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Texas Supreme Court Holds Energy Company Can Recover Substantial Defense Costs Under Insurance Policy Covering Deepwater Horizon Oil Spill

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On January 25, 2019, the Texas Supreme Court ruled that a provision in an insurance policy did not limit coverage for Anadarko's defense expenses related to the Deepwater Horizon oil spill where the provision only capped "liability"—an undefined term. The Court concluded that, in the context of the policy as a whole, the term "liability" plainly did not include defense expenses which thus were not subject to the cap. *See* Anadarko Petroleum Corp. v. Houston Casualty Co., No. 16-1013 (Tex. Jan. 25, 2019).

Through a joint-venture arrangement, Anadarko held a 25% ownership interest in the offshore well that blew out and was the source of the spill. The policy in question, an excess policy which Anadarko held with a group of underwriters at Lloyd's of London, provided for $150 million in excess liability coverage for Anadarko's "Ultimate Net Loss." The policy also, however, contained a "Joint Venture Provision" that capped Anadarko's "liability" arising from joint-venture operations at 25% of the total $150-million coverage limit—that is, $37.5 million.

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The underwriters paid Anadarko $37.5 million to cover certain of Anadarko's third-party liabilities arising from the spill, but denied Anadarko coverage for more than $100 million in defense expenses, claiming that such expenses were subject to the limit on joint-venture liability. Anadarko challenged the coverage determination, arguing that the policy's "Joint Venture Provision" only capped excess coverage for its liabilities to third parties, not for its defense costs.

The court, seeking to impute meaning to the policy's undefined term "liability," looked beyond broadly worded dictionary definitions that could ostensibly encompass both defense costs and third-party liability. Instead, the court surveyed the policy as a whole, and concluded that it plainly distinguished defense costs and third-party liability.

After exploring common usage and various other policy provisions contemplating "liability," the court ultimately determined that the joint-venture liability cap was "plainly" inapplicable to Anadarko's defense costs, largely because "the liability insured and defense expenses are two separate components of the Ultimate Net Loss." The court thus reversed the intermediate appellate court's judgment for the underwriters and remanded the case back to the trial court with instructions to resolve any disputes concerning the amount of defense costs that Anadarko has claimed.

This case is significant for energy industry policyholders whose insurance policies contain similar limitations on liability coverage. Moving forward, such policyholders should carefully monitor their insurance policy language to ensure that they are making informed decisions about potential coverage when entering into new joint ventures, such as offshore drilling projects that may expose them to significant liabilities *and* defense costs.

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