

THOUGHT LEADERSHIP

News

FEDERAL COURT APPLIES DEEPWATER HORIZON TO GRANT SUMMARY JUDGMENT FOR CARRIER IN AN ADDITIONAL INSURED COVERAGE DISPUTE

Newsbrief

25 NOV 2015

Last Wednesday, a south Texas federal court granted summary judgment in favor of a commercial liability insurer in an additional insured coverage dispute. In *Miramar Petroleum, Inc. v. First Liberty Ins. Corp.*, No. V-15-0028, 2015 WL 7301096 (S.D. Tex. Nov. 18, 2015), Miramar hired Nicklos Drilling Company to work on an oil well. The contract required Nicklos to indemnify Miramar for certain types of claims and also to provide insurance to Miramar covering that same set of claims. Nicklos assumed liability for damage to the surface equipment, while Miramar assumed liability for the in-hole equipment. Nicklos bought liability insurance from First Liberty, which included a blanket additional insured endorsement. The endorsement expressly stated it applied only to the extent required by written contract with the additional insured.

The well blew out, and Miramar sued Nicklos and others for damages associated with the blowout. Nicklos filed a counterclaim against Miramar for non-payment for its drilling services as well as the damage to its in-hole equipment. Miramar tendered Nicklos' counterclaims to First Liberty and demanded a defense as an additional insured under the First Liberty policy. First Liberty contended it was not obligated to defend Miramar against a counterclaim by its own named insured.

To answer the question of whether Miramar was entitled to additional insured status under the First Liberty policy for the counterclaims, the district court applied the Texas Supreme Court's opinion from earlier this year in *In re Deepwater Horizon*. *Deepwater Horizon* affirmed that if the insurance policy refers to the contract between the named insured and additional insured to determine the extent of additional insured coverage, then the policy and the contract are "inexorably linked" and the contract controls the scope of coverage provided by the policy.

The court therefore examined the drilling contract and the scope of the indemnity obligations assumed by Nicklos. It found Nicklos only assumed responsibility for three clearly delineated types of claims, and none of them were claims for damage to in-hole equipment or claims for payment for services. Therefore, First Liberty had no obligation to defend Miramar against any of the claims asserted by Nicklos.

FEDERAL COURT APPLIES DEEPWATER HORIZON TO GRANT SUMMARY JUDGMENT FOR CARRIER IN AN ADDITIONAL INSURED COVERAGE DISPUTE

This case provides a good example of how courts are applying *Deepwater Horizon* to resolve additional insured coverage disputes. Blanket additional insured endorsements which expressly limit the additional insured coverage to the minimum required by contract are now very common in the industry, and this case is an object lesson in how to parse them. This situation could also have been resolved with less uncertainty by including a Cross Suits endorsement on the policy, which excludes claims brought by any insured against any other insured.