entitled to coverage under an insurance policy issued by the Defendant AMCO Insurance Company ("AMCO").

The Plaintiff seeks coverage for water damage to property located at 3127 W. Huron in Waterford, Michigan (the "Waterford Property") occurring on January 21, 2019. Roye Investment apparently owns the Waterford Property.[1] Frank Roye ("Roye") is an owner of Roye Investment. Roye was also a member, along with two other individuals, of Generation Mobile Preferred, LLC ("Generation Mobile Preferred").[2]

Generation Mobile Preferred was created in September 2016 through the merger of three companies, Roye Holdings (owned by Roye), Generation Mobile, LLC (owned by Joe Barbat), and Digicom, Inc. (owned by Raid Yousef).[3] Roye's tenure with Generation Mobile Preferred lasted until June 2017 when there was apparently a "falling out" with the other members.[4]

General Mobile Preferred was created to "provide Sprint wireless services and products for sale in retail stores owned and operated by the Members."[5] The Waterford location, along with twenty-six other retail locations, was listed in the Operating

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[1] Pl's Response, Exh 1, Quitclaim Deed.

[2] Def's Motion, Exh 7, Operating Agreement, Generation Mobile Preferred, p 13.

[3] *Id.* Yousef was designated as the member responsible for the routine day-to-day operations of Generation Mobile Preferred. *Id.* § 7.1

[4] Def's Motion, Exh 6, Roye Deposition, pp 33-34, 52-53, 56-59.

[5] Def's Motion, Exh 7, Operating Agreement, Generation Mobile Preferred, p 1.

Agreement's "Table of Stores."[6] The Plaintiff alleges that Roye Investment leased the Waterford Property to Generation Mobile Preferred.[7]

On September 2, 2016, Roye submitted an application for an insurance policy with Kejbou Insurance Agency.[8] Kevin Kejbou ("Kejbou"), the insurance agent involved in the transaction testified in his deposition that Roye told him that Roye wished to obtain insurance for Generation Mobile Preferred and Roye was acting on behalf of Generation Mobile Preferred.[9] Roye did not inform Kejbou about Roye Investment or ask for a policy or coverage for Roye Investment.[10] Kejbou stated that he was told by Roye to set up the policy so that only tenants would be covered.[11]

Roye avers in his affidavit that he instructed Kejbou to "issue a commercial property insurance policy on the building insuring the interests of [Roye Investment] as owner and [Generation Mobile Preferred] as tenant" and that "Kejbou Agency agreed to issue the insurance on the building as instructed."[12]

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[6] *Id.* p 15. The Table of Stores indicates that the Waterford location is operated by OmniCell, Inc. The assets of Omnicell were apparently transferred to Roye Holdings before the merger which created Generation Mobile Preferred. Def's Motion, Exh 6, Roye Deposition, pp 13-15.

[7] The Plaintiff asserts that "possession and use" of the Waterford Property by Generation Mobile Preferred was governed by a December 3, 2005 Lease between Roye Investment and Omnicell, Inc. *See* Pl's Response, Exh 3.

[8] The Plaintiff asserts in its brief that Roye "was responsible for purchasing insurance for [Generation Mobile Preferred] and [Roye Investment]" but provides no reference to the record to support this assertion. Pl's Response, p 4 (approximated as the Plaintiff's Response does not include page numbers.)

[9] Def's Motion, Exh 3, Kejbou Deposition, pp 93-94.

[10] *Id.* pp 94-95, 67.

[11] *Id.* pp 65-67.

[12] Pl's Response, Exh 7, Frank Roye Affidavit, ¶¶ 4-5.

The Commercial Insurance Application (the "Application") signed by Roye lists as "Named Insureds" Generation Mobile Preferred and also lists the retail locations.[13] The Application does not include Roye Investment as a "Named Insured" and does not mention Roye Investment.[14]

A "Premier Businessowners Policy" with a policy period of September 1, 2016 to September 1, 2017 was issued by AMCO (the "Policy").[15] The "Named Insured" on the Policy is "Generation Mobile Preferred LLC."[16] The retail locations, including the Waterford Location, were also named as insureds.[17] Roye Investment was not named as an insured.

