Breach of Warranty & Misrepresentation - United States

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Commonly Seen Warranties in Hull and P&I Policies

- Hull Policies
  - Crew Warranty
  - Cruising Warranty
  - High-bilge Warranty
  - Implied (or express) Warranty of Seaworthiness
- P&I Policies
  - Crew Warranty
  - Navigational Limits Warranty
  - Towage Warranty
  - But **NOT** a Warranty of Seaworthiness
    - P&I Policies are intended to benefit injured third parties
    - Third Parties are not usually injured without an unseaworthy condition or negligence on the part of the vessel
    - The purpose of obtaining a P&I policy is to have coverage for unseaworthy conditions or negligence that results in injury to a third party

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How Far Can Underwriters Go?

"It is agreed that the Assured fully comply with the U.S. Coast Guard regulations with respect to manning and navigation requirements."

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Well #14



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July 28, 2007



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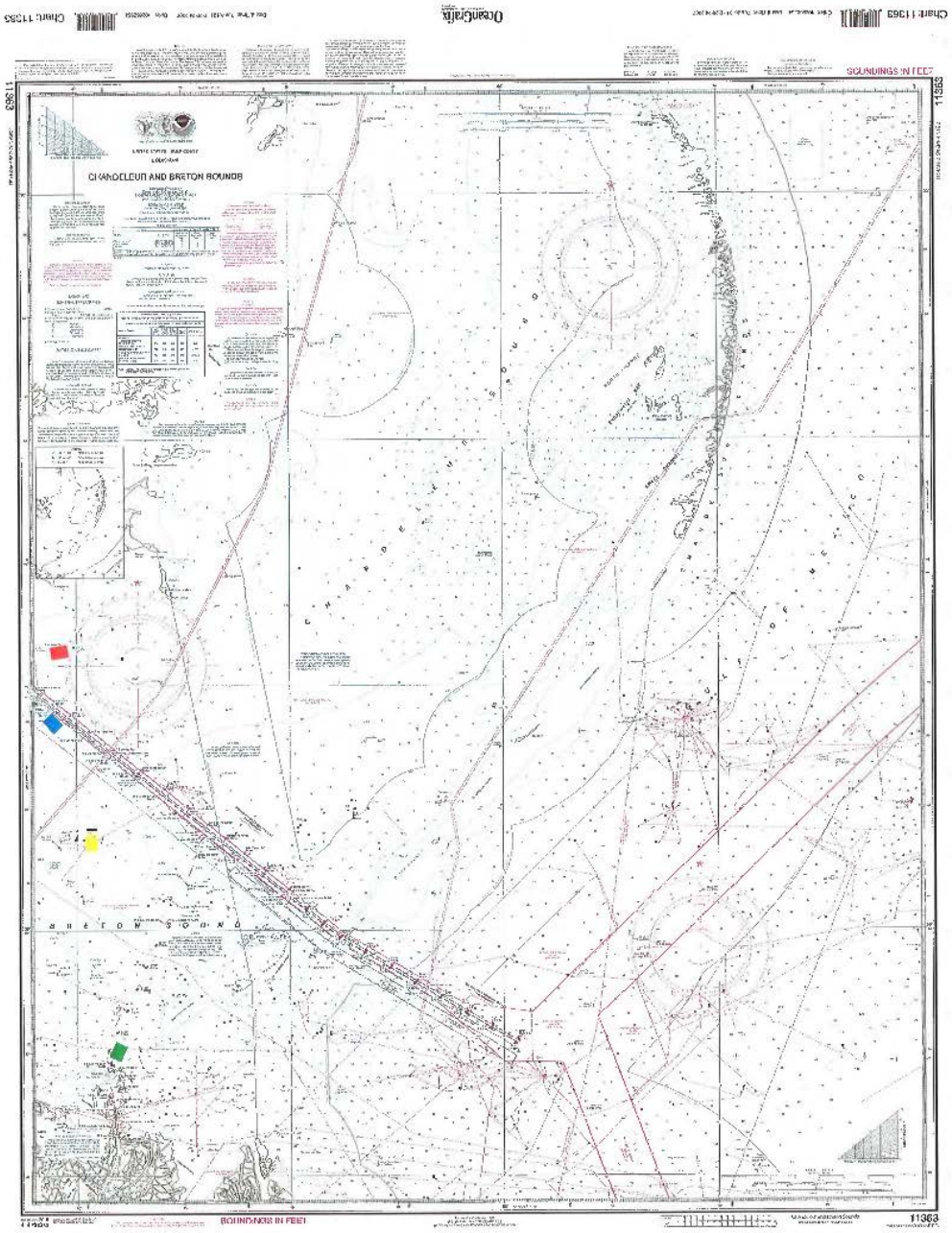

