

PUBLICATION

Deepwater Horizon Update: Fifth Circuit Rules in Favor of Cameron on Insurance Issues

Authors: Kenneth Marc Klemm

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The U.S. Court of Appeals for the Fifth Circuit recently issued an opinion ruling in favor of Cameron International Corporation and certifying a question to the Texas Supreme Court on issues arising out of an insurance dispute filed against Liberty Insurance Underwriters, Inc. In its ruling, the court considered several issues connected to Liberty's refusal to fund a settlement between Cameron and BP and Liberty's refusal to waive subrogation against BP.

The Fifth Circuit made the following findings and certified one issue as follows:

- The court held that Liberty erroneously interpreted an "other insurance" clause to include insurance obtained by Transocean. In general, Liberty argued that under the policy provisions, the Transocean policies should be considered as insurance available to Cameron by way of Transocean's contractual obligation to defend Cameron, and, until exhausted, Liberty had no obligation to pay under its policy issued to Cameron. The Fifth Circuit, however, disagreed and held the other insurance must actually, not potentially, apply to cover the claims for the "other insurance" clause to be applicable. Thus, the court held Liberty's interpretation of the "other insurance" clause to be unreasonable and ruled in favor of Cameron on this issue.
- The Fifth Circuit further considered Liberty's argument that Cameron forfeited its right to coverage by breaching the policy's subrogation clause through its settlement with BP. Again, the court ruled against Liberty, holding that because Liberty had interpreted the "other insurance" clause erroneously, it had breached the policy and waived its rights under the subrogation clause.
- Cameron also sought reversal of the district court's denial of an award of attorneys' fees against Liberty. In the district court's view, Cameron waived its right to claim attorneys' fees incurred in its suit against Liberty because it did not claim such an award in its summary judgment motion. The Fifth Circuit disagreed and held that Cameron properly moved for attorneys' fees under Rule 54 of the Federal Rules of Civil Procedure after obtaining a favorable ruling on its summary judgment motion. The appellate court, therefore, remanded the case to the district court for a determination of the amount of attorneys' fees to be awarded to Cameron.
- The final issue involved the question of whether Cameron should be entitled to damages under the Chapter 541 of the Texas Insurance Code when it suffered no actual damages other than denial of the policy benefits and attorneys' fees. In considering this issue, the court noted conflicting opinions, making the answer to this question less than clear. Hence, it certified the issue to the Texas Supreme Court for an interpretation of Chapter 541 and an answer to the question before it.

For a copy of the full opinion, please click [here](#).