United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
February 27, 2023
Lyle W. Cayce
Clerk

No. 22-40271

SCHLUMBERGER TECHNOLOGY CORPORATION,

Plaintiff—Appellee,

versus

CAROLINA CASUALTY INSURANCE COMPANY,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
No. 6:20-CV-0035

Before HIGGINBOTHAM, DUNCAN, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Defendant-Appellant Carolina Casualty Insurance Company appeals the district court's summary judgment determination that it was obligated to defend Plaintiff-Appellee Schlumberger Technology Corporation—as an "Additional Insured"—against negligence claims that Robert and Linda Smith previously asserted against Schlumberger in state court litigation. Because the district court erred in its interpretation and application of

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

relevant portions of the insurance policy at issue, we REVERSE and RENDER judgment in favor of Defendant-Appellant Carolina Casualty Insurance Company.

I.

On August 22, 2014, a four-vehicle accident involving two tractor-trailers, a Chevrolet Cobalt, and the Ford F-150 truck that Robert Smith ("Smith") was driving occurred at the intersection of U.S. Hwy 87 and FM 953 in Dewitt County, Texas. The four vehicles were traveling on U.S. 87. Darrel Campbell, an employee of Spotted Lakes, LLC, was driving one of the tractor-trailers northbound; Ryan Edison, a Schlumberger employee, was driving the other tractor-trailer southbound. In the lane behind Edison were the Chevrolet Cobalt, Smith's Ford F-150, and an automobile driven by Smith's wife, Linda Smith. Despite Campbell's evasive efforts (steering left), the right front of his northbound tractor-trailer struck the right rear of Edison's southbound tractor-trailer when Edison unsuccessfully attempted to complete a left turn (in front of Campbell) onto FM 953. Still moving forward, the tractor-trailer driven by Campbell then struck Smith's truck, which at that time was proceeding along the highway's paved shoulder.[1]

Smith suffered various physical injuries as a result of the collision. Linda Smith was not physically injured but, having seen the accident, asserted a bystander claim. The Smiths eventually filed a suit for damages in Texas state court. Initially, they sued only Schlumberger and Edison, asserting both had acted negligently.[2] However, after Schlumberger and

[1] Smith apparently had moved to and was driving on the road's shoulder in hopes of bypassing the waiting line of vehicles.

[2] The Smiths alleged that Edison operated the Schlumberger tractor-trailer he was driving in a negligent manner, including attempting an improper left turn. In addition to alleging Schlumberger's *respondeat superior* liability for Edison's conduct, the Smiths also

Edison asserted a third-party claim against Spotted Lakes and Campbell, alleging their negligence and seeking contribution relative to any damages that Schlumberger and Edison might be required to pay, the Smiths amended their petition to add negligence claims against Spotted Lakes and Campbell. *See* "Plaintiff's Fifth Amended Petition."

Schlumberger and the Smiths eventually reached a settlement of the Smiths' claims against Schlumberger and Edison. Thereafter, because the Spotted Lakes tractor-trailer was transporting sand for Schlumberger at the time of the accident, pursuant to a "Master Transportation Services Agreement" with indemnity and insurance requirements, Schlumberger filed the instant action against Spotted Lake's insurer, i.e., Carolina. Contending that Carolina should have defended it—as an "additional insured"—against the Smiths' claims, Schlumberger seeks to recover its defense costs, the full amount paid to settle the Smiths' claims, and any statutory damages, penalties, attorney fees, interest, and costs to which it may be entitled.[3]

Reviewing cross-motions for summary judgment, the district court granted partial summary judgment in Schlumberger's favor relative to its "duty to defend" claim. The district court denied Schlumberger's motion relative to its claim for indemnity, however, concluding that material facts are disputed.

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alleged that Schlumberger had acted negligently by failing to exercise ordinary care in hiring, qualifying, training, and supervising its employee.

