

Maritime Update: No Coverage for Large Settlement Payment

ATTORNEYS

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On August 1, 2016, in the case of *Richard v. Dolphin Drilling, Ltd.*, the U.S. Fifth Circuit Court of Appeals ruled that an excess marine insurer did not have to reimburse its insured for payment of a sizable personal injury settlement. The ruling is significant because the insurer did not raise its policy defense until over four years after the plaintiff was injured.

A. Background

In 2009, Raylin Richard, an employee of Offshore Energy Services, Inc. ("Offshore"), was injured while working on a drill ship in the Gulf of Mexico. Richard filed suit against multiple defendants. Offshore became a party in August 2011. To try to secure insurance coverage, Offshore sued its primary insurer, Liberty Mutual Insurance Company ("Liberty"), in 2012, and its excess insurer, Valiant Insurance Company ("Valiant"), in January 2014.

Valiant responded to Offshore's suit in April 2014, maintaining that its policy with Offshore contained a drilling rig exclusion, which excluded coverage for "any liability for, or any loss, damage, injury or expense caused by, resulted from or incurred by reason of any liability or expense arising out of the ownership, use or operation of drilling rigs..." Offshore settled with the plaintiff, but maintained its suit for reimbursement against Liberty and Valiant.

Valiant asked the district court to dismiss Offshore's claim, arguing that the drilling rig exclusion unambiguously precluded coverage for the plaintiff's accident, which occurred on a drill ship, a type of drilling rig. Offshore claimed 99% of its business was servicing the oil industry and a finding of no coverage would be absurd. It also argued that Valiant waived its coverage defenses by failing to issue a reservation of rights letter or to challenge coverage until April 2014 despite knowledge of the incident years earlier.

The district court dismissed Offshore's suit against Valiant and Offshore appealed.

B. Discussion

The drilling rig exclusion contained in the Valiant policy states:

III. Exclusions.

A. This insurance does not apply to: ...

11. Any liability for, or any loss, damage, injury or expense caused by, resulting from or incurred by reason of: ...

d. any liability or expense arising out of the ownership, use or operation of drilling rigs, drilling barges, drilling tenders, platforms, flow lines, gathering stations and/or pipelines, but this exclusion shall not apply to craft serving the foregoing such as crew, supply or utility boats, tenders, barges or tugs.

The Fifth Circuit agreed that the policy clearly and unambiguously excluded coverage since the accident occurred on a drilling rig. It further held that Valiant did not waive its right to assert coverage defenses despite its failure to issue a reservation of rights or denial of coverage letter.

C. Why is This Important?

1. Silence by an excess insurer does not guarantee that it will not assert a coverage defense years after an accident.
2. In Louisiana, excess insurers run the risk of facing a waiver argument if they do not issue a reservation of rights or denial of coverage letter to the insured upon learning of facts that potentially preclude coverage.
3. Insureds should always be mindful of the scope of their insurance policy exclusions. Doing so could identify potential gaps in coverage before an accident occurs.