

# ExxonMobil v National Union Fire Insurance: meaning of 'additional insureds' guidance

28 June 2023

## < Previous

Algorithmic underwriting, boosting time and cost efficiency

## Next >

The recent Texas case of ExxonMobil corporation vs National Union Fire Insurance Company provided useful guidance as to the meaning of 'additional insureds' under policies issued by business partners.

The AI product boom: risks and opportunities for insurers

## Background

ExxonMobil took legal action against the insurer of its subcontractor to recover payments made to employees of the sub-contractor who suffered personal injuries that were alleged to have been caused by Exxon's negligence. Part of the settlement with the employees had been funded by the sub-contractor's primary policies. One of those policies was held with the same insurer, National Union, from which Exxon was now seeking to recoup the payout.

National Union argued that the umbrella policy did not respond because Exxon and its sub-contractor had entered into a service agreement that obliged the sub-contractor to provide primary insurance that named Exxon as an 'additional insured' but that that did not extend to the umbrella policy.

In response, Exxon argued that the service agreement was not incorporated into the umbrella policy and that the umbrella policy therefore followed the form of the primary policy, under which it was an additional insured.

## The policy

Under the umbrella policy, the 'insured' was defined as:

*"any person or organization, other than the Named Insured, included as an additional insured under Scheduled Underlying Insurance, but not for broader coverage than would be afforded by such Scheduled Underlying Insurance".*

The definition of 'Scheduled Underlying Insurance' included the primary policy. That primary policy covered anyone whom the sub-contractor was obliged to insure pursuant to any agreement. The service agreement required the sub-contractor to maintain general liability insurance with a limit of at least USD2 million, with Exxon listed as an additional insured.

## Judgment

The court ruled in favour of Exxon and found that National Union was liable to pay approximately 20 million dollars as reimbursement to Exxon. In reaching that decision, the court re-emphasised the importance of following these steps:

1. Begin with the wording;
2. Refer to extrinsic documents only if the policy being reviewed clearly requires them; and
3. Refer to extrinsic documents only to the extent of incorporation.

In the present case, the umbrella policy clearly referred to the scope of the primary policy (which extended cover to third parties to which the sub-contractor had agreed by contract to cover) and the contract between Exxon and the sub-contractor (which required the sub-contractor to insure Exxon). Together, those documents resulted in Exxon being treated as an additional insured under the umbrella policy. The court was not satisfied by insurers' argument that the indemnity to Exxon under the umbrella policy was limited to the scope of the contract (i.e. to USD2 million) because the service contract was not incorporated into the umbrella policy.

Insurers were therefore required to cover the full loss of c. USD20 million.

## Considerations for insurers

The case highlights the importance of cautiously reviewing policy wordings to ensure that the description of the parties to be covered is clear. In particular, terms and definitions that cross reference other terms or documents should be drafted very carefully to avoid confusion and unintended consequences.

### Contents

<a href="#"><u>The Word, June 2023</u></a>	→
<a href="#"><u>Pizza Express v Liberty: business interruption policy drafting considerations</u></a>	→
<a href="#"><u>Tropical cyclones are predicted to increase across the North Atlantic</u></a>	→
<a href="#"><u>Algorithmic underwriting, boosting time and cost efficiency</u></a>	→
<a href="#"><u>ExxonMobil v National Union Fire Insurance: meaning of 'additional insureds' guidance</u></a>	→
<a href="#"><u>The AI product boom: risks and opportunities for insurers</u></a>	→
<a href="#"><u>The FM Global Resilience Index 2023: underwriter risks</u></a>	→
<a href="#"><u>If you think data compliance is expensive – try having a data breach!</u></a>	→

### Key contact

Tim Johnson

Partner

[tim.johnson@brownejacobson.com](mailto:tim.johnson@brownejacobson.com)

+44 (0)115 976 6557

---

## Related expertise

Coverage disputes and policy interpretation

Policy drafting and distribution