

THOUGHT LEADERSHIP

News

COVERAGE FOR ADDITIONAL INSURED IS DETERMINED BY POLICY TERMS, NOT INDEMNITY AGREEMENT IN SERVICE CONTRACT

Newsbrief

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Applying Texas law, the Fifth Circuit recently concluded that when a service provider agrees to secure insurance for an additional insured and, to indemnify them for certain claims, the terms of the insurance policy determine the insurer's obligations which may not be limited to those stated in the indemnity provision. In *In re Deepwater Horizon v. Transocean Offshore Deepwater Drilling, Inc.* 2013 WL 776354 (5th Cir. La. March 1, 2013), the drilling unit owner, Transocean, agreed to name the oil company, BP, as an additional insured under their insurance policies providing a combined \$750,000,000 in coverage. In the service contract, Transocean also agreed to indemnify BP for certain liabilities, which did not include pollution related liabilities for below surface oil spills. After the Deepwater Horizon oil spill in the Gulf of Mexico, BP sought insurance coverage from Transocean's insurers. The district court concluded that the insurers had no obligation to provide coverage to BP with respect to the pollution claims and this appeal followed.

The Fifth Circuit reviewed Texas law interpreting insurance contracts and cases addressing additional insured status and the impact of indemnity provisions. The court observed that "BP is not seeking indemnity from Transocean, but is seeking coverage from the insurers." The court also noted that "where an additional insured provision is separate from and additional to an indemnity provision, the scope of the insurance requirement is not limited by the indemnity clause." After finding that the insurance provisions and the indemnity clauses were separate and independent, the court held that BP was entitled to coverage as an additional insured under the Transocean policies, and that coverage was not limited by the indemnity provision in the contract between BP and Transocean. The district court's decision was reversed and the case remanded for entry of judgment.