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FIFTH CIRCUIT APPLIES DEEPWATER HORIZON ANALYSIS TO COMMON OILFIELD LIABILITY POLICY DISPUTE

Newsbrief
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A common requirement in contracts between oilfield production companies is an agreement to obtain insurance to cover another company's liabilities. In *Ironshore Specialty Ins. Co. v. Aspen Underwriting, Ltd.,* No. 13-51027, 2015 WL 3621857 (5th Cir. June 10, 2015), a fire at a Texas oil well owned by Endeavor Energy Resources killed two men employed by Basic Energy Services and set the case between the insurers of the involved entities in motion. Endeavor and Basic entered into a contract containing an indemnity provision in which they agreed to cover any liability resulting from claims brought by their own employees, even if the other party was at fault. They each agreed to obtain at least $5 million of insurance that would cover claims asserted by their own employees against the other party. The policies Basic obtained did not expressly limit the coverage for additional insureds like Endeavor to this $5 million.

Endeavor's excess insurer, Ironshore Specialty Insurance Corporation, brought this case against Basic's excess insurers for a declaratory judgment. Ironshore contended that Basic's insurers are obligated to provide coverage up to the full limits of their policies because the policies do not expressly limit the coverage available to an additional insured like Endeavor. Defendants contended that the insurance policies incorporate a $5 million limit because the policies specifically reference the contract.

The Court began with a reference to *Deepwater Horizon* that its analysis: "necessarily begins with the four corners of the policies," not the service contract. *See Deepwater Horizon*, 2015 WL 674744, at *5 (citing *Evanston Ins. Co. v. ATOFINA Petrochems., Inc.*, 256 S.W.3d 660, 664 (Tex.2008)). The Court recognized that Texas courts "will not hesitate to award coverage beyond that contemplated by a service contract when the "terms of the ... policy itself" do not impose the same limits as the service contract. *See, e.g., ATOFINA,* 256 S.W.3d at 664. Thus finding if there is no limit to the coverage in the policies it is "irrelevant" that the underlying contract contemplated a $5 million limit. The policy at issue made Endeavor an insured only because of contractual obligations (an "insured contract" clause).

Relying on the "insured contract" finding in the *Deepwater Horizon* case, and making an "*Erie* guess" the Court concluded because the provision at issue was almost identical to the one in *Deepwater Horizon* and Basic was only "obliged" to procure $5 Million in insurance, the limit of coverage is therefore $5 million.