In January 28, 2019, Raid Yousef, on behalf of Generation Mobile Preferred, made a "record only" report about a frozen pipe burst at the Waterford Property.[18] Subsequently, a claim was made by Shelly Roye, the wife of Frank Roye, for water damage.[19] AMCO then issued a check in the amount of $28,793.10 payable to Generation Mobile Preferred.[20] An attorney representing Generation Mobile Preferred returned the

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[13] Def's Motion, Exh 8, Insurance Application. There was also a "tbd" notation for "Additional Insured 2" for "Additional Insured Type" "Managers or Lessors of Leased Premises. *Id.* at p 44. A subsequent policy endorsement provides additional insured status to "Managers or Lessors of Leased Premises" "but only with respect to their *liability* arising out of your use of that part of the premises leased to you." *Id.*, Exh 11. Because the Plaintiff is seeking coverage for property damage this endorsement is not applicable in this case.

[14] *Id.* The Plaintiff apparently does not dispute that Roye Investment is not named in the Application.

[15] The Policy was renewed in 2017 and 2018.

[16] Def's Motion, Exh 10, Declarations/Schedule of Named Insureds.

[17] *Id.*

[18] Def's Motion, Exh 14, January 28, 2019 email.

[19] Def's Motion, Exh 25, Deposition of Shelly Roye, pp 68-69.

[20] *Id.*, Exhibit 17.

check to AMCO with the explanation that "the policyholder did not file or authorize any party to make this claim with AMCO Insurance Company and my client believes this claim to be fraudulent."[21] Shelly Roye then notified the AMCO adjuster to move forward on a claim, apparently on behalf of Roye Investment as an additional insured.[22] AMCO replied that the claim was withdrawn by the insured, Generation Mobile Preferred, and that Shelly Roye should contact the attorney for Generation Mobile Preferred with any concerns.[23]

Roye Investment filed this action seeking reformation of the Policy to include it as an additional named insured and a declaration that AMCO breached the Policy by failing to pay its claim. Before the Court is a motion for summary disposition pursuant to MCR 2.116(C)(10) filed by AMCO.[24] Oral argument is dispensed as it would not assist the Court in its decision-making process.[25]

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[21] *Id.*

[22] *Id.* at Exh 18.

[23] *Id.* at Exh 19.

[24] The Plaintiff also seeks judgment in its favor under MCR 2.116(I)(2).

[25] MCR 2.119(E)(3) provides court with discretion to dispense with or limit oral argument and to require briefing. MCR 2.116(G)(1) specifically recognizes application of MCR 2.119(E)(3) to summary disposition motions. Subrule (G)(1) additionally authorizes courts to issue orders establishing times for raising and asserting arguments. This Court's Scheduling Order clearly and unambiguously sets the time for asserting and raising arguments, and legal authorities to be in the briefing – not to be raised and argued for the first time at oral argument. Therefore, both parties have been afforded due process as they each had notice of the arguments and an opportunity to be heard by responding and replying in writing, and this Court has considered the submissions to be fully apprised of the parties' positions before ruling. Because due process simply requires parties to have a meaningful opportunity to know and respond to the arguments and submissions which has occurred here, the parties' have received the process due.

At stake in this Motion is whether the Plaintiff, who is not a party to the Policy, has standing to seek reformation of the Policy to include the Plaintiff as an insured? Because the answer is "no," the Defendant's Motion for Summary Disposition is granted.

Also, at stake in this Motion is whether reformation of the Policy is possible where the Plaintiff has not demonstrated a mutual mistake of fact and has not pled a claim for fraud? Because the answer is "no," the Defendant's Motion for Summary Disposition is granted.

Additionally, at stake in this Motion is whether the Plaintiff has supported its claim that the Defendant is bound by any agreement to provide coverage other than that provided for in the Policy? Because the answer is "no," the Defendant's Motion for Summary Disposition is granted.

