

## Texas Justices Take Up Anadarko's \$100M Coverage Battle

By Jeff Sistrunk

*Law360 (June 1, 2018, 8:03 PM EDT)* -- The Texas Supreme Court agreed Friday to review a lower court's holding that Anadarko Petroleum Corp. is not entitled to coverage by Lloyd's of London underwriters for any of the over \$100 million it has spent defending against claims stemming from the 2010 Deepwater Horizon explosion and oil spill.

In a brief notice, the Texas justices indicated they had granted Anadarko's petition for review in the long-running coverage dispute. The oil and gas explorer, which was a minority partner in the offshore well where the blowout occurred, is seeking to upend a November 2016 decision by a Texas Court of Appeals panel in Beaumont that absolved the underwriters of any duty to cover Anadarko's whopping defense bill.

The crux of the panel's opinion was the finding that defense costs constitute a "liability" under Anadarko's policy. That determination triggered the application of a policy provision that capped the underwriters' overall limits for Anadarko's liabilities arising out of any joint venture operations. Since the underwriters had already paid that entire sum to Anadarko, they are not obligated to pay the company's defense costs, the panel held.

Noting the prevalence of joint venture provisions like the one in its policy, Anadarko has said in filings with the Texas Supreme Court that the appellate panel's decision "will wreak havoc in construing liability insurance policies and also in construing statutes that depend upon what liability is insured under a liability insurance policy."

"The Beaumont court erroneously holds that defense costs constitute a 'liability' insured in a liability insurance policy, even though the 'liability' insured in such policies is the insured's liability to third parties imposed by law for damages for bodily injury and property damage," Anadarko's attorneys wrote in an opening merits brief. "That erroneous holding will have far-reaching consequences because the insuring language in the Lloyd's policy here ... is virtually identical to standard insuring language used for many decades in all manner of liability insurance policies used in Texas and across the country."

The Lloyd's underwriters, meanwhile, have asserted that Anadarko's interpretation of the relevant language is unreasonable and would require the Texas high court to rewrite the policy.

Anadarko once held a 25 percent working interest in the Macondo offshore well in the Gulf of Mexico as part of a joint venture with BP PLC and an entity called MOEX Offshore 2007 LLC, according to court

papers. In April 2010, the well experienced a catastrophic blowout that destroyed the Deepwater Horizon drilling rig, killing 11 workers and causing a massive oil spill that took months to contain.

The disaster led to a litany of government and private civil actions against Anadarko, BP and others. In February 2012, for instance, the court overseeing the Deepwater Horizon multidistrict litigation found that BP and Anadarko were jointly and severally liable under the Oil Pollution Act of 1990 for remediation costs and damages tied to subsurface pollution, according to court records.

At the time of the incident, Anadarko held an “energy package” policy with the Lloyd’s underwriters that included, among other things, \$150 million in excess liability coverage, according to court documents. The policy’s joint venture clause provided that for Anadarko’s liabilities relating to joint venture operations, total coverage would be limited to Anadarko’s percentage interest in the venture times the \$150 million cap — here, \$37.5 million, court papers say.

According to court documents, the Lloyd’s underwriters agreed to pay Anadarko the \$37.5 million limit established under the joint venture provision to cover various claims, but that payment did not resolve the issue of coverage for the energy company’s defense costs. As a result, Anadarko launched the current suit against the underwriters in Texas state court in August 2012.

That court ruled that Anadarko’s defense expenses are a liability subject to the joint venture provision, but that an exception to the clause’s coverage limitations applied because Anadarko had been found jointly and severally liable with BP for OPA remediation costs and damages. Under the lower court’s ruling, Anadarko was permitted to recover all its defense costs up to the overall, \$150 million limit, minus the \$37.5 million the underwriters had already paid.

But the Beaumont appellate panel disagreed, finding that no exceptions to the joint venture provision apply and that Anadarko therefore cannot recover any of its defense costs.

In its filings with the Texas high court, Anadarko argued that aside from erroneously deeming defense costs a liability, the appellate panel’s decision flouted numerous precedential decisions and foundational principles of policy interpretation.

“The victim here is not just Anadarko but also proper appellate review,” Anadarko’s attorneys wrote in the company’s initial brief.

The Lloyd’s underwriters countered in an answer brief that the panel’s decision applied a correct interpretation of the joint venture provision. Anadarko’s reading, meanwhile, would improperly result in two separate limits: a \$37.5 million limit for third-party liability claims and a \$150 million cap for defense expenses, the underwriters said.

“That absurd result contradicts the face of the policy, which provides a single limit,” the underwriters’ attorneys wrote.

Attorneys for Anadarko and for the underwriters did not immediately respond to requests for comment Friday.

Anadarko is represented by John D. Shugrue and Kevin B. Dreher of Reed Smith LLP and Marie R. Yeates, Michael A. Heidler, Zachary J. Howe of Vinson & Elkins LLP.

The Lloyd's underwriters are represented by Robert B. Dubose, Roger D. Townsend and Charles T. Frazier Jr. of Alexander Dubose Jefferson & Townsend LLP and J. Clifton Hall III, William P. Maines, George H. Lugin, IV Neil E. Giles and Jeffrey T. Bentch of Hall Maines Lugin PC.

The case is Anadarko Petroleum Corp. et al. v. Houston Casualty Co. et al., case number 16-1013, in the Supreme Court of the State of Texas.

--Editing by Edrienne Su.

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