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Texas High Court To Review Ruling In Gulf Oil Spill Coverage Dispute

Mealey's (June 4, 2018, 1:03 PM EDT) -- AUSTIN, Texas — The Texas high court on June 1 granted an insured's petition for review to determine if an exception to a policy's joint venture provision applies to provide coverage to an insured seeking coverage for damages incurred as a result of the Deepwater Horizon Oil Spill in the Gulf of Mexico (Anadarko Petroleum Corp., et al. v. Houston Casualty Co., et al., No. 16-1013, Texas Sup.).

(Notice available. Document #03-180606-010X.)

Houston Casualty Co., Allianz Global Corporate & Specialty AG, Clearwater Insurance Co., Hudson Insurance Co., Lancashire Insurance Company (UK) Limited, Navigators Insurance Co. and Underwriters at Lloyd's Syndicate Nos. 33, 457, 510, 609, 623, 958, 1036, 1084 (collectively, Underwriters) filed suit in the 284th District Court for Montgomery County, Texas, against their insureds, Anadarko Petroleum Corp. and Anadarko E&P Co. (collectively, Anadarko), seeking a declaratory judgment regarding coverage for defense costs incurred by Anadarko as a result of the Deepwater Horizon Oil Spill in the Gulf of Mexico.

Energy Package Policy

The Macondo Well was an exploratory well located offshore in the Gulf of Mexico. The Deepwater Horizon, a mobile offshore drilling vessel owned and operated by several Transocean Ltd. entities, drilled the Macondo Well.

Certain British Petroleum entities (collectively, BP), MOEX Offshore 2007 LLC and Anadarko entered into an offshore oil and gas lease with the United States for the continental shelf block in which the well was located. BP, MOEX and Anadarko entered into the Macondo Prospect Offshore Deepwater Operating Agreement. BP was the designated operator of the Macondo Well, while Anadarko and MOEX were nonoperators. Anadarko owned a 25 percent working interest the offshore lease.

Underwriters issued an energy package policy to Anadarko covering the period from June 30, 2009, to June 30, 2010. The policy provides excess liability insurance coverage and has a limit of liability of $150 million per occurrence if Anadarko owns 100 percent of the insured operation.

On April 20, 2010, BP and Transocean were completing temporary abandonment operations of the Macondo Well when the well experienced a blowout and the Deepwater Horizon drilling rig exploded, resulting in a discharge of oil into the Gulf of Mexico.

A number of lawsuits were filed as a result of the explosion and discharge, referred to as the Macondo incident. Most of the federal cases arising from the Macondo incident were consolidated into Multidistrict Litigation 2179. The United States filed suit against BP, MOEX, Transocean and Anadarko, seeking civil penalties under the Clean Water Act and a declaratory judgment of liability under the Oil Pollution Act of 1990 (OPA).

Disputes also arose between the defendants. BP filed a claim against Anadarko for costs

incurred by BP in connection with the Macondo incident. In October 2011, Anadarko entered into a settlement agreement with BP wherein Anadarko and BP mutually agreed to release all claims against each other. Anadarko agreed to pay BP $4 billion and to transfer its 25 percent interest in the offshore lease to BP. BP agreed to release Anadarko from all claims arising under the operating agreement and to indemnify Anadarko for all future liability, including damages or removal costs under the OPA.

Joint Liability

In February 2012, the MDL court granted the United States' request for a declaratory judgment finding that BP and Anadarko were jointly and severally liable under the OPA for removal costs and damages related to the subsurface discharge. The MDL court eventually found Anadarko liable to the United States for civil penalties under the Clean Water Act in the amount of $159.5 million.

Underwriters paid Anadarko $37.5 million under Section III of the policy. Anadarko then filed suit against Underwriters, seeking additional coverage from Underwriters under Section III of the policy for defense, investigation and adjustment costs and expenses paid by Anadarko arising out of the Macondo incident.

Underwriters moved for summary judgment, seeking dismissal of Anadarko's claims on the basis that it had already paid Anadarko for its costs and expenses.

Anadarko argued in its own motion for partial summary judgment that Underwriters are required to reimburse Anadarko's defense expenses up to the $150 million limit of Section III.

The trial court determined that the defense expenses are subject to scaling under the policy's joint venture provision. The trial court further found that the MDL court's judgment finding Anadarko jointly and severally liable for OPA removal costs triggered the second exception to the policy's joint venture provision.

2nd Exception

The second exception to the joint venture provision states that Underwriters' liability "increases in the event that Anadarko becomes legally liable in a court of competent jurisdiction for an amount greater than its proportionate interest in a Joint Venture." Therefore, the trial court said, "Underwriters' liability is equal to the combination of Anadarko's working interest percentage ownership and the additional percentage for which Anadarko becomes legally liable, up to the full limits of the Policy, without regard to any scaling of interest."

The parties filed cross-petitions for appeal of the trial court's order.

On Nov. 17, 2016, a Ninth District Texas Court of Appeals panel, consisting of Justices Steve McKeithen, Charles Kreger and Hollis Horton, first noted that the plain language of the joint venture provision supports the trial court's finding that defense expenses are subject to scaling.

However, the panel determined that the trial court erred in finding that the second exception to the policy's joint venture provision was triggered.

The panel explained that the MDL court's judgment finding Anadarko jointly and severally liable for OPA costs did not trigger the second exception the joint venture provision because the MDL court did not order Anadarko to pay any specific amount of OPA expenses. The second exception to the joint venture provision requires a monetary judgment that is an amount greater than the insured's proportionate ownership interest be

entered against the insured, the panel said.

"Nothing in the record before us shows that Anadarko has been ordered to pay any specific amount of OPA expenses in a judgment," the panel concluded.

Review Granted

Anadarko filed a petition for review in the Texas high court, arguing that review should be granted because "Anadarko's reasonable interpretation of the Policy presents the issue of what is the 'liability' insured in a liability policy — where the insuring language here is virtually identical to insuring language widely used for many decades in liability policies in Texas and across the country."

Anadarko maintained that the opinion is "bad for insurance law and 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."

In addition, Anadarko said the appellate court's opinion "represents a deviation from proper appellate review" because the appellate panel disregarded "the key rules of law laid down by this Court."

The high court granted the petition for review. A date for oral arguments has not yet been scheduled.

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

The insurers are represented by Robert B. Dubose and Roger D. Townsend of Alexander Dubose Jefferson & Townsend in Houston, Charles T. Frazier Jr., of the firm's Dallas office and J. Clifton Hall III, William P. Maines, George H. Lugrin IV, Neil E. Giles and Jeffrey T. Bentch of Hall Maines Lugrin in Houston.

(Additional documents available: Petition for review. Document #03-180606-011B. Response to petition. Document #03-180606-012B. Reply in support of petition. Document #03-180606-013B.)