

THOUGHT LEADERSHIP

News

FIFTH CIRCUIT PANEL REJECTS ARGUMENT THAT INSURED'S CLIENT IS IMPLICITLY COVERED AS ADDITIONAL INSURED UNDER POLICY

Newsbrief

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In an appeal of a maritime-insurance dispute between the owner of a large fleet of vessels, a ship repair company, and the repair company's insurer, the Fifth Circuit held last week that the repair company had agreed to defend, indemnify, and procure insurance for the fleet owner, but that the fleet owner was not covered by the policy at issue. *One Beacon Ins. Co. v. Crowley Marine Svcs., Inc.*, — F.3d —, 2011 WL 3195292 (5th Cir. July 28, 2011), arose out of indemnity demands raised by the fleet owner, Crowley Marine Services, following a workplace injury lawsuit by the employee of a subcontractor of the repair company, Tubal-Cain Marine Services, brought against both Crowley and Tubal-Cain. The appellate court's opinion focuses primarily on the dispute between Crowley and Tubal-Cain, in which Crowley contended that the repair service order ("RSO") that it sent to Tubal-Cain incorporated certain language maintained at Crowley's website that purportedly required Tubal-Cain to obtain certain insurance, and to name Crowley as an additional insured. Tubal-Cain's attorney did not review the on-line material, and Tubal-Cain did not obtain the necessary insurance. Crowley also claimed that Tubal-Cain's Marine Comprehensive Liability Policy with One Beacon Insurance Company implicitly covered Crowley as an additional insured, even though Tubal-Cain did not procure coverage explicitly naming Crowley. The trial court found in favor of Crowley in its claims against Tubal-Cain, but found that the One Beacon policy did not cover Crowley as an additional insured.

The Court of Appeals affirmed the trial court in all respects. In a thorough opinion, Circuit Judge Carolyn King explained that even though the RSO did not give precise instructions how to find the on-line terms and conditions, and even though the terms and conditions "were displayed in approximately four-point font," the course of dealing between Tubal-Cain and Crowley and the incorporation language in the RSO rendered the terms and conditions binding on Tubal-Cain. Thus, Tubal-Cain was required to defend and indemnify Crowley.

Crowley was not, however, entitled to coverage under Tubal-Cain's insurance policy with One Beacon. The trial court held that an oral agreement between Tubal-Cain and Crowley, the RSO, and a later invoice sent by Tubal-Cain together formed an "insurable contract" under the policy. However, the trial court further found that Crowley was not specifically named as an additional insured anywhere in the policy, and therefore that Crowley was not entitled to additional insured coverage. The Court of Appeals rejected Crowley's argument that the policy implicitly included Crowley as a named insured because Crowley was a party to an "insurable contract." The Court therefore did not reach One Beacon's alternative argument on appeal that the agreements between Crowley and Tubal-Cain did not

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constitute an insurable contract.