

Direct Contract Not Key To Insurance Coverage: Okla. Panel

By Ryan Boysen

Law360 (March 6, 2018, 4:44 PM EST) -- Three insurers must cover the owner of an oil pipeline that caught fire in several lawsuits despite their indirect contractual relationship to the energy company, an Oklahoma appeals court has found, breaking new ground in the state's insurance law.

JP Energy Marketing LLC was pulled into 19 lawsuits after the fire occurred at its Great Salt Plains Pipeline in 2012 while it was still under construction. In an opinion filed March 1, Oklahoma's Court of Civic Appeals affirmed a lower court's decision that found JP Energy is entitled to coverage under three separate policies taken out by subcontractors Global Pipeline Construction LLC and Wilcrest Field Services Inc.

The court ruled coverage is required despite the fact Global and Wilcrest only signed contracts with JP Energy's primary subcontractor, IPS Engineering LLC, and not with the energy company itself.

"While a direct contract between JP and Global would satisfy the additional insured provision, a direct contract is not necessarily required by the plain language of the policy," the unanimous three-judge panel wrote. "The ordinary, plain meaning is that JP is an insured if both JP and Global agree, in writing, that JP will be added as an additional insured to Global's policies."

The question of whether JP Energy's once-removed relationship with Global and Wilcrest's insurers would hold up under fire was an issue of first impression in Oklahoma's state court system, the panel said.

The insurers — Alterra America Insurance Co., Navigators Insurance Co. and BITCO General Insurance Co. — had argued that because their insureds never contracted directly with JP Energy, they shouldn't be on the hook for covering lawsuits tied to the 2012 fire.

An Oklahoma state trial court disagreed and granted summary judgment in favor of JP Energy in 2016, finding that all three insurers had a duty to defend and indemnify JP Energy.

Global held a \$2 million per-occurrence commercial lines policy and a \$5 million commercial

umbrella policy with BITCO at the time of the fire. Global also held a \$5 million commercial excess liability policy with Alterra.

Wilcrest held a \$1 million per-occurrence commercial general liability policy with a Liberty Mutual unit, as well as a \$10 million commercial excess liability policy with Navigators. The Liberty Mutual unit agreed to defend JP Energy in the underlying litigation and was not named in the suit.

Both Global and Wilcrest were hired by IPS as subcontractors to work on the pipeline. Under the terms of that contract, they were required to add IPS and JP Energy as additional insureds.

In addition to their arguments about the indirect nature of that contractual relationship, the insurers had also argued that Oklahoma's anti-indemnity statute should be able to void the contracts.

Almost every state has some version of Oklahoma's anti-indemnity law, which provides that an indemnitor can never be held liable for an indemnitee's own negligence.

Global and Wilcrest were technically the indemnitors in this case, and JP Energy the indemnitee. The panel said that because the contracts at hand don't require the subcontractors and their insurers to cover JP Energy for claims resulting from its own negligence, the anti-indemnity statute can't be invoked to kill the contracts.

"The indemnity agreements and insurance contracts provide coverage to [JP Energy] for liability caused, at least in part, by Global and Wilcrest acts and omissions and do not violate" the statute, the panel said.

JP Energy had put forward evidence showing that the underlying suits hinged on allegedly negligent acts committed by Global and Wilcrest, not JP Energy, which was only vicariously liable, the panel added.

"BITCO and Navigators have not submitted any evidence to the contrary," the panel said.

The question of whether the anti-indemnity statute could bring down the type of contractual setup that exists between JP Energy, IPS, Global and Wilcrest was also an issue of first impression in Oklahoma, the panel said.

None of the parties involved responded to requests for comment Tuesday.

Judges Kenneth L. Buettner, E. Bay Mitchell and Barbara Swinton sat on the panel.

JP Energy is represented by Mark E. Dreyer and Isaac R. Ellis of Conner & Winters LLP.

Alterra is represented by Sarah J. Timberlake of Doerner Saunders Daniel & Anderson LLP.

Navigators is represented by R. Lawson Vaughn of the Cheek Law Firm PLLC.

BITCO is represented by Phil R. Richards, Randy J. Lewin and Casper J. den Harder of Richards & Connor.

The case is JP Energy Marketing LLC v. Commerce and Industry Insurance Co. et al., case number 115285, in the Court of Civil Appeals of the State of Oklahoma.