Chart 11363
41st ed.
June 2007

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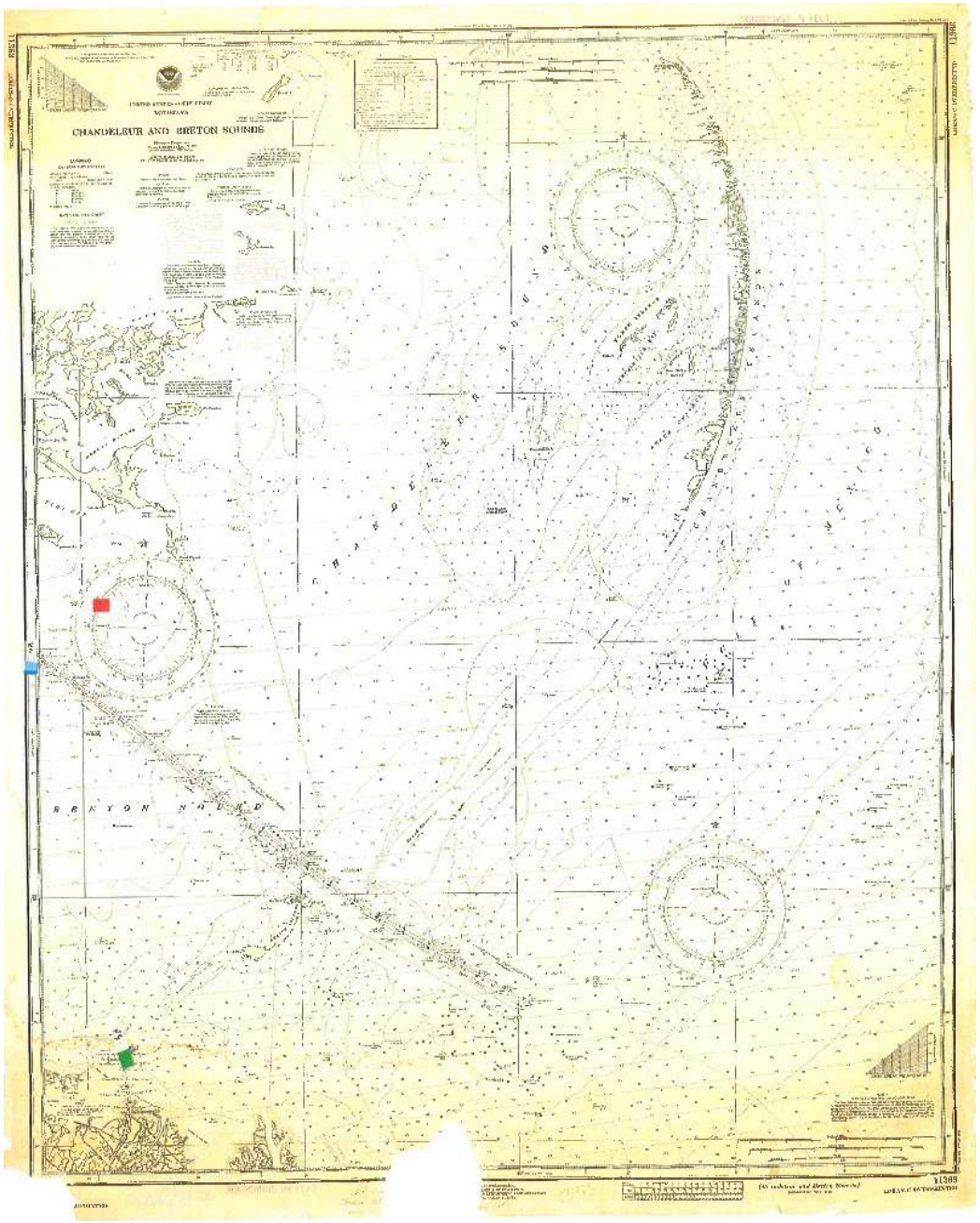

