THOUGHT LEADERSHIP

News

SOUTHERN DISTRICT OF TEXAS FINDS IN FAVOR OF INSURER'S CALCULATION AND APPLICATION OF COMMERCIAL GENERAL LIABILITY POLICY'S DEDUCTIBLE

Newsbrief
27 APR 2015

Federal District Judge Gray Miller for the Houston Division of the Southern District of Texas ruled in favor of an insurer's interpretation of a commercial general liability policy's calculation of a deductible for damages to various oil and gas properties resulting from Hurricane Ike. In *Saratoga Res., Inc. v. Am. Intern. Group., Inc.*, 2015 WL 1602130 (S. D. Tex. Apr. 9, 2015), the insured made a claim for $3,085,047 in damages. After deducting damages the adjuster determined were not related to Hurricane Ike and $912,500 for the policy deductible, the insurer paid $2,001,191. The insured disagreed with the manner the deductible was calculated, and asserted the deductible should be $400,000, not $912,500. The insured filed this lawsuit seeking a declaratory judgment that its interpretation of the policy's terms relating to the deductible are correct and the insurer breached the policy because it did not tender the complete amount due under the policy. The insurer filed a cross-motion for summary judgment.

The insurer interpreted the deductible provision as unambiguously requiring the insured to pay 5% of the total insurable values of each damaged property, added together, which it calculated to total $912,500. The insured contended the policy unambiguously prohibited any deduction exceeding the "largest applicable deductible" and that the deductible should be calculated to be 5% of the value of the property with the highest total insured value, which is valued at $8,000,000. Five percent of $8,000,000 leaves a deductible of $400,000.

The court determined that the deductible calculation under the Policy was not ambiguous. Judge Miller noted that the parties agreed that Hurricane Ike quailed as a "named windstorm" therefore "[e]ach claim for loss or damage" was "subject to a per occurrence retention amount" of "5% of Total Insurable Values at the time and place of loss, subject to a minimum of $250,000 any one occurrence." The court concluded the insured's interpretation that 5% of the insurable value of each damaged property is a "deductible amount" and that the total deductible cannot exceed 5% of the highest valued property was not reasonable. The preceding paragraph in the policy indicated that one must consider the "total insurable values." If the phrase "two or more deductible amounts" in the next paragraph means taking 5% of two or more properties to arrive at two or more deductible amounts, the use of the word "total" in the phrase "total insurable values" would have no meaning. There also would be no reason to use the plural noun "values." Judge Miller reiterated courts must "examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless."

The court concluded a reasonable interpretation which takes the entire writing into account is that "5% of total insurable values" means a 5% of the total, or sum, of the insurable values of each damaged property. The term "total insurable values" contains the word "total" and it is a plural phrase, both of which indicate that more than one value is included. Judge Miller determined if the phrase is interpreted this way, it does not conflict with the next paragraph, which provides instruction when "two or more deductible amounts" apply, because a plain reading of this section indicates that different types of deductibles may apply, as opposed to different deductibles for each property. The deductible is calculated by adding the insurable values of each damaged property and taking 5% of the total. Accordingly, the court denied the insureds' motion for summary judgment and granted the insurer's cross-motion for summary judgment.