II
Standard of Review

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996). Accordingly, "[i]n evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood,* 461 Mich 109, 119-120 (1999); MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto,* 451 Mich at 358. The moving

party "must specifically identify the issues" as to which it "believes there is no genuine issue" of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4).

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Quinto,* 451 Mich at 361. If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id.* at 362. If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4); see also *Meyer v City of Center Line*, 242 Mich App 560, 575 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)).

Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

III
The Arguments

The Policy provides "property coverage" under following provision:

Building Property of Others

(1) If you occupy a described premises as a tenant, and a written lease or rental agreement for that premises requires you to pay for loss of or damage to a part of building property you do not own, we will pay for direct physical loss of or damage to that part of building property, other than exterior glass, caused by a Covered Cause of Loss.[26]

Under the Policy "the words 'you' and 'your' refer to the Named Insureds shown in the Declarations."[27] The "Named Insured" on the Policy is "Generation Mobile Preferred LLC." Several other entities, i.e., the retail store locations, were also named as insureds. The Defendant asserts that summary disposition should be granted in its favor because Plaintiff is not a "Named Insured" under the property coverage provisions of the Policy and thus is not entitled to coverage. The Defendant also argues that the Policy cannot be reformed to include Roye Investment as an insured.

The Plaintiff admits that it is not included as a "Named Insured" under the Policy.[28] However, the Plaintiff asserts that the Policy should be reformed to include it as a "Named Insured." The Plaintiff also argues that there was an agreement between the insurance agent, Kejbou and the Plaintiff to provide coverage to the Plaintiff and that AMCO ratified and is bound by this agreement. The Defendant argues that summary disposition should be granted in its favor because the Plaintiff was not a party to the Policy and therefore, cannot seek reformation of the Policy. The Plaintiff does not address this argument in its response to the Defendant's motion for summary disposition.

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[26] Def's Motion, Exh 10, Insurance Policy, p 15 of 42.
[27] *Id.* at p 2 of 42.
[28] Complaint ¶22.

IV
Summary Disposition under MCR 2.116(C)(10) is properly granted in favor of the Defendant and the Plaintiff's request for judgment in its favor under 2.116(I)(2) is properly denied

A
The Plaintiff is not entitled to reformation of the Policy

1
The Plaintiff does not have standing to seek reformation of the Policy

A court of equity has the power to reform a contract to conform to the agreement actually made. *Casey v Auto Owners Ins Co*, 273 Mich App 388, 398 (2006). The Court of Appeals has explained:

> To obtain reformation, a plaintiff must prove a mutual mistake of fact, or mistake on one side and fraud on the other, by clear and convincing evidence. A unilateral mistake is not sufficient to warrant reformation. A mistake of law – a mistake by one side or the other regarding the legal effect of an agreement – is not a basis for reformation. [*Id.* (citations omitted).]

However, "courts are required to proceed with the utmost caution in exercising jurisdiction to reform written instruments." *Olsen v Porter*, 213 Mich App 25, 28 (1995).

"Reformation of written instruments may be had by the immediate parties and those standing in privity with them."[29] *Biondo v Ridgemont Ins Agency, Inc*, 104 Mich App 209, 212 (1981). An insurance policy is a contractual agreement between the insurer and the insured. *West American Ins Co v Meridian Mutual Ins Co*, 230 Mich App 305, 310 (1998).

[29] "In its broadest sense, privity has been defined as 'mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right.'" *Sloan v City of Madison Heights*, 425 Mich 288, 295 (1986) (citation omitted). The Plaintiff has made no argument that it is in privity with Generation Mobile Preferred.

