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Direct Actions against Insurers and US Limitation of Liability

Jason P. Minkin of BatesCarey in Chicago has sent in a note on SCF Waxler Marine, LLC v. M/V ARIS T, 2017 WL 3894705 (E.D. La. Sept. 6, 2017), a recent US court case addressing the interplay between the Louisiana Direct Action Statute that allows third party claimants to bring claims directly against a tortfeasor's insurer and the US Shipowner's Limitation of Liability Act. As the court explained, an injured claimant filing a direct action against an insurer stands in the shoes of the policyholder, and thus has no rights greater than the policyholder. The Direct Action Statute "could not be clearer" that any action under the statute is subject to all of the lawful terms and conditions of the policy, including the insurer's defenses.

SCF Waxler involved an accident in which the M/V ARIS T allided with multiple vessels and facilities on the Mississippi River, allegedly causing substantial damage and economic loss. The ARIS T blamed the accident on unsafe maneuvering by two tugs. The owner and operator of one of the tugs, Cenac Marine Services, filed an action in defense of the claims against it pursuant to the Shipowner's Limitation of Liability Act, a U.S. federal statute that permits a vessel owner to limit its liability to the post-casualty value of the vessel and the pending freight, except where the vessel owner knew or should have known of the problem that caused the accident beforehand. Two other injured parties, whom the court referred to as the "movants," sued Cenac's primary and excess insurers directly pursuant to the Louisiana Direct Action Statute. Cenac's insurers filed defenses arguing that their liability, if any, was derived solely from their policies' terms and conditions and that they are entitled to limit their liability to the extent Cenac was entitled to limit its liability to the subject vessels and pending freight. The movants sought summary judgment against the insurers on the grounds that Cenac's insurance policies did not contain language allowing them to limit their liability vis-à-vis an injured third party (the primary insurers advised that they had no interest in the outcome of motion because their primary $1 million limits of coverage were less than the $14.6 million limitation fund posted by Cenac).

The court rejected the movants' arguments. The policies in question were excess follow-form policies, and accordingly the legal question turned on the language of the primary P&I cover to which they followed form. The court noted controlling U.S. Fifth Circuit Court of Appeals precedent, which provides that a P&I insurer "may limit its liability to that of the vessel owner's liability when the terms of the policy allow it to do so." (See Crown Zellerbach Corp. v. Ingram Industries, Inc., 783 F.2d 1296 (5th Cir. 1986). Recognizing that the Direct Action Statute permits a third-party lawsuit that the policy itself would not permit, the court nonetheless observed that the statute "does not and cannot increase the insurer's exposure beyond the express terms of the policy," and does not "impose new liabilities or deprive the insurer of its valid policy defenses" against a third-party claimant. The court distinguished the scenario of an insurer

seeking to escape liability not through the terms of its policy, but by invoking the Limitation Act, which is only for the benefit of vessel owners, not insurers. Here, in contrast, the primary P&I policy stated that the insurer would pay loss "as the Assured shall as owners of the vessel named herein have become liable to pay and shall pay…." Accordingly, the court reasoned that the excess insurers' exposure could not exceed the indemnity limits of their policies.

Moreover, although the Direct Action Statute overrode the "and shall pay" language by permitting the third-party claimants to sue regardless of whether Cenac had yet paid, the Direct Action Statute, according to the court, is clear that any recovery "is within the terms and limits of the policy," and any direct action is subject to all the terms of the policy, including any defenses. In other words, a third-party claimant stands in the shoes of the policyholder for purposes of a direct action, and may not recover amounts beyond the policyholder's liability. The court further noted that no "special language" is necessary to effect this result. According to the court, neither U.S. admiralty law nor Louisiana law prohibits a P&I policy from expressly limiting the insurer's liability to that of the vessel owner.

Although the Direct Action Statute confers unique rights on third party claimants, those rights are relatively modest in scope. As is the case here, while the excess insurers had no right to assert a statutory limitation of liability defense, they were not, according to the court, liable beyond the indemnity obligation imposed by the primary P&I policy to which their policies followed.