

THOUGHT LEADERSHIP

News

BURDEN TO PROVE PROPERTY DAMAGE NOT SATISFIED BY LAW OF THE CASE DOCTRINE

Newsbrief

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In *American Home Assur. Co. v. Oceaneering Int'l, Inc.*, 2015 WL 1881911 (5th Cir. April 27, 2015) (*per curiam*), Chevron hired Aker Maritime, Inc. to provide design and engineering services for the construction of a “riser system” that attaches a floating spar to the ocean floor as part of an off shore oil production facility. A stability problem plagued the riser system, and eventually resulted in a crack in the spar’s hull. Oceaneering International, Inc. repaired the hull, and Chevron put Aker in charge of designing a permanent fix. Aker ordered bolts from Lone Star as part of the fix, but Lone Star substituted the wrong bolts for the right ones. Oceaneering unknowingly accepted the wrong bolts. The bolts later failed. Chevron later sued Oceaneering, and obtained a judgment based on an appellate court’s statement that the defective bolts damaged other property, the spar.

In the subsequent coverage suit, American Home Assurance denied coverage under its Commercial General Liability policy because there was no “physical injury to tangible property, including all resulting loss of use of that property,” and for the sistership exclusion. The district court granted American Home a summary judgment based on the sistership exclusion. On appeal, the Fifth Circuit decided not to reach that issue. The Fifth Circuit held that Oceaneering failed to “carry its burden of establishing ‘property damage’ as required by the Policy” in order to trigger a duty to indemnify. The Court examined the prior opinion’s conclusion that the bolts caused damage to other property, and the 5th Circuit concluded it was not binding in this separate coverage action through the law of the case doctrine because that prior statement was in a separate proceeding, rather than a subsequent stage of the same proceeding. The law of the case doctrine requires a prior finding to be in a later stage of the same proceeding. Additionally, the prior finding was not addressing “physical injury to tangible property” under the Policy, but rather was a technical interpretation of whether or not there was damage under a statute for recovery of Redhibition.