Michigan jurisprudence has long held that third parties may not seek reformation of a contract when a plaintiff who is not a named insured on an insurance policy seeks reformation of the policy to be included as a named insured. In *Harwood v Auto-Owners Ins Co*, 211 Mich App 249, 253-254 (1995) the Court of Appeals rejected the guardian of an injured minor's request to reform an insurance policy issued to the minor's paternal grandfather. The guardian first argued that there was coverage under the policy because, at the time of the accident, the minor resided with his father, a named insured under the policy. *Id.* at 252-253. However, the Court of Appeals determined that the grandfather, not the father, was designated as a named insured on the policy. *Id.* at 253. The guardian then argued that reforming the policy to designate the father as a named insured would be consistent with the intent of the parties. *Id.* The Court of Appeals first reasoned that no mutual mistake or fraud had been alleged. Moreover, it noted that the parties to the insurance contract were the grandfather and the insurance company. Because the grandfather had not requested that the policy be reformed, the claim for reformation failed. *Id.* See also *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 24 (1998) (where the deceased was not a party to the insurance contract, the personal representative of the deceased could not obtain reformation of the contract); *Stone v Auto-Owners Ins Co*, 307 Mich App 169, 180 (2014) (the plaintiff could not obtain reformation of an insurance policy where neither plaintiff, who was seeking payment of survivor's loss benefits, nor plaintiff's deceased spouse, was a party to an insurance policy which named only the surviving spouse's parents as insureds).

In this case, the Plaintiff does not dispute that it is not a party to the Policy. It also does not dispute that a nonparty to an insurance policy cannot seek reformation of that policy. Based on the foregoing, the Court concludes that the Plaintiff is not entitled to reformation of the Policy.

2
The Plaintiff has not demonstrated a mutual mistake of fact and has not pled fraud or made any legal argument regarding fraud

Even if the Plaintiff has standing to seek reformation, the Plaintiff has failed to demonstrate mutual mistake of fact necessary to support a claim for reformation of the insurance contract. The Plaintiff asserts that Kejbou, the insurance agent, and Roye agreed that Roye Investment would be covered under the Policy, but as a result of a mutual mistake, this status was not reflected in the Policy.[30] A "mutual mistake of fact" is "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442 (2006). Kejbou denies that Roye asked for a policy or coverage for Roye Investment.[31] Kejbou also stated that at the time he "wrote" the Policy he did not know

[30] The parties disagree as to whether Kejbou was acting as a representative of AMCO or as a representative of the insured, Generation Mobile Preferred and therefore, whether any "mistake" by Kejbou can be attributed to AMCO. AMCO, citing *Genesee Food Servs, Inc v Meadowbrook, Inc*, 279 Mich App 649, 654 (2008), argues that under well-established common law, Kejbou, as an independent agent, was acting on behalf of Generation Mobile Preferred, the insured, and AMCO cannot be bound by Kejbou's actions. On the other hand, the Plaintiff argues that under MCL 500.1201(b) and (c) (added by 2018 PA 462 and effective Dec. 21, 2018), the common law rule relied on by AMCO was superseded and Kejbou was an agent of AMCO because he was an appointed insurance producer of AMCO. The Court need not decide the question of whether Kejbou was acting as an agent of the Plaintiff or as an agent of AMCO because regardless of Kejbou's status the Plaintiff cannot establish mutual mistake of fact.

[31] Def's Motion, Exh 3, Kejbou Dep, pp 94-95, 67.

of Roye Investment.[32] Roye states in his affidavit that he requested that the interests of Roye Investment be insured and "Kejbou Agency agreed to issue the insurance on the building as instructed."[33]

Regardless of whether Roye directed that the Plaintiff be insured, the Plaintiff cannot claim that Roye was under the mistaken belief that the Plaintiff *was* a named insured under the Policy where it was not named in the Application for Insurance signed by Roye and where the Policy itself does not list Roye Investment as a named insured. The Court of Appeals has found:

> It is well established that an insured is obligated to read his or her insurance policy and raise any questions about the coverage within a reasonable time after the policy is issued. Consistent with this obligation, if the insured has not read the policy he or she is nevertheless charged with knowledge of the terms and conditions of the insurance policy.[34] [*Casey*, 273 Mich App at 394-395 (2006).]

In the present case, the Application for Insurance signed by Roye lists as "Named Insureds" Generation Mobile Preferred and the retail locations.[35] The Application does not include Roye Investment as a "Named Insured."[36] Consistent with the Application,

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[32] *Id.* p 53.

[33] Pl's Response, Exh 7, Frank Roye Affidavit, ¶¶ 4-5.

