

Insurers Should Re-Examine Additional Insured Liability Coverage Wording in Light of BP Oil Spill Decision

March 20, 2013

What you need to know:

The US Court of Appeals for the Fifth Circuit ruled that the insurance policy, rather than the indemnity provision of an underlying service contract, determined whether BP was an additional insured for pollution-related liabilities stemming from the Deepwater Horizon oil spill.

What you need to do:

Insurance companies should consider drafting narrow additional insured wording to limit the scope of additional insured coverage under their policies.

Background

Transocean Holdings, Inc. and BP America Production Company entered into a drilling contract for exploratory drilling at the Macondo Well in the Gulf of Mexico. The drilling contract required that Transocean maintain insurance for the operations to be performed under the contract, and that BP be named as an additional insured under Transocean's insurance policies. The contract further provided that Transocean would indemnify BP for liability for pollution "originating on or above the surface of the land or water." Transocean's insurance policies defined "Insured" as any entity to whom the Insured is obliged by an Insured Contract to provide insurance. They defined "Insured Contract" as any contract "entered into by the 'Insured' . . . and pertaining to business under which the 'Insured' assumes the tort liability of another party to pay for . . . 'Property Damage' . . . to a 'Third Party.'"

In April 2010, Transocean's Deepwater Horizon off-shore drilling platform exploded and sank, spilling millions of gallons of oil into the Gulf of Mexico. Transocean's insurers sought a declaratory judgment that they had no additional insured obligations to BP for pollution claims arising from the incident. The federal trial court granted judgment for the insurers. It concluded that Transocean was required to name BP as an insured *only* for liabilities Transocean assumed under the drilling contract, that Transocean did not assume liabilities for spills originating below the surface of water, and therefore that BP was not an additional insured. The Fifth Circuit Court of Appeals reversed. See *In re Deepwater Horizon*, No. 12-30230, 2013 U.S. App. LEXIS 4512 (5th Cir. Mar. 1, 2013).

The Court's Ruling

The Fifth Circuit held that:

- Under Texas law, courts look to the terms of the insurance policy itself, rather than the indemnity agreement in the underlying service contract, to determine the scope of additional insured coverage. The court concluded that the policy itself did not contain any limitations on additional insured coverage nor incorporate any limits from the underlying drilling contract, as long as the insurance provision and the indemnity provision in the drilling contract were separate and independent.

- The court held that the additional insured provision and the indemnity provision in the drilling contract were separate and independent. The drilling contract required that Transocean obtain coverage for its contractual liabilities, and a separate provision required Transocean to name BP as an additional insured. The court concluded that the provision extending direct insured status to BP was separate and independent from BP's agreement to forego contractual indemnity in various other circumstances.
- The court accordingly held that BP was entitled to coverage under the Transocean policies because the policies imposed no limitation on the extent to which BP was an additional insured, and because the additional insured provision was separate from and additional to the indemnity provision in the drilling contract.

Conclusion

The Fifth Circuit held that, under Texas law, an additional insured provision in an insurance contract is not modified by indemnity provisions in underlying service contracts if the indemnity and additional insured provisions in the underlying contract are separate and distinct, unless the insurance policy's additional insured clause incorporates such limitations. The court concluded that the additional insured provisions in Transocean's policies were not limited to circumstances involving those liabilities that Transocean expressly assumed under the drilling contract, and therefore BP was an additional insured.

If you have questions about the subject matter of this Alert, please contact your lawyer at Choate or one of the following partners:

David A. Attisani	617-248-5271		dattisani@choate.com
Mark D. Cahill	617-248-5033		mcahill@choate.com
Robert A. Kole	617-248-2121		rkole@choate.com
Peter B. Moores	617-248-4089		pmoores@choate.com
John A. Nadas	617-248-5156		jnadas@choate.com
A. Hugh Scott	617-248-5250		hscott@choate.com
Ethan V. Torrey	617-248-4792		etorrey@choate.com

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