Chart 11363
21st ed.
1983

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Liability Arguments Made in Limitation Proceeding

- Statutory Violations
  - Improper Chart – 46 CFR § 130. 330
  - No Notice to Mariners – 33 CFR § 164.30 - § 164.33
  - Failure to Have a Lookout – 330 U.S.C § 2005 (Rule 5)
  - Twelve Hour Rule – 46 U.S.C. § 8104

- Other Negligence - [33 U.S.C § 2002 (Rule 2)]
  - Failure to Implement Safety Program
  - Failure to Take Marked Channel

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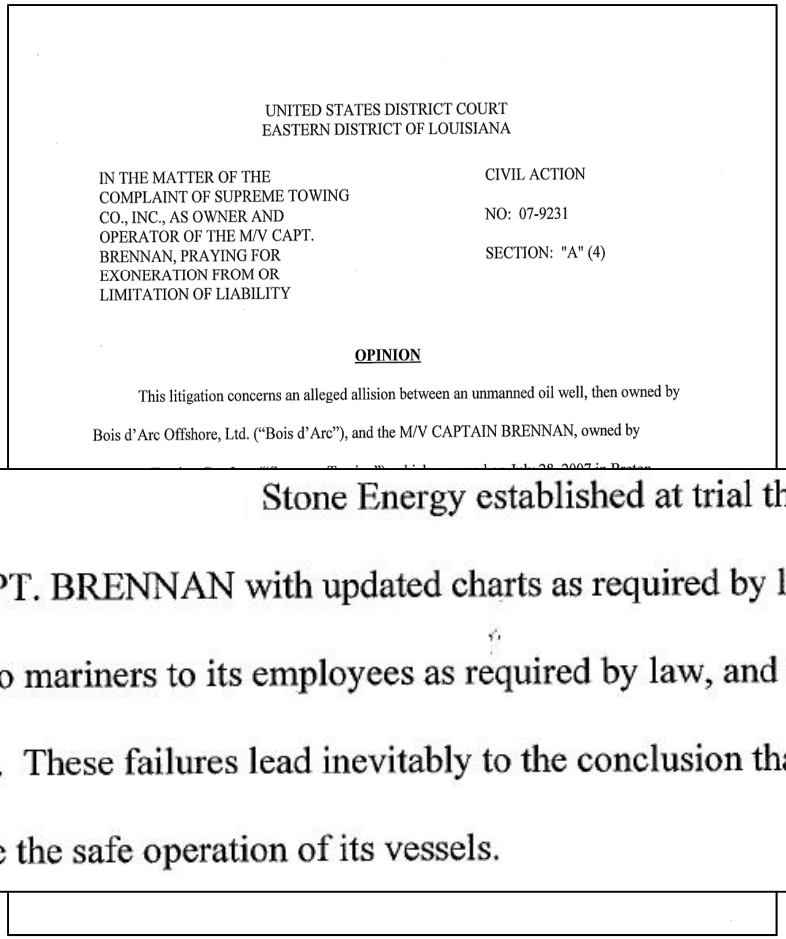
August 12, 2010



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF THE COMPLAINT OF SUPREME TOWING CO., INC., AS OWNER AND OPERATOR OF THE M/V CAPT. BRENNAN, PRAYING FOR EXONERATION FROM OR LIMITATION OF LIABILITY

CIVIL ACTION

NO: 07-9231

SECTION: "A" (4)

OPINION

This litigation concerns an alleged allision between an unmanned oil well, then owned by Bois d'Arc Offshore, Ltd. ("Bois d'Arc"), and the M/V CAPTAIN BRENNAN, owned by

Stone Energy established at trial that Supreme Towing failed to outfit the CAPT. BRENNAN with updated charts as required by law, failed to provide relevant local notices to mariners to its employees as required by law, and failed to implement its own safety procedures. These failures lead inevitably to the conclusion that Supreme Towing did not properly ensure the safe operation of its vessels.

