

THOUGHT LEADERSHIP

News

HOUSTON COVERAGE TEAM WINS SUMMARY JUDGMENT ON “IMPAIRED PROPERTY” EXCLUSION

Newsbrief

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MDJ&W’s Houston coverage team won summary judgment last Tuesday in favor of a major carrier in a commercial lawsuit involving a liability carrier’s duty to defend and indemnify its insured. In this case, *U.S. Metals, Inc. v. Liberty Mutual Group, Inc.*, No. 4:12-CV-00379 (S. D. Texas, July 2, 2013), the policyholder, U.S. Metals, sued Liberty Mutual after Liberty Mutual refused to defend and indemnify the policyholder against a suit brought by Exxon.

Exxon’s suit against U.S. Metals alleged that a number of flanges it purchased from U.S. Metals were defective, and Exxon incurred extensive costs to remove the flanges from two of its refineries and replace them with new flanges, including lost income due to shutting down the two refineries. Liberty Mutual contended Exxon’s petition did not allege “property damage,” the claimed damages were excluded by the policy’s “Your Product” exclusion, and the claimed damages were excluded by the policy’s “Impaired Property” exclusion.

Last week, the court agreed with Liberty Mutual holding the “Impaired Property” exclusion barred coverage for the shutdown of the entire undamaged refinery necessary to remove and replace the defective flanges. The court also held because the defects in the flanges were discovered during testing before the refinery was brought online, they were not a “sudden and accidental failure” occurring after the product had been put to its intended use, and did not bring the claim within any exception to the “Impaired Property” exclusion. Finally, the court held although some damage was done to parts of the surrounding refinery equipment in order to remove and replace the flanges, this did not take the scenario outside the scope of the “Impaired Property” exclusion because the flanges themselves did not cause any damage. Instead, the damage was caused entirely by the process of removing and replacing them.

Last but not least, the court also granted summary judgment on all of the insured’s extra-contractual claims because it found there was no coverage for the claim, thus no breach of contract, and therefore Liberty Mutual’s conduct in denying the claim did not violate any statutory provisions of the Texas Insurance Code. In making this holding, the court confirmed that in the third-party context, “bad faith” and its statutory equivalent under insurance Code Chapter 541 are analogous to and co-extensive with the *Stowers* duties owed by the carrier to the insured.

Editor’s Note: Congratulations to Chris Martin and Todd Lonergan of MDJW as well as the litigation and coverage groups at Liberty Mutual for their collective work which led to this win.