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Expert Analysis

Court: Joint Venture Clause Doesn't Limit Insurers' Exposure for Defense Costs

By **Howard B. Epstein**

And **Theodore A. Keyes**

The Deepwater Horizon oil spill has given rise to some interesting insurance cases which have the potential to impact insurance disputes regardless of venue. Consequently, although these cases have primarily been litigated in Texas, they are worthy of further review, even for the New York insurance practitioner. In the most recent decision, the Supreme Court of Texas ruled that a clause that reduces the insurers' liability for joint venture risks by the insured's percentage interest in the joint venture did not limit the insured's right to recover defense expenses. *Anadarko Petroleum v. Houston Cas. Co.*, No. 16-1013, 2019 WL 321921, at *1 (Tex. Jan. 25, 2019).

Anadarko Insurance Dispute

Anadarko Petroleum owned a 25 percent stake in the Macondo well. In April 2010, the Macondo well blowout destroyed the Deepwater Horizon oil rig and caused the largest offshore oil spill in U.S. history. Prior to the oil spill, Anadarko had purchased an energy package insurance policy providing excess liability insurance through the Lloyd's London market. Id. at *2. The policy provided coverage in accordance with its terms and conditions up to a limit of liability of $150 million. Id. However, with respect to liability arising out of joint ventures, the policy limit was reduced based on Anadarko's interest in the joint venture in accordance with the following clause:

> [A]s regards any liability of [Anadarko] which is insured under this Section III and which arises in any manner whatsoever out of the operation or existence of any joint venture ... in which [Anadarko] has an interest, the liability of Underwriters under this Section III shall be limited to the product of (a) the percentage interest of [Anadarko] in said Joint Venture and (b) the total limit afforded [Anadarko] under this Section III.

Id.

In April 2010, after the well blowout and ensuing catastrophic oil spill, BP (the majority owner of the Macondo well) and Anadarko reached a settlement agreement whereby Anadarko agreed to transfer its 25 percent interest in the joint venture to BP and pay BP $4 billion. Id. In exchange, BP released Anadarko from any claims and indemnified Anadarko "against all other liabilities arising out of the Deepwater Horizon incident." Id. Anadarko sought coverage from its insurers in connection with the settlement. Id.

In accordance with the terms of the policy, the insurers paid Anadarko $37.5 million—the $150 million policy limit multiplied by Anadarko's 25 percent interest in the joint venture. Id. However, Anadarko also sought to recover defense costs incurred up to the $150 million policy limit. Id. The insurers contended that, pursuant to the joint venture clause, their liability under the policy was capped at 25 percent of the $150 million policy limit, which they had already paid out when they contributed $37.5 million to the settlement with BP. Id. at *3. Anadarko disagreed and argued that the joint venture clause only limited the insurers' exposure for Anadarko's liabilities to third parties, not for its own defense expenses. Id. Thus, Anadarko sought recovery of $112.5 million in defense expenses, which would bring the total insurance recovery up to $150 million. Id.

Although these cases have primarily been litigated in Texas, they are worthy of further review, even for the New York insurance practitioner.

HOWARD B. EPSTEIN *is a partner at Schulte Roth & Zabel.* THEODORE A. KEYES *is special counsel at the firm.*

The insurers prevailed before the trial court and before the Court of Appeals. Id. at *1. The Supreme Court of Texas, however, reversed and granted partial summary judgment in favor of Anadarko. Id. The key to the Supreme Court's ruling was its determination that the insurance policy distinguished between Anadarko's "liabilities" and Anadarko's "expenses"—and only loss arising out of liabilities was limited by the joint venture clause. Id. at *8.

At the outset, the court set out to ascertain the intent of the parties by applying the plain meaning of the terms and by considering how the policy used those terms. Id. at *4-5. The court noted that because the policy did not define the term "liability," it would construe the term in accordance with its "common, ordinary meaning" based on the dictionary definition and use in other precedent. Id. at *4. "[W]e must give an insurance policy's undefined words their common, ordinary meaning *unless* the policy itself demonstrates that the parties intended a "different" or more "technical" meaning." Id.

The court determined that based on the policy's use of the term, liability in the policy refers only "to an obligation imposed on Anadarko by law to pay for damages sustained by a third party who submits a written claim." Id. at *7. In support, the court discussed the policy provisions that distinguished between liabilities and expenses. Id. at *5. It first highlighted the use of the term liability in the insuring clause, by which the insurers were obligated to indemnify Anadarko for "Ultimate Net Loss sustained by reason of liability … for damages" that were imposed on Anadarko by law. Id.

Next, the court reviewed the definition of Ultimate Net Loss, which the policy defined as "the amount [Anadarko] is obligated to pay, by judgement or settlement, as damages resulting from an 'Occurrence' covered by this Policy, including the service of suit, institution of arbitration proceedings and all 'Defense Expenses' in respect of such 'Occurrence.'"Id. at *6-7.

Focusing on these two clauses, the court found that the policy covers both legally imposed liability and defense costs through the definition of Ultimate Net Loss, but that the legally insured liability referred to in the insuring clause, as well as in the joint venture clause, does not refer to Anadarko's defense expenses. Id. at *7. The court held that "the term liability does not include Anadarko's voluntarily assumed obligation to pay lawyers, investigators or others for services provided to defend against the liability." Id. at *6. Instead, defense expenses are insured under the policy because they are incurred "by reason" of the liability.

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Consequently, the court concluded that the joint venture clause reference to liability does not refer to Anadarko's defense expenses and thus the 25 percent limit in that provision did not cap the insurers' liability for Anadarko's defense expenses. Id. at *8. Finding for Anadarko, the Texas Supreme Court reversed the Court of Appeals' judgment and granted Anadarko's motion for partial summary judgment. Id. at *9.

New York Courts

New York courts have not expressly addressed a joint venture dispute similar to the one between Anadarko and its insurers. However, New York courts do generally follow some of the same principles that the Texas Supreme Court used to justify its conclusion. For example, New York courts will give terms their plain and ordinary meeting when interpreting insurance contracts to resolve a dispute. *Tomco Painting & Contracting v. Transcontinental Insurance Co.*, 21 A.D.3d 950 (2d Dep't 2005).

Likewise, New York courts will attempt to ascertain the parties' intent. For example, when determining whether an insurance policy was subject to one limit of liability for a three-year period or whether the policy limit was intended to be annualized, the Court of Appeals explained that "[i]t is implausible that an insured with as large and complicated an insurance program as [the insured] would have bargained for policies that differed, as between primary and excess layers, in the time over which policy limits were spread." *Union Carbide v, Affiliated FM Insurance Co.*, 16 N.Y.3d 419 (2011). While the court agreed that the insurer's proposed interpretation was plausible, the court found for the insured because it was unlikely the parties intended the result urged by the insurer. Id. at 425.

Looking Forward

The Supreme Court of Texas' ruling in Anadarko is, of course, not binding on a New York court. However, given the limited amount of case law addressing joint venture clauses as well as the fact that the Texas court reached its conclusion based on the application of the plain meaning of the terms in conjunction with an attempt to ascertain the intention of the parties, faced with a similar joint venture clause, a court may find the *Anadarko* ruling persuasive. At minimum, the *Anadarko* ruling should provide incentive for insurers to review their joint venture clauses to make sure the terms are clear.

Schulte Roth&Zabel

Schulte Roth & Zabel LLP
919 Third Avenue, New York, NY 10022
212.756.2000 tel | 212.593.5955 fax | www.srz.com
New York | Washington DC | London