

Not Named, No Coverage: Additional Insured Status Denied

Insurance Law Update

August 30, 2011

U.S. District Court for the Fifth Circuit

In *One Beacon Ins. Co. v. Crowley Marine Services, Inc.*, ___ F.3d ___, 2011 WL 3195292 (5th Cir. (Tex.) July 28, 2011), the U.S. Court of Appeals for the Fifth Circuit upheld an insurer's denial of coverage for a party not expressly named as an additional insured.

Crowley, owned and operated vessels, and Tubal-Cain repaired ships. While working on a Crowley vessel, a subcontractor for Tubal-Cain purportedly was injured and filed suit against Tubal-Cain and Crowley in Texas state court. Crowley sought a defense and indemnity from Tubal-Cain and coverage from One Beacon as an additional insured under a maritime comprehensive liability policy issued to Tubal-Cain.

One Beacon denied coverage and filed a declaratory judgment action in the federal District Court for the Southern District of Texas. One Beacon asserted that it never received a request from Tubal-Cain to add Crowley as an additional insured, and that no "insured contract" existed between Tubal-Cain and Crowley. The District Court stated that, to qualify as an additional insured under the terms of One Beacon's policy, Crowley had the burden of establishing that: (1) Tubal-Cain was obligated by an "insured contract" to include Crowley as an additional insured; and (2) Crowley was specifically identified in the endorsement as an additional insured. While the District Court held that the oral agreement between the parties, the repair service order, and the subsequent invoice combined to satisfy the "insured contract" requirement, it ruled that the language of the endorsement unambiguously required that Crowley be specifically named to qualify as an additional insured. As Crowley was not so named, the District Court held that Crowley was not entitled to additional insured coverage.

On appeal to the Fifth Circuit, Crowley argued that it was entitled to coverage, just as unnamed officers, directors and employees are entitled to coverage under the policy. Crowley asserted that the additional insured endorsement simply augmented the list of parties entitled to coverage as additional insureds. However, the Fifth Circuit affirmed the District Court's ruling that Crowley was not an additional insured because it was not expressly named as such in the One Beacon policy.

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