

2. Plaintiff, NEW YORK MARINE AND GENERAL INSURANCE COMPANY (“New York Marine”), is a New York corporation engaged in the insurance business with a principal place of business in New York. New York Marine is authorized to transact business and has transacted business in the State of Texas.

3. Plaintiff, NAVIGATORS INSURANCE COMPANY (“Navigators”), is a New York corporation engaged in the insurance business with a principal place of business in New York. Navigators is authorized to transact business and has transacted business in the State of Texas.

4. Defendant, W&T OFFSHORE, INC., is a Texas corporation with its principal place of business in Texas. Said Defendant is a resident of and conducts business in the State of Texas, and it may be served through its agent for service of process, C T Corporation System, 350 N. Saint Paul St., Suite 2900, Dallas, Texas 75201-4234.

5. W&T is the operator of, or a working interest owner in, oil and gas wells in the Gulf of Mexico, which are located on over 150 offshore platforms.

Jurisdiction and Venue

6. IINA, New York Marine, and Navigators bring this claim for a declaratory judgment under both Federal Rule of Civil Procedure Rule 57 and 28 U.S.C. §§ 2201, 2202 for the purpose of determining an actual case and controversy between the parties regarding anticipated claims by W&T for coverage under an excess liability policy. Further, this Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §1332(a)(3). There is complete diversity of citizenship between each insurer and W&T, and the matter in controversy between each insurer and W&T exceeds \$75,000.00, exclusive of interest and costs.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because this is a judicial district in which W&T resides and is subject to personal jurisdiction.

The Policies

8. Various companies insured W&T under policies MS-S 2812, MS-S 2813, MS-S 2814, MS-S 2815, and MS-S 2816 with effective dates from June 1, 2008, to June 1, 2009 (together the “Package Policy”). With respect to W&T’s interests in offshore platforms, the Package Policy provided coverage for Operators Extra Expense (“OEE”), Physical Damage including Removal of Wreck or Debris (“ROW/D”), Builder’s Risk, and Named Windstorm in excess of a self-insured retention.

9. Various companies insured W&T under primary and excess liability insurance policies MS-S 2773, MS-S 2774, and MS-S 2775 with effective dates of May 1, 2008 to May 1, 2009 and June 1, 2010 (together the “Underlying Liability Policies”). With respect to W&T’s interests in offshore platforms, the Underlying Liability Policies provided certain coverage for ROW/D.

10. IINA subscribed to 50%, New York Marine subscribed to 30%, and Navigators subscribed to 20% of Excess Policy No. MS-S 2776 (“IINA Excess Policy”) with effective dates of May 1, 2008 to May 1, 2009. A copy is attached as Exhibit 1. With respect to W&T’s interests in offshore platforms, the IINA Excess Policy provided coverage with limits of \$25,000,000 per occurrence or in the aggregate in excess of a Retained Limit.

The Claim

11. On or about September 12, 2008, Hurricane Ike struck the Gulf of Mexico, and it is alleged that Hurricane Ike damaged over 150 offshore platforms in which W&T had an interest.

12. On September 19, 2008, W&T gave notice to Excess Liability Underwriters of potential claims for losses to its offshore platforms, and, on September 24, 2008, W&T gave additional notice specifically of potential claims for ROW/D.

13. Braemar Steege, Inc. was appointed loss adjuster for W&T's claims under the Package Policy, the Underlying Liability Policies, and the IINA Excess Policy, and Braemar Steege has furnished periodic reports of its investigation and adjustment of W&T's claims.

14. Braemar Steege reported in its Status Advice of February 12, 2012 (attached as Exhibit 2) that W&T has submitted OEE and Physical Damage claims under the Package Policy for which approved costs exceed \$150,000,000. Braemar Steege forecasts that W&T's OEE and Physical Damage "claims will exhaust their underlying Package Policy limit of US\$150,000,000 (100%) which will force all ROW/D charges to fall upon W&T's excess program." Braemar Steege also reported that the ROW/D claims are estimated to exceed \$50,000,000, and it is expected that W&T will submit a formal payment request for the ROW/D expenses to Excess Liability Underwriters for payment under the IINA Excess Policy in the third quarter of 2012.