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OPINION

This litigation concerns an alleged allision between an unmanned oil well, then owned by Bois d'Arc Offshore, Ltd. ("Bois d'Arc"), and the M/V CAPTAIN BRENNAN, owned by

The Court therefore concludes that Supreme Towing's failure to adhere to federal guidelines requiring it to equip the CAPT. BRENNAN with an updated paper chart and requiring it to provide its crew with local notices to mariners was the proximate cause of the allision. The Court further finds that Supreme Towing's total failure to implement proper safety procedures in turn proximately caused these omissions and constituted gross negligence. Supreme Towing will therefore not be permitted to limit its liability under the OPA.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF THE COMPLAINT OF SUPREME TOWING CO., INC., AS OWNER AND OPERATOR OF THE M/V CAPT. BRENNAN, PRAYING FOR EXONERATION FROM OR LIMITATION OF LIABILITY	CIVIL ACTION NO: 07-9231 SECTION: "A" (4)

OPINION

This litigation concerns an alleged allision between an unmanned oil well, then owned by

The Court finds that the CAPT. BRENNAN was unseaworthy at the time it allided with Well #14, and that this unseaworthiness was the proximate cause of the allision. The Court further finds that Supreme Towing had both privity and knowledge of the CAPT. BRENNAN's unseaworthy condition. Therefore, the Court concludes that Supreme Towing is liable for the allision between the CAPT. BRENNAN, Barge SCI-25, and Well #14 under general maritime law, and that Supreme Towing cannot limit its liability under the Limitation Act.

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October 2010 – Is There Coverage?

Case 2:10-cv-03367-JCZ-KWR Document 1 Filed 10/06/10 Page 1 of 9

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

HOUSTON CASUALTY COMPANY Plaintiff VERSUS SUPREME TOWING COMPANY, INC. Defendant	CIVIL ACTION NO.: SECTION: ___ DISTRICT JUDGE: HON. _____ MAGISTRATE JUDGE: HON. _____

HOUSTON CASUALTY COMPANY'S
COMPLAINT FOR DECLARATORY JUDGMENT

NOW INTO COURT, through undersigned counsel, comes Houston Casualty Company

HC now seeks a declaration from this Honorable Court, considering the terms, conditions, warranties, and exclusions of Policy No. CUL 15010.126 and the findings of liability against Supreme based upon violations of Coast Guard regulations by Supreme and based upon additional allegations by Stone/BD under the Oil Pollution Act, that HC owes no insurance coverage for defense or indemnity to Supreme.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

HOUSTON CASUALTY COMPANY Plaintiff VERSUS SUPREME TOWING COMPANY, INC. Defendant	CIVIL ACTION NO.: SECTION: ___ DISTRICT JUDGE: HON. _____ MAGISTRATE JUDGE: HON. _____

HOUSTON CASUALTY COMPANY'S
COMPLAINT FOR DECLARATORY JUDGMENT

d. Policy No. CUL 15010.126 does not provide coverage to Supreme for the claims and/or liabilities or portions thereof asserted against Supreme in the Stone/BD suit, due, *inter alia*, to Supreme's failure to comply with United States Coast Guard regulations in connection with the navigation, operation and management of the M/V CAPTAIN BRENNAN, Supreme's vessel found to have allided with the Stone/BD well, due to Supreme's failure to provide said vessel with proper and up to date navigational charts, electronic charts and navigational data, and notices to mariners.

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Is This a Warranty?

