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Contract Requiring the Procurement of "Commercial General Liability" Coverage Does Not Include Excess and Umbrella Coverage

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In *National Union Fire Ins. Co of Pittsburg, PA v. Exxon Mobil Corp., et al.*, 2021 WL 4268898 (Tex. App. Sept. 21, 2021), the Texas Court of Appeals reversed, in part, a trial court decision finding that a contract between Savage Refinery Services, LLC ("Savage") and Exxon Mobil Corporation ("Exxon") requiring "Commercial General Liability insurance" extended to provide additional insured coverage to Exxon on both primary and excess/umbrella policies issued by National Union to Savage.

Savage provided certain services to Exxon at one of Exxon's refineries under a Standard Procurement Agreement (the "Contract"). The Contract required Savage to "carry and maintain in force at least the following insurance and amounts: … (2) its normal and customary Commercial General Liability insurance coverage and policy limits or at least $2,000,000, whichever is greater" for bodily injuries or property damage. Two Savage employees, Kevin Roberts ("Roberts") and Arturo Munoz ("Munoz"), were injured when hot water and steam escaped from a drum they were working at the Exxon refinery. Roberts and Munoz asserted claims against Exxon, which ultimately settled for $12M and $12.433M, respectively. National Union paid almost $1.7M of the Roberts settlement and almost $1.9M of the Munoz settlement. Exxon paid the remainder of both settlements and then asserted, in part, a breach of contract claim against National Union relative to coverage under its umbrella policy.

Exxon argued that National Union wrongfully denied coverage under its umbrella policy and sought indemnification for the amounts Exxon paid toward the Roberts and Munoz settlements. National Union argued, in part, that Exxon was not an additional insured in its umbrella policy because the Contract expressly limited additional insured coverage to Commercial General Liability coverage. After filing competing motions for summary judgment, the trial court found that the National Union umbrella policy provided coverage to Exxon and thus, National Union was liable to Exxon for the over $20,000,000 Exxon paid in connection with the Roberts and Munoz settlements. The Appellate Court disagreed.

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Rejecting Exxon's argument that the term "Commercial General Liability insurance" as referenced in the Contract was ambiguous and should be interpreted as referring to both primary and umbrella or excess insurance, the Appellate Court noted the "near-consensus of understanding that 'commercial general liability insurance' refers to a form of primary policy or coverage and does not encompass umbrella or excess coverage." According to the Appellate Court, the language in the Contract "had only one reasonable, certain, and definite meaning, creating an obligation for Savage to provide primary coverage to Exxon as an additional insured - but not any obligation to provide coverage under an umbrella or excess policy…" The Appellate Court also rejected Exxon's argument that it was entitled to reimbursement under National Union umbrella policy because the policies covered "any person or organization … included as an additional insured under [the National Union CGL policy]." The Appellate Court held that the argument ignored, and rendered meaningless, the limiting language in the additional insured endorsement, which would not provide "broader coverage than would be afforded by" the National Union CGL policy. Having determined that the Contract's language only required primary general liability coverage, the Appellate Court held that Exxon's status as an additional insured was limited to primary coverage and did not extend to National Union's umbrella policy. The Appellate Court ultimately reversed the trial court's decision and granted National Union's summary judgment motion against Exxon.

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