[3] Schlumberger asserts that it demanded defense and indemnity at least as of March 24, 2017.

II.

An appellate court reviews a district court's grant of summary judgment *de novo,* "applying the same standard as the district court." *Moon v. City of El Paso,* 906 F.3d 352, 357 (5th Cir. 2018). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). "A genuine dispute of material fact exists 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Kitchen v. BASF*, 952 F.3d 247, 252 (5th Cir. 2020) (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986)). A party that asserts that there is a genuine dispute as to any material fact must support its assertion by citing to particular parts of materials in the record. *See* FED. R. CIV. P. 56(c)(1)(A). "The district court's interpretation of an insurance policy is a question of law that we [] review *de novo.*" *Ferrer & Poirot, GP v. Cincinnati Ins. Co.*, 36 F.4th 656, 658 (5th Cir. 2022) (per curiam).

III.

As indicated above, Schlumberger and Spotted Lakes are parties to a "Master Transportation Services Agreement," per which Spotted Lakes agreed to transport dry bulk products from origin to destination utilizing drivers and equipment furnished by it. The "Master Transportation Services Agreement" includes indemnity and insurance requirements. The indemnification provision states, in pertinent part:

> **10. <u>INDEMNIFICATION</u>**
>
> Carrier [Spotted Lakes] shall defend, indemnify, and hold Shipper [Schlumberger], . . . harmless from and against all claims, demands, causes of action, judgments, proceedings, awards, damages, losses, fines, penalties, costs, expenses and liabilities, including court and litigation costs and reasonable attorney's fees which may be brought or made against Shipper or which it may sustain, pay or incur ("Claim(s)") arising out

> of death, illness or injury, or property loss or damage or any other loss, damage or cost, as a result of or in connection with (i) the negligent acts (including concurrent negligence) or omissions of Carrier, its subcontractors (if applicable) and all of their respective Directors, Officers, agents, Representatives, Employees and Consultants ("Carrier Group") during performance of services under this Agreement, or (ii) Carrier's breach of Carrier's obligations, warranties or representations under this Agreement.

Regarding insurance, the "Master Transportation Services Agreement" provides, in pertinent part:

> **11. INSURANCE**
>
> Before providing any services, Carrier shall provide Shipper with certificates of insurance as described in this section. Without limiting Carrier's liability under the indemnification provisions in section 10 above, Carrier, at its sole cost and expense, shall maintain the following insurance during the validity of this Agreement with licensed insurance companies acceptable to Shipper.
>
> * * *
>
> [Commercial General Liability (including but not limited to Contractual Liability Coverage, with limits in respect of third party liability and property damage); Automotive Liability Insurance (as may be required by statutes or similar regulations in the country of operations); Excess Liability Insurance; Employer's Liability Insurance and Workman's compensation covering personal injury (including death); Carrier Cargo Insurance.]
>
> Carrier's policies provided under this section shall be endorsed to (i) name Shipper as an additional insured in respect of the policies listed; (ii) operate as primary in relation to any policies carried by Shipper; (iii) call for no contribution by any insurance carried by Shipper; (iv) provide waivers of subrogation in

> favor of Shipper; (v) provide for not less than 30 days written notice of cancellation or material change and (vi), name Carrier as loss payee.
>
> Additional Insured: Schlumberger Technology Corporation.

Carolina issued a commercial transportation insurance policy to Spotted Lakes—Policy Number CGT362084P, effective May 1, 2014 to May 1, 2015 ("the Carolina Policy").[4] The Carolina Policy provides, in pertinent part, as follows:

> **MOTOR CARRIER COVERAGE FORM**
>
> Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.
>
> Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the company providing this insurance. Other words and phrases that appear in quotation marks have special meaning. Refer to Section VI – Definitions.
>
> **SECTION I – COVERED AUTOS**
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> * * *
>
> **SECTION II – COVERED AUTOS LIABILITY COVERAGE**
>
> **A. Coverage**
>
> We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and

[4] According to the Carolina Policy's Declarations, the "Named Insured" is D&T Holdings, LLC dba Spotted Lakes, LLC dba 1845 Oil Field Services; D&T Trucking LLC; Rowdy Farms, LLC dba 1845 Oil Field Transport; Gila Hotshot LP dba Gila Trucking, LLC.

resulting from the ownership, maintenance or use of a covered "auto".

