

THOUGHT LEADERSHIP

News

LLOYD'S POLICY LIMITS INDEMNIFICATION AVAILABLE TO ADDITIONAL ASSURED

Newsbrief

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Houston's First Court of Appeals recently brought an end to a tortured coverage dispute that had been to Maine, the UK, and then Texas. The Court of Appeals was tasked with unraveling the various lawsuits, a Lloyd's policy, and contractual indemnification provisions to determine if the insurers had breached the insurance policy. In *Offshore Recruiting Services, Inc. v. New Hampshire Ins. Co.*, 2011 WL 6938531 (Tex.App.—Houston [1st Dist.], Dec. 29, 2011), the underlying claim arose during an offshore construction project from an accident that occurred injuring two people and killing a third. Petrodrill, which managed the construction and commissioning of six offshore oil drilling units, entered into an agreement with Offshore for Offshore to provide Petrodrill with personnel for a Petrodrill-managed semi-submersible drilling vessel construction project. The Personnel Agreement required Offshore to maintain with Lombard Canada Limited an "Employers Liability Insurance" policy, and it required Offshore and Petrodrill to "indemnify, defend, and hold the other harmless from and against any and all claims, losses, costs, damages and expenses ... in respect of injury to ... or death of any person employed by itself or its other contractors or subcontractors ... arising out of or in connection with" the Personnel Agreement.

The injured workers and the estate of the deceased worker sued Petrodrill, and it requested that Offshore, pursuant to the indemnity provision in the Personnel Agreement, defend it against the workers' claims. Offshore refused, and Petrodrill, after it later settled the workers' claims for \$912,000, sued Offshore in a Maine court for indemnification for the settlement amounts and its legal expenses. Offshore challenged the jurisdiction of the Maine court, contending that Petrodrill's claim was subject to arbitration, and Petrodrill submitted its indemnification claim to arbitration in England. Petrodrill won the arbitration; the arbitrator issued a detailed award order, concluding that Petrodrill was entitled to indemnification for the settlement amounts pursuant to the indemnity provision in the Personnel Agreement. After the entry of the arbitration award, Offshore sent the London Insurers a letter demanding that they defend and indemnify it against the claims made by Petrodrill in the arbitration on the basis that Offshore was an "additional insured" under the London Policy. Offshore filed the Texas suit against the London Insurers alleging they had breached the London Policy by bringing, through Petrodrill, the arbitration proceeding against it for indemnification of the settlement amounts.

The court upheld a summary judgment for the insurers. The court rejected Offshore's argument that the policy language was ambiguous and it followed general rules of construction to apply the policy's limitations on the insurer's obligations to indemnify "additional assureds." The court also noted that Offshore's anti-subrogation claim,

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which was the basis for its breach of contract, is typically an affirmative defense under Texas law.