

PUBLICATION

Transocean/BP Settlement Ends Texas Law Insurance Dispute: What Are the Possible Future Implications?

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A lesser known but interesting legal issue regarding the 2010 BP oil spill was whether an operator (BP) could recover insurance proceeds as an additional insured under its driller's (Transocean) insurance policies for sub-surface pollution. Following the BP oil spill, BP sought to access \$750 million for spill costs as an additional insured under Transocean's insurance policies. BP argued that, because the four corners of the insurance policies did not limit its status as an additional insured, the drilling contract could not supersede the policies despite the drilling contract's clear language that allocated all sub-surface pollution risk to BP.

Judge Carl Barbier of the United States District Court for the Eastern District of Louisiana ruled in favor of Transocean, determining that BP was not an "additional insured" for sub-surface pollution. The U.S. Fifth Circuit Court of Appeals reversed the district court and determined that Transocean's carriers could not deny coverage for pollution-related liabilities for a spill that would cost BP an estimated \$40 billion in fines, clean-up costs and settlements. The consequence of the reversal was that BP was given unlimited additional insured status under the policies. However, the Fifth Circuit later withdrew its opinion and asked the Texas Supreme Court to interpret the insurance contract. On February 17, 2015, the Texas Supreme Court ruled that BP had no rights to the insurance proceeds and was therefore not an unlimited additional insured. Analyzing the insurance policy in context of the "inextricably intertwined" drilling contract between BP and Transocean, the Texas Supreme Court found that the drilling contract made BP an additional insured. However, the drilling contract also defined the scope of BP's coverage. Because Transocean was not liable for sub-surface pollution under the drilling contract, Transocean had no obligation to insure BP against the risk. Therefore, the Texas Supreme Court held that BP assumed the risk for liability arising from sub-surface pollution and was not entitled to any of the insurance proceeds. BP subsequently requested a rehearing.

On May 20, 2015, before the Texas Supreme Court ruled on BP's request for rehearing, Transocean announced two separate settlement agreements with the Plaintiffs' Steering Committee and BP. In the Transocean/BP settlement, both parties agreed to mutually release all claims each had against the other, and BP agreed to discontinue its attempts to recover the insurance proceeds. On May 28, 2015, BP dismissed its request for rehearing before the Texas Supreme Court, thus bringing to a close another part of the massive oil spill litigation and ending the issue of an operator's coverage as an additional insured under a contractor's insurance policy.

This resolution may implicate changes in industry practice. Prior to the BP oil spill, many drilling contracts and master service agreements (MSAs), which included the naming of additional insureds, provided for the application of Texas law. The litigation over BP's claim that it was an unlimited additional insured caused uncertainty in the industry and marketplace, which led to operators and contractors selecting New York or maritime law as the operative law in drilling contracts and MSAs instead of Texas law. Thus, one possible outcome of the resolution between Transocean and BP is the restoration of Texas law as the preferred applicable law for new and renewed drilling contracts and MSAs.