

5th Circ. Revives Oil Co.'s Faulty Cement Coverage Suit

By Hope Patti

Law360 (October 21, 2025, 8:13 PM EDT) -- The Fifth Circuit revived an oil and gas producer's suit seeking coverage for a settlement it reached with a bankrupt oilfield services firm over faulty cement, saying a Texas federal court incorrectly tossed the company's duty to defend and indemnify claims against certain underwriters at Lloyd's of London.

In an **unpublished opinion** Monday, a three-judge panel reversed the dismissal of BPX Production Co.'s defense and indemnity claims, and vacated and remanded the dismissal of its declaratory judgment claim.

The panel did, however, affirm the dismissal of BPX's common law bad faith claim, saying Texas courts do not recognize such claims in the third-party context.

The dispute stems from what BPX said is faulty cement work performed by BJ Services LLC at a Texas well operated by BPX's predecessor, Petrohawk Energy Corp. BPX claimed the oilfield services firm used improper materials in its cement mix, which damaged BPX's property and forced the company to plug and abandon the well, according to court filings.

BPX subsequently demanded \$2.5 million in damages from BJ Services in January 2019, and invoked the dispute resolution procedure set forth in their master services agreement. The underwriters, which insured BJ Services under commercial general liability and umbrella policies, refused to provide coverage to the firm in connection with BPX's claim.

BJ Services went on to file for Chapter 11 bankruptcy in July 2020. The bankruptcy judge ultimately approved a settlement between BPX and BJ Services in January 2022, whereby the firm assigned to BPX all claims against the underwriters relating to the carriers' failure to defend and indemnify BJ Services.

In the present action, which was removed to federal court in April 2022, BPX asserted claims for breach of contract, bad faith and violations of the Texas Insurance Code against the underwriters.

U.S. Magistrate Judge Andrew M. Edison **dismissed** the suit in January 2023, saying BPX failed to sufficiently allege that underlying settlement negotiations triggered the underwriters' coverage obligations. BPX **appealed** in May 2023.

The panel on Monday rejected the underwriters' **argument** that there was never a "suit," which includes alternative dispute resolution proceedings, that triggered their duty to defend.

The settlement negotiations between BPX and BJ Services were alternative dispute resolution proceedings as defined by the CGL policy, the panel held. Moreover, assuming that the underwriters improperly denied coverage, the panel found that the carriers waived the policy's consent-to-suit requirement by failing to assert their right to consent in their coverage denial letter.

As for the underwriters' duty to indemnify, the panel agreed with BPX that it can bring its claim against the underwriters without a prior adjudication holding BJ Services legally responsible for damages, under the Texas Supreme Court's 2017 ruling in *Great American Insurance Co. v. Hamel* .

In Hamel, the high court held that an insurer is not responsible for a judgment against its insured that is not the product of a fully adversarial proceeding. The panel noted, however, that the ruling allows third-party claimants and insurers to litigate underlying liability in a coverage suit when an insurer wrongfully refuses its duty to defend the insured.

"The fact that BPX could not recover from BJ Services or its bankruptcy assets does not preclude its duty-to-indemnify claim," U.S. Circuit Judge Priscilla Richman said.

The bankruptcy court's order assigning BJ Services' insurance claims to BPX "only prevents BPX from seeking damages from BJ Services and shifts the costs of litigation away from the bankruptcy estate," and it does not allow the underwriters to escape coverage for injuries caused by the firm, Judge Richman added.

Unlike BPX's duty to indemnify claim, the panel held that BJ Services' bankruptcy forecloses any claim under the so-called Stowers doctrine, which requires insurers to act in good faith when considering settlement demands, because "there must be actual liability imposed on the insured in excess of policy limits."

Since BJ Services has been discharged from any liability, there is no harm or legal injury to the firm, and therefore no valid Stowers claim against the underwriters, the panel said.

Representatives of the parties did not immediately respond to requests for comment Tuesday.

U.S. Circuit Judges Priscilla Richman, Catharina Haynes and Stuart Kyle Duncan sat on the appeals panel.

BPX is represented by John D. Sullivan and Brian K. Tully of GableGotwals.

The underwriters' counsel information could not be immediately determined Tuesday.

The case is BPX Production Co. v. Certain Underwriters at Lloyd's London Subscribing to CGL et al., case number 23-20034, in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Leah Bennett.