U.S. Coast Guard:

It is agreed that the Assured fully comply with the U.S. Coast Guard regulations with respect to manning and navigation requirements

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If it is a Warranty…

- Should be void as a matter of public policy
  - All collisions involve a regulation violation
  - Effect of enforcement is that vessel owner paid premiums for no coverage
- Louisiana Anti-Technical Statute Should Apply
- Waiver
  - Pre-binding
  - Post-binding
- Estoppel
  - Inadequate Reservation of Rights
  - No Separation of files

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Judge Morgan Decision – Sept. 16, 2012

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

HOUSTON CASUALTY COMPANY, Plaintiff	CIVIL ACTION
VERSUS	No. 10-3367
SUPREME TOWING CO., INC., Defendant	SECTION "E"

ORDER AND REASONS

Before the Court are three motions for summary judgment: (1) plaintiff Houston Casualty Company's ("HCC") "Motion for Summary Judgment on Insurance Coverage;"[1]

Summary judgment is not appropriate with respect to the issue of insurance coverage in this case. HCC has not met its burden of proving that, as a matter of law, the Coast Guard Provisions are warranties/exclusionary provisions giving rise to an automatic right to deny coverage.

[1] R. Doc. 81.

[2] R. Doc. 173.

[3] R. Doc. 181.

[4] R. Doc. 240.

1

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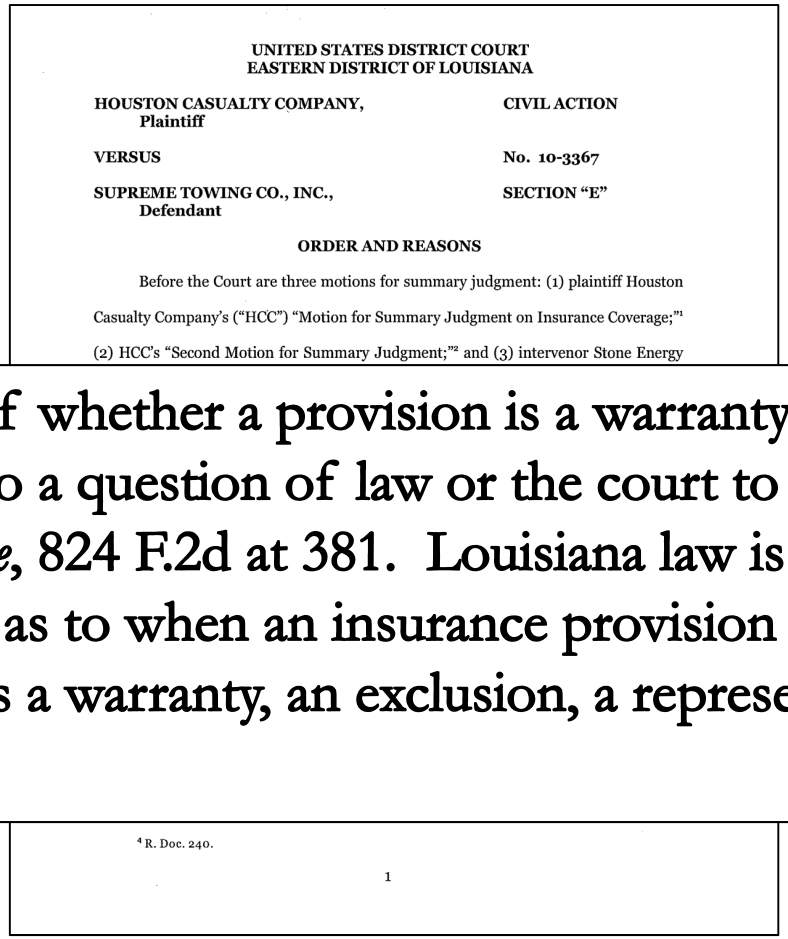
Judge Morgan Decision – Sept. 16, 2012



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

HOUSTON CASUALTY COMPANY, Plaintiff	CIVIL ACTION
VERSUS	No. 10-3367
SUPREME TOWING CO., INC., Defendant	SECTION "E"

ORDER AND REASONS

Before the Court are three motions for summary judgment: (1) plaintