UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-3113

DEBBIE CATER,

Plaintiff,

VERSUS

PLACID OIL COMPANY, ET AL.

Defendants,

PLACID OIL CO.,

Defendant/Third Party Plaintiff-Appellant,

VERSUS

ALBANY INSURANCE CO.,

Third Party Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-90-1325-A)

(February 10, 1993)

Before WISDOM and DUHÉ, Circuit Judges, and DOHERTY, District Judge.[1]

PER CURIAM:[2]

What began as a maritime personal injury action has now evolved into a case that asks, "Who will pay for the damages?"

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[1] Honorable Rebecca F. Doherty, District Judge, Western District of Louisiana, sitting by designation.

[2] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Appellant Placid Oil contends that it is entitled to indemnity from Appellee Albany Insurance Company because it was named as an additional assured in a contract of protection and indemnity insurance issued to Bradford Marine, Inc., by Albany. We conclude that the district court correctly held that the law is against Placid Oil Company in this endeavor, and AFFIRM the entry of summary judgment in Albany's favor.

BACKGROUND AND PROCEDURAL HISTORY

Debbie Cater was injured while attempting a crew transfer from one vessel to another, while the vessels were alongside Placid's offshore production platform, the Ship Shoal 207A. Placid's platform crane, operated by one of its employees, lifted the personnel basket in which Cater was riding from one vessel and deposited it on the deck of another awaiting vessel. Cater was injured when the basket hit the deck of the transferee vessel.

Bradford Marine, Cater's employer and the owner of the transferor vessel which was chartered to Placid, had obtained a policy of protection and indemnity (P&I) insurance from Albany. Pursuant to its contract with Placid, Bradford named Placid as an additional assured on this P&I policy. When Cater sued Placid and Bradford, Placid called on Albany for a defense to her claim. This request was denied. Placid then filed a third party complaint against Albany for its failure to honor the terms of the P&I policy. Cross-motions for summary judgment were filed, and the district court held that Placid's attempt to seek coverage under the terms of the Albany policy issued to Bradford was foreclosed:

"The law is clear that there is no P&I coverage for an additional assured who is acting in its capacity as platform operator rather than vessel owner." Cater v. Placid Oil Co., Et Al., No. 90-1325 (E.D. La. Jan. 29, 1991) (citations omitted).

DISCUSSION

A. Standard of Review.

In reviewing a grant of summary judgment, we apply the same standard of review applied by the district court. See Waltman v. International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989); Moore v. Mississippi Valley State Univ., 871 F.2d 545, 548 (5th Cir. 1989). Summary judgment is appropriate only if, when viewed in the light most favorable to the nonmoving party, the record discloses "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

B. Lanasse and Its Progeny.

In Lanasse v. Travelers Ins. Co., 450 F.2d 580 (5th Cir. 1971), cert. denied, 406 U.S. 921 (1972), this Court held that coverage was available to an additional assured under a P&I policy only according to the express language of the policy. Because the policy was limited to liabilities incurred "as owners" of the scheduled vessel, coverage was unavailable for liabilities that an additional assured incurred in roles other than as vessel owner, e.g., liability arising as a platform owner. This logic has been consistently followed in the Fifth Circuit. See Marathon Oil Co. v. Mid-Continent Underwriters, 786 F.2d 1301, 1303 (5th Cir. 1986);

Gryar v. ODECO, Inc., 719 F.2d 112, 116 (5th Cir. 1983); Wedlock v. Gulf Mississippi Marine Corp., 554 F.2d 240 (5th Cir. 1977); cf. Helaire v. Mobil Oil Co., 709 F.2d 1031, 1042 (5th Cir. 1983) (coverage afforded platform owner named as additional assured because the words "as owner of the vessel named herein" were deleted from the policy).

In support of its position that the Albany P&I policy affords it coverage as an additional assured, Placid advances two lines of reasoning. First, Placid points to Endorsements Five and Twelve attached to the policy. Endorsement Five does extend coverage for liabilities that "arise out of hold harmless and/or indemnity agreements" that Bradford may contractually assume. This is qualified, however, by the second paragraph of the endorsement which states that it shall not be construed to extend coverage for "any type of claim not otherwise covered by the P&I policy ...." Likewise, Endorsement Twelve, at first blush, appears to extend coverage to additional assureds that Bradford might designate. Again, closer inspection of this endorsement fails to reveal how it can circumvent the "as owner" limitation placed on coverage that is set out on the first page of the policy.

Placid's second argument is that there was enough vessel involvement in the events causing injury to Cater to justify coverage of Placid's liability pursuant to the "as owner" limitation in the policy. Alternatively, Placid contends that the issue of vessel involvement presents enough of a factual question so as to make summary judgment inappropriate. Both arguments are

unavailing in light of Lanasse and the cases cited supra.

Placid relies on a "negative inference" that can be distilled from a close reading of Lanasse. The Lanasse court did hold that, "There must be at least some causal operational relation between the vessel and the resulting injury[]" in order to find coverage despite the "as owner" limitation. Lanasse, 450 F.2d at 584. Because the scheduled vessel's crew played some role in the events that precipitated Cater's injuries, Placid contends this causal operational relation has been shown, and coverage is activated. This argument has been advanced, and rejected, before.

In Wedlock v. Gulf Mississippi Marine Corp., 554 F.2d 240 (5th Cir. 1977), an employee of DeFelice Marine was temporarily blinded when a co-employee shone the tug's spotlight on him. Wedlock fell into an open hatch on a barge owned by McDermott, who was also the charterer of the tug. Both DeFelice and McDermott contributed to settling Wedlock's claims, and McDermott sought indemnification from DeFelice's P&I insurer. McDermott's arguments for coverage were analogous to those advanced by Placid: There was a causal operational relationship between the vessel and the injuries, therefore, the additional assured is entitled to coverage. The Wedlock court rejected this inference, holding that, "McDermott's liability for its share of the settlement in favor of Wedlock was predicated upon its acts as owner of the barge, not on negligent acts with respect to the covered vessel." Id. at 244.

Such is the case today. Placid's liability extends from the operation of its platform crane by one of its employees.

CONCLUSION

Because the policy of P&I insurance only covers liabilities incurred "as owner" of the scheduled vessel, Placid is unable to come within the scope of its coverage. The judgement of the district court is AFFIRMED.[3]

[3] Placid also argues that the district court erred in failing to grant its alternative motions for either a new trial, Fed. R. Civ. P. 59, or relief from judgment, Fed. R. Civ. P. 60. Because our review of the record does not indicate that the district court abused its discretion in passing on these motions, we are unable to reverse the summary judgment on this basis.