

# PUBLICATION

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## New Developments Involving the Deepwater Horizon Incident

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**The U.S. Court of Appeals for the Fifth Circuit reversed course on August 29th and withdrew its earlier opinion in a dispute involving Transocean Deepwater Drilling, Inc., Ranger Insurance, Limited, and BP, P.L.C., among others, arising from the Deepwater Horizon incident.**

In the case, the Fifth Circuit previously had decided in an opinion issued on March 1, 2013, that the insurance policies covering the contractual liabilities between the parties governed the extent of insurance coverage available to BP and not the liabilities assumed by Transocean and BP under the relevant drilling contract.

The ruling issued last week withdraws the March 1st opinion and decides that the State of Texas' Supreme Court would be a better forum to decide the issues presented by this case. More specifically, the Fifth Circuit certified two questions to the Texas Supreme Court: (1) whether the insurance policies alone determine BP's coverage as an additional insured under the Transocean insurance policies; and, (2) whether the legal doctrine of construing a contract or agreement against is author applies in the context of this case.

The Fifth Circuit, however, left the door open for the Texas Supreme Court to re-phrase the questions or address other issues relevant to deciding this legal dispute. Thus, because the ramifications of this case remain important to oil and gas industry members entering contracts with indemnification and additional insured provisions, the reply by the Texas Supreme Court to the Fifth Circuit's questions should garner a significant amount of interest.