* * *

We will have the right and duty to defend any "insured" against a "suit" asking for such damages. . . . However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" . . . to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

1. WHO IS AN INSURED

The following are "insureds":

a. You for any covered "auto".

b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:

(1) The owner, or any "employee", agent or driver of the owner, or anyone else from whom you hire or borrow a covered "auto".

(2) Your "employee" or agent if the covered "auto" is owned by that "employee" or agent or a member of his or her household.

(3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.

(4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), a lessee

> or borrower of a covered "auto" or any of their "employees", while moving property to or from a covered "auto".
>
> (5) A partner (if you are a partnership), or member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.
>
> c. The owner or anyone else from whom you hire or borrow a covered "auto" that is a "trailer" while the "trailer" is connected to another covered "auto" that is a power unit, or, if not connected, is being used exclusively in your business.
>
> d. The lessor of a covered "auto" that is not a "trailer" or any "employee", agent or driver of the lessor while the "auto" is leased to you under a written agreement if the written agreement between the lessor and you does not require the lessor to hold you harmless and then only when the leased "auto" is used in your business as a "motor carrier" for hire.
>
> e. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

The Carolina Policy also contains a "Blanket Additional Insured Endorsement," which provides as follows:

> **THIS ENDORSEMENT CHANGES THE POLICY.**
>
> **PLEASE READ IT CAREFULLY**.

BLANKET ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies the insurance provided under the following:

BUSINESS AUTO COVERAGE

MOTOR CARRIER COVERAGE

TRUCKERS COVERAGE

Sections **II. A. 1. c.** for Business Auto Coverage and **II.A.1.e.** for Motor Carrier Coverage and Truckers Coverage are deleted and replaced by the following:

> Any person or organization that requires you under an "insured contract" to provide insurance is considered an "insured" but only to the extent of your [Spotted Lakes'] negligence arising out of the ownership, maintenance or use of a "covered auto."

The Carolina Policy defines "insured" and "insured contract" as follow:

> G. "Insured" means any person or organization qualifying as an insured in the Who Is an Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
>
> H. "Insured contract" means:
>
> * * *
>
> 5. That part of any other contract or agreement pertaining to your business . . . under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement."

Under Texas law, "insurance policies are interpreted by the same principles as contract construction." *Terry Black's Barbecue, L.L.C. v. State Auto. Mut. Ins. Co.,* 22 F.4th 450, 454 (5th Cir. 2022) (citing *State Farm Lloyds v. Page*, 315 S.W.3d 525, 527 (Tex. 2010)). "The policy's terms are given their ordinary and generally-accepted meaning unless the policy shows the words were meant in a technical or different sense." *Gilbert Tex. Const., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 126 (Tex. 2010). "Where a policy's terms can be given definite or certain legal meanings, it is unambiguous." *Ferrer & Poirot, GP*, 36 F.4th at 658. "The paramount rule is that courts enforce unambiguous policies as written." *Id.* (quoting *Pan Am Equities, Inc. v. Lexington Ins. Co.*, 959 F.3d 671, 674 (5th Cir. 2020)).

Schlumberger argues that the Carolina Policy's "Blanket Additional Insured Endorsement" can reasonably be construed to confer additional insured status upon it relative to any otherwise covered claim for monetary damages that also asserts the named insured's concurrent negligence. In other words, Schlumberger maintains that it enjoys additional insured status by virtue of the fact that the Smiths alleged that the August 2014 accident was caused by the negligent and grossly negligent conduct of Schlumberger and its driver-employee, Edison, *and* the negligent conduct of Spotted Lakes, the named insured, and its driver-employee, Campbell.