[34] There is an exception to this rule where the insurer renews the insurance policy but does not provide notification of a reduction in coverage. *Casey*, 273 Mich App at 395. This exception is not applicable in this case.

[35] Def's Motion, Exh 8, Insurance Application.

[36] *Id.*

the "Named Insured" on the Policy is "Generation Mobile Preferred LLC" with the retail locations as additional named insureds. Again, Roye Investment is not a named insured.

Roye states in his affidavit that "AMCO never sent a copy of the insurance policy to [Roye Investments]."[37] However, AMCO has presented evidence that a copy of the Policy was emailed to Roye *himself* on September 21, 2016 and that Roye responded by raising concerns that the Policy did not list all of the retail locations, but did not mention the absence of Roye Investments as a named insured.[38] Roye's failure to notify the Defendant of the alleged discrepancy between the Policy and his belief that Roye Investment was a named insured prevents reformation of the Policy based upon mutual mistake. [39] See *Casey*, 273 Mich App at 398-399; *McPeek v Allstate Vehicle*, 331 F Supp 3d 750, 756-757 (ED Mich, 2018) citing *Casey*, 273 Mich App at 398-399.

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[37] Pl's Response, Exh 7, Roye Affidavit, ¶ 12.

[38] Def's Motion, Exh 9. The Plaintiff does not dispute the authenticity of this email. Additionally, Roye was also informed by Kejbou in September 2017, well before the alleged loss, that Generation Mobile Preferred and not Roye Investment was the Named Insured under the Policy. *Id.*, Exh 13, September 22, 2017 Email.

[39] As was noted, reformation is also available where there is a mistake on one side and fraud on the other. *Casey v Auto Owners Ins Co*, 273 Mich App 388, 398 (2006). The Plaintiff states that there are "only two possible explanations for the omission of [Roye Investment] from policy coverage" The first is a mutual mistake in AMCO's paperwork that did not reflect Roye Investment's insured status. The second is that "[Kejbou] make a material misrepresentation to Mr. Roye by promising that [Roye Investment] would be covered under the policy." Pl's Response, p 15 (approximated - as the Plaintiff's Response does not bother to include page numbers.) To the extent that the Plaintiff is seeking reformation based upon a unilateral mistake and fraud, this argument falls. First, the above-quoted passage from the Plaintiff's Response is the sum total if its argument on fraud. The Plaintiff cites no legal authority or evidence from the record to support a claim of fraudulent misrepresentation. This Court need not conduct the Plaintiff's research and act as its advocate to find authority to justify its bald assertion. *Walters v Nadell,* 481 Mich 377, 388 (2008). Because the Plaintiff has failed to cite any authority to support their argument and explain its argument, the argument is deemed abandoned. See, e.g., *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959); *Houghton v Keller*, 256 Mich App 336, 339-340 (2003); *People v Odom*, 327 Mich App 297, 311 (2019); MCR 2.119(A)(2). Moreover, under MCR 2.112(B)(1) there is a heightened pleading standard for fraud claims requiring that "the circumstances constituting fraud . . . must be stated with particularity." *State ex rel. Gurganus v CVS Caremark Corp*, 496 Mich 45, 63 (2014). Because the First Amended Complaint actually makes no allegations of fraud, it fails to meet this standard.

B

The Plaintiff has not supported its assertion that the insurance agent, Kejbou had authority to bind AMCO to an agreement outside of the terms of the Policy or that AMCO "ratified" any such agreement between Kejbou, and the Plaintiff

The Plaintiff argues that Kejbou, as agent of AMCO, agreed to provide coverage to the Plaintiff and that AMCO "ratified" this alleged agreement. As such, the Plaintiff argues that AMCO is bound to provide coverage despite the fact that the Plaintiff is not a named insured under the Policy. This argument fails.

