UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-7046
Summary Calendar

ERGON, INC., ET AL.,

Plaintiffs,

ERGON, INC., COMMERCIAL UNION INSURANCE CO., CONTINENTAL INSURANCE CO., ARKWRIGHT MUTUAL INSURANCE CO., and ST. PAUL FIRE & MARINE INSURANCE CO.,

Plaintiffs-Appellants,

versus

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG, PA.,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Mississippi
(CA-W90-0064(B))

(June 9, 1993)

Before POLITZ, Chief Judge, HIGGINBOTHAM and WIENER, Circuit Judges.

PER CURIAM:*

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*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In **Daniel v. Ergon, Inc.**,[1] we affirmed judgment in favor of a worker injured in an explosion occurring in the course of gas freeing a tank barge owned and operated by subsidiaries of Ergon, Inc. The workers were using steam, a speedier but more dangerous procedure than butterwalling, in accordance with the instructions of an agent of the subsidiaries and Ergon's operations manual. Explaining the basis of Ergon's liability, we said:

> Ergon, Inc. formulated the operations manual . . . which allowed for the use of steam. The manual was followed by the workers involved in the cleaning operations.[2]

After we affirmed liability, Ergon brought the instant action against National Union Fire Insurance Company of Pittsburgh, Pa., its comprehensive general liability insurer, seeking coverage. The district court entered summary judgment for National Union and Ergon timely appealed.[3]

The issue presented for review is the applicability of the policy's watercraft exclusion, which provides in pertinent part:

> This insurance does not apply:
>
> to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of
>
> (1) any watercraft owned or operated by or rented or loaned to any insured . . . .

It is undisputed that the tank barge was a watercraft and the Ergon

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[1]892 F.2d 403 (5th Cir. 1990).

[2]892 F.2d at 410.

[3]Ergon's subsidiaries and the insurers who defended the earlier action joined as plaintiffs. The insurers appealed but the subsidiaries did not.

subsidiaries which owned and operated it were additional insureds. Ergon, however, contends that the exclusion does not apply to it because it was not engaged in maintenance. We disagree. By providing a manual to direct workers in the subject operations and by including maintenance therein, Ergon became involved in the maintenance process along with the subsidiaries whose agent issued verbal directives.

Ergon contends that we previously have found the watercraft exclusion to be ambiguous and, therefore, under Mississippi law must construe it in favor of coverage. Whatever ambiguities may exist, we determined in **Grigsby v. Coastal Marine Service of Texas, Inc.**, the principal case on which Ergon relies, that the watercraft exclusion "seems patently intended to declare that with respect to those risks which are normally the traditional undertaking of a marine underwriter, the Insurer was not extending to this Assured protection for any of his activities of that kind."[4] Directing workers in the maintenance of a watercraft, whether by written or verbal communication, is such an activity. In order to effectuate the clear intent of the CGL policy,[5] coverage must be denied.

AFFIRMED.

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[4]412 F.2d 1011, 1038 (5th Cir. 1969), cert. dismissed, 396 U.S. 1033 (1970).

[5]See **Patton v. Aetna Ins. Co.**, 595 F. Supp. 533 (N.D.Miss. 1984) (under Mississippi law, an insurance policy must be construed in light of its purpose and the hazards it was designed to protect against).