Coverage Issue

15. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 to settle important questions concerning W&T's claims for excess liability insurance coverage. The purpose is to determine Excess Liability Underwriters' obligations to W&T under the IINA Excess Policy. An actual case and controversy exists regarding whether coverage is afforded under the terms, conditions, provisions, limitations, and exclusions of the IINA Excess Policy for the claims and damages alleged.

16. A declaration by this Court regarding these issues will confer certainty on the parties relative to their rights and obligations under the IINA Excess Policy.

17. Excess Liability Underwriters are entitled to declaratory judgment against W&T because there is no coverage under the IINA Excess Liability Policy for the ROW/D claims.

18. The IINA Excess Policy contains the following provisions:

Section I Coverage states:

We will pay on behalf of the **Insured** those sums in excess of the Retained Limit that the Insured becomes legally obligated to pay by reason of liability imposed by law or assumed by the **Insured** under an **Insured Contract** because of **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** that takes place during the Policy Period and is caused by an **Occurrence** happening anywhere in the world. The amount we will pay for damages is limited as described in **INSURING AGREEMENT III, LIMITS OF INSURANCE**.

If we are prevented by law or statute from paying on behalf of the **Insured**, then we will, where permitted by law or statute, indemnify the **Insured** for those sums in excess of the Retained Limit.

Section III Limits of Insurance, paragraph D states in part:

If the applicable limits of insurance of the policies listed in the **SCHEDULE OF UNDERLYING INSURANCE** or of other insurance providing coverage to the **Insured** are reduced or exhausted by payment of one or more claims that would be insured by our Policy we will:

1. In the event of reduction, pay in excess of the reduced underlying limits of insurance; or
2. In the event of exhaustion of the underlying limits of insurance, continue in force as underlying insurance.

Section III Limits of Insurance, paragraph E further provides:

Retained Limit

We will be liable only for that portion of damages in excess of the **Insured's** Retained Limit which is defined as the greater of either:

1. The total of the applicable limits of the underlying policies listed in the **SCHEDULE OF UNDERLYING INSURANCE** and the applicable limits of any other underlying insurance providing coverage to the **Insured**; or

2. The amount stated in the **SPECIAL DECLARATIONS** as Self Insured Retention as a result of any one **Occurrence** not covered by the underlying policies listed in the **SCHEDULE OF UNDERLYING INSURANCE** nor by any other underlying insurance providing coverage to the Insured;

And then up to an amount not exceeding the Each Occurrence Limit as stated in the **SPECIAL DECLARATIONS**.

19. Pursuant to these provisions, the ROW/D claims from W&T are not covered by the IINA Excess Policy because the Retained Limit of the IINA Excess Policy has not been exhausted. Consequently, the Excess Liability Underwriters are entitled to a declaration that W&T's ROW/D expenses are not covered under the IINA Excess Policy.

Attorneys Fees

20. Excess Liability Underwriters have engaged the law firms stated below for the purpose of making demand and prosecuting this declaratory judgment action, through trial, and appeal if necessary, together with all other related services, costs, and expenses. Excess Liability Underwriters, therefore, seek recovery of all reasonable and necessary attorneys' fees, costs, and expenses allowable by law or in equity.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, NEW YORK MARINE & GENERAL INSURANCE COMPANY, and NAVIGATORS INSURANCE COMPANY, pray that, after due proceedings are held, a judgment be rendered in their favor and against W&T Offshore, Inc., as follows:

- (1) Declaring that the applicable Retained Limit of the IINA Excess Policy has not been depleted by or exhausted;
- (2) Declaring that the claims of W&T Offshore, Inc. for ROW/D incurred in Hurricane Ike in the amount of approximately \$50,000,000 are not insured by the Excess Liabilities Underwriters

because they do not exceed the Retained Limit of the IINA Excess Policy;

- (3) Awarding all reasonable and necessary attorneys' fees;
- (4) Awarding all costs of court; and
- (5) Awarding all further relief to which the Excess Liability Underwriters may show themselves to be justly entitled either at law or in equity.

Respectfully submitted,

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