

Blanket Policies Provide Coverage in Excess of Limits of Project-Specific Policy

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The U.S. Court of Appeals for the Fifth Circuit, applying Louisiana law, recently denied the motion to stay of Reliance Insurance Company (In Liquidation) (Reliance) and held that, under Louisiana law, an insurer's blanket policy provides coverage only for losses in excess of the limits of a project-specific policy. *Holden, etc. et al., v. Connex-Metalna Mgmt. Consulting GMBH, etc. et al.*, 302 F.3d 358 (5th Cir. 2002).

Three insurers had provided coverage to a rail marine terminal company. Reliance provided a project-specific policy, and the other two insurers provided blanket property policies that provided coverage for the same property. The insurers disputed allocation of liability for losses suffered by the terminal company following the collapse of a crane during construction of a cargo terminal. The lower court ruled that a settlement with the insured should be divided among the three insurers in proportion to their respective policy limits.

Reliance moved to stay the appeal in deference to a Pennsylvania state court orders placing it in rehabilitation and later liquidation. The court first addressed the motion to stay and held that *Burford* abstention did not divest the court of jurisdiction over the case. The court reasoned that the appeal involved no decisive issue of state law nor did it implicate any federalism concerns. Further, the court reasoned that its resolution of the appeal would not substantially interfere in the administration of the insurer's assets by state authorities since the state court handling the rehabilitation could "very well preclude enforcement of any judgment" against the insurer.

Addressing the allocation issue, the court held that, under Louisiana law, when an insured has purchased a blanket property policy that covers the same property as a policy purchased specifically for a well-defined project, the blanket policy provides coverage only for losses in excess of the limits of the project-specific policy. The court reasoned that it would be "redundant to purchase a project-specific policy that simply duplicates the coverage of the broader blanket policy." Thus, the court found here that the builder's risk policy purchased specifically for the construction project at issue provided primary coverage for the loss, and the general blanket property policies functioned merely as "excess" policies. The court noted that the decision was based on a Louisiana court of appeals ruling, which represents the minority viewed on this issue, and that the Louisiana Supreme Court has not addressed the issue. Accordingly, the Fifth Circuit specifically did not extend its "Erie guess to predict how the Louisiana Supreme Court might resolve coverage issues between general and specific policies in other contexts."

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130