

Alternate Employer Entitled to Worker's Compensation Coverage as an Additional Insured

Insurance Law Update

January 2011

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U.S. Court of Appeals for the Fifth Circuit

In *Cal-Dive Intern., Inc. v. Seabright Ins. Co.*, ___ F.3d ___, 2010 WL 4706221 (5th Cir. (La.) November 22, 2010), the Fifth Circuit Court of Appeals held that an alternate employer is entitled to benefits as an additional insured under an alternate employer endorsement in a workers' compensation insurance policy.

Coastal contracted with Horizon to provide catering services aboard Horizon's vessels. Under the contract, Coastal was obligated to defend Horizon for claims arising out of Coastal's catering services. Coastal employee David Brown was injured while working aboard the M/V AMERICAN HORIZON, and he filed suit against both Coastal and Horizon for failing to provide a reasonably safe place to work. Coastal tendered its defense to Horizon under Coastal's maritime general liability (MGL) policy from State National Insurance Company (SNIC), but was defended through its own maritime workers' compensation and employers liability (MEL) policy issued by Seabright Insurance Company.

After settlement of the Brown litigation, SNIC sought reimbursement from Seabright for the costs of Horizon's defense under the alternate employer endorsement in the Seabright MEL policy. The alternate employer endorsement "applies only with respect to death, bodily injury or illness to ... employees while in the course of temporary employment by an alternate employer" and it "[applies] as though the alternate employer is insured..." According to SNIC, Brown alleged that Coastal was his employer and that Horizon was his alternate employer and that, therefore, Seabright was required to defend Horizon.

Seabright disagreed, arguing (1) that Brown's allegations did not trigger the duty to defend under the endorsement, and (2) that the protection and indemnity (P&I) exclusion in the MEL policy – which

provided in part that the MEL policy does not cover “bodily injury to your master and crew covered by a Protection and Indemnity Policy...” – absolved any duty that would arise if Horizon were the alternate employer. Because Horizon maintained a P&I policy, Seabright argued that the exclusion unambiguously freed it from any duty to defend Horizon.

The district court entered summary judgment for SNIC, and the Fifth Circuit affirmed. The court concluded that, while the alternate employer endorsement added Horizon as an additional insured to Coastal’s MEL policy, additional insureds are subject to policy exclusions. As a result, Horizon was subject to the P&I exclusion. The court noted that because Horizon maintained P&I insurance coverage for the workers aboard the M/V AMERICAN HORIZON, the P&I exclusion in Seabright’s policy applied and SNIC was not entitled to recover its costs from Seabright.

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