

INSURANCE COVERAGE

SECTION OF LITIGATION

Texas Court Denies Exxon a La Carte Coverage

Richard W. Brown, Celia B. Waters, and Malcolm S. Ranger-Murdock – June 2, 2017

In April, the Court of Appeals of Texas held that a party seeking additional insured coverage under an umbrella general liability policy issued by Lexington Insurance Company cannot reap the benefits of being an additional insured, and simultaneously avoid the limitations of an arbitration clause contained in the policy.

The Court of Appeals ultimately determined: 1) that the arbitration clause in the policy was enforceable against an additional insured; 2) that disputes regarding a party's status as an additional insured is within the scope of the arbitration clause; and 3) Lexington did not waive its right to arbitration when it denied coverage.

The decision supports the position that a party cannot seek additional insured coverage under an insurance policy, and simultaneously avoid an arbitration clause present in the policy. As such, it is important to review your contract language to ensure that the necessary and intended risk transfer provisions are included, and to the extent possible, the insurance policies of any contractor or service provider to confirm that the coverage provided satisfies such contractual obligations.

In *Lexington Ins. Co. v. Exxon Mobil Co.*, No. 09-16-00357-CV, 2017 WL 1532271 (Tex. App. Apr. 27, 2017) Exxon Mobil Corporation and ExxonMobil Oil Corporation sought additional insured coverage for an incident that involved a fire at an Exxon refinery. At the time of the Incident, Brock Services was providing scaffolding, painting, and insulation work for Exxon. As part of a written agreement entered into with Exxon, Brock Services agreed to name Exxon as an additional insured on its general liability policies. Accordingly, Exxon sought additional insured coverage on Brock Services' insurance policies in connection with claims arising out the Incident. After Lexington failed to respond, Exxon filed a declaratory judgment action. Subsequently, Lexington filed a motion to compel arbitration pursuant to the arbitration clause contained in the policy, which the trial court denied. Thereafter, Lexington appealed the trial court's decision to the Court of Appeals.

On appeal, Exxon argued that it was not subject to the arbitration clause because Brock Services, the named insured, acquired the policy. Exxon contended that enforcing the policy's arbitration provision against it as an additional insured was unconscionable because it did not directly acquire or negotiate the policy. The court held that Exxon was subject to the terms of the arbitration clause, and referenced the doctrine of direct benefits estoppel— non-signatories to arbitration agreements may be bound to the arbitration clause of a contract when the non-signatory is suing to enforce all the other terms of the written agreement. Accordingly, the court felt that a party cannot seek to enforce specific provisions or terms of an insurance policy that favor its position, but ignore its arbitration clause. Exxon further argued that because an arbitration clause does not appear in its written contract with Brock Services, it should not be compelled to arbitrate its disputes with Lexington. Exxon claimed that because it did not request an arbitration provision be placed in Brock Services' insurance policies, Exxon could not be forced to arbitrate. The court again rejected Exxon's argument, finding that Exxon's suit was based on the language in the Policy and not the language in its contract with Brock Services, and that the arbitration clause applied. The court also pointed out that in Exxon's written contract with Brock Services, Exxon maintained the right to inspect Brock Services' insurance policies and could have done so at any time.

Exxon argued that the determination of whether it is an additional insured on the policy is outside the scope of the arbitration clause. Exxon claimed that because the dispute did not relate to the interpretation of the policy, but rather whether Exxon qualified as an insured, it was outside the scope of the arbitration clause and should be resolved by the court as a matter of law.

The court found that the language of the arbitration clause was broad enough to “require the trial court to send the parties’ disagreements about the policy to arbitration, not merely those which the court will deem meritorious”. (Internal citations and quotation marks omitted). The court held that “[o]nce Lexington and Exxon disagreed about whether the policy covered the casualty, and Lexington established that the [policy] contained a valid arbitration agreement that required disputes over coverage to be arbitrated, the trial court was required to submit the matter to arbitration regardless of the merits of the respective parties’ arguments.”

The court ultimately compelled Exxon and Lexington to arbitrate the coverage dispute.

[Richard W. Brown](#), [Celia B. Waters](#), and [Malcolm S. Ranger-Murdock](#), are with Saxe Doernberger & Vita, P.C.

Copyright © 2016, American Bar Association. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. The views expressed in this article are those of the author(s) and do not necessarily reflect the positions or policies of the American Bar Association, the Section of Litigation, this committee, or the employer(s) of the author(s).