The district court agreed with Schlumberger. Respectfully, we do not. Rather, having considered the pertinent provisions of the Carolina Policy, the allegations of the Smiths' "Fifth Amended Petition," and the parties' arguments and cited authorities, we conclude that the only reasonable interpretation of the relevant policy language is that urged by Carolina. Specifically, the "Blanket Additional Insured Endorsement" confers insured status on Schlumberger *only* with respect to claims premised on the negligence of the

named insured, i.e., Spotted Lakes. Thus, because the only alleged negligence for which the Smiths sought to hold Schlumberger financially responsible is its own and that of its employee, Schlumberger is not an additional insured under the Carolina Policy as to the Smiths' claims.

The reasons provided by the district court in support of its contrary determination are not persuasive. Although the district court correctly notes that language such as "arising out of ownership, maintenance or use" or "arising out of the named insured's operations" is regularly construed broadly by courts, that matters little here. In this instance, the endorsement's "arising out of the ownership, maintenance or use of a 'covered auto'" verbiage delimits the *named insured's* negligence and thus is relevant *only* when a claim premised on the *named insured's* negligence is asserted against a purported additional insured. As noted, such is not the case here.

Indeed, the district court's suggestion that Carolina could have effectively limited its "additional insured" coverage by utilizing "available language" seemingly overlooks the fact that the Carolina Policy's endorsement *does* use the type of limiting language (insured status provided "only to the extent of your [the named insured's] negligence") that the Texas courts have referenced for that purpose. *See Evanston Ins. v. Atofina Petrochemicals,* 256 S.W.3d 660, 666 and n. 20 (Tex. 2008) (insurer could have limited coverage by including terms such as "vicarious liability" or "negligence of the named insured"); *Mid-Continent Cas. Co. v. Chevron Pipe Line Co.*, 205 F.3d 222, 229 (5th Cir. 2000) (same).

Finally, Schlumberger's assertion that limiting insured status in the manner argued by Carolina would render the blanket additional insured endorsement meaningless, given that Section II.A.1.e. of the standard policy language addresses vicarious liability, is similarly not compelling. That argument fails to recognize that the endorsement plainly states that Section

II.A.1.e. is "deleted and replaced" by the endorsement's language. And the endorsement, unlike Section II.A.1.e. of the policy, specifically addresses insurance required by "insured contracts." Finally, we are unaware of any requirement under Texas law that endorsements substantially broaden the coverage otherwise provided by the policy.[5]

IV.

For the foregoing reasons, we find that the district court erred in its assessment of Schlumberger's "insured" status vis-à-vis Spotted Lakes' commercial auto insurance policy and the Smiths' negligence claims. Because Schlumberger lacks "insured" status relative to the Smiths' claims, Carolina owed Schlumberger neither defense nor indemnity in the underlying state court action. And absent a duty of defense and/or indemnity, Schlumberger's claims alleging a breach of Carolina's duty of good faith and fair dealing, and seeking awards of damages, interest, penalties, attorney fees, and costs under the Texas Insurance Code, likewise fail. *See* TEX. INS. CODE ANN. §§ 541.151–152, 542.060; *State Farm Lloyds v. Page*, 315 S.W.3d at 532; *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 486–501 (Tex. 2018); *see also Certain Underwriters at Lloyd's of London v. Lowen Valley View, L.L.C.,* 892 F.3d 167, 172 (5th Cir. 2018).

V.

For the reasons stated herein, we REVERSE and RENDER a judgment of dismissal in favor of Carolina Casualty Insurance Company.

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[5] To the extent that Schlumberger wanted the trucking company with whom it contracted to provide it with more extensive insurance coverage under the trucking company's liability policy—including coverage for Schlumberger's own independent negligence—it should have taken additional steps to confirm that that coverage actually was obtained.