

INSURANCE UPDATE

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LIABILITY INSURANCE – EQUITABLE CONTRIBUTION

CALIFORNIA LAW

By Glen R. Olson

***Crowley Maritime Corporation v. Boston Old Colony Insurance Company***, 2008 Cal. App. Lexis 36 (January 11, 2008)

*The First District holds that an insurer, in pursuing equitable contribution against other insurance carriers, was not subject to the arbitration provisions of the latter’s policies with the insured.*

On January 11, 2008, the First District California Court of Appeal held that an insurer seeking equitable contribution from its policyholder’s other insurance carriers was not bound by arbitration clauses in the other carriers’ policies. The claim arose out of asbestos exposure to two tugboat captains employed by Crowley Maritime Corporation. Crowley settled the two claims for an amount exceeding \$6 million and then sought indemnity from insurer Boston Old Colony Insurance Company. Boston and another insurer, Glens Falls, indemnified Crowley for a portion of the settlements only and Crowley sued to recover the balance.

Boston then cross-complained against Crowley and several third-party insurers that had issued policies to Crowley, including West of England Ship Owners Mutual Insurance Association (“Luxembourg”) and The United Kingdom Mutual Steam Ship Assurance Association (“Bermuda”). Boston

sought declaratory relief and equitable contribution alleging that the sums it paid to Crowley needed to be allocated among all the third-party insurers. Those insurers, citing arbitration provisions in their contracts with Crowley, moved to stay the action and compel arbitration. The trial court denied the motion to compel arbitration finding that the provisions of the Luxembourg and Bermuda policies were not binding upon Boston and Glens Falls.

The Court of Appeal affirmed, noting that Luxembourg and Bermuda had confused equitable contribution with equitable subrogation. The right of equitable subrogation is purely derivative and places the insurer in the same position as an assignee of the insured’s claim. In contrast, equitable contribution is the insurer’s right to recover from a co-obligor who shares liability with the party seeking contribution. Equitable contribution

frequently arises when multiple insurers insure the same loss and one insurer has paid more than its share to the insured.

Because the right of equitable contribution belongs to each insurer individually, it has nothing to do with the subrogation rights of the insured. The Court also noted that the right of equitable contribution does not arise from contract because the multiple insurers that may share responsibility for the same loss have not contracted with each other – only with their respective insureds.

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