"[I]t [is] incumbent upon the [party] who relied on the alleged agency to show what authority [the agent] actually had." *Selected Investments Co v Brown*, 288 Mich 383, 388 (1939). Assuming, without deciding, that Kejbou was acting as AMCO's agent, the Plaintiff cannot support any claim that Kejbou had authority to bind AMCO to any agreement to provide coverage outside of that sought in the Application for Insurance or provided for in the Policy.[40]

The Plaintiff asserts that the Independent Agency Agreement (the "Agency Agreement") between Kejbou and AMCO "granted Kejbou Agency the express authority to solicit applications for insurance, deliver and sign insurance policies and endorsements, collect premiums and bind AMCO insurance company to coverage."[41] Contrary to the Plaintiff's representations, the language under the heading

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[40] Again, the Court need not decide Kejbou's status as either an agent of the insured or the insurer to resolve this issue. *See* footnote 30, *infra.*

[41] Pl's Response, p 4 (approximated as the Plaintiff's Response does not include page numbers.)

"Appointment and Authority" in the Agency Agreement relied upon by the Plaintiff does not broadly authorize the agency to "bind" AMCO to coverage.[42] Moreover, nothing in the portion of the Agency Agreement relied on by the Plaintiff permits the Kejbou Agency to make extraneous contracts which bind AMCO to provide coverage not applied for and not included in the Policy.[43]

The Plaintiff's argument that even if the alleged agreement between Kejbou and Roye was outside of the scope of Kejbou's authority, such agreement was "ratified" by AMCO also fails. When an agent exceeds his authority "the act of the agent still may bind the principal if he ratifies it." *David v Serges*, 373 Mich 442, 443-444 (1964). "Ratification is

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[42] *Id.*, Exhibit 6, Independent Agency Agreement, filed under Seal.

[43] The Plaintiff argues that two certificates of insurance issued by the Kejbou Agency, one issued on October 16, 2017 and one issued on January 23, 2019, demonstrate AMCO agreed to insure it under the Policy. Both certificates list Generation Mobile Preferred as the "Insured" and list Roye Investment as an additional insured. See Pl's Response, Exhs 9 and 10. These certificates were issued by the agency, apparently in error. See Def's Motion, Exh 3, Kejbou Deposition, pp 44, 63-64, 123. The Plaintiff cannot rely on the certificates to establish coverage under the Policy where both certificates explicitly state:

> THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.
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> THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. . . .[Pl's Response, Exhs 9 and 10.]

Thus, while the certificates list Roye Investment, the certificates did not obligate AMCO to provide coverage to Roye Investment because "the certificate, in and of itself could not alter the terms and conditions" of the Policy. *Auto-Owners Ins Co v Ryder Truck Rental*, unpublished per curiam opinion of the Court of Appeals, issued Feb 8, 2002 (Docket No. 222114), p 5 citing *West American Ins Co v Meridian Mutual Ins Co*, 230 Mich App 305, 311 (1998).

the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him." *Id.* "Unauthorized acts of an agent are ratified if the principal accepts the benefit of the unauthorized acts *with knowledge of the material facts*." *Bruno v Zwirkoski*, 124 Mich App 664, 668 (1983) (emphasis added).

In the instant case, the Plaintiff argues that AMCO "ratified" the alleged agreement that Roye Investment would be covered under the Policy by renewing the policy and charging a premium to cover Roye Investment's ownership interest. However, the Plaintiff does not explain how renewing coverage under the Policy constitutes an "affirmance" of an agreement to provide coverage outside of the Policy. Additionally, the premiums on the Policy were paid by Generation Mobile Preferred.[44] Moreover, the Plaintiff has presented nothing to indicate that AMCO had any knowledge of the alleged agreement between Kejbou and Roye that Roye Investment would be a named insured contrary to the terms of the Policy. The Plaintiff's claim that AMCO is bound by any agreement to provide coverage outside of the Policy fails.

[44] Def's Motion, Exh 3, Deposition of Kejbou, pp 117-118.

ORDER

Based on the foregoing Opinion, the Defendant's Motion for Summary Disposition under MCR 2.116(C)(10) is GRANTED and the Plaintiff' request for judgment in its favor under MCR 2.116(I)(2) is DENIED.

This Order resolves the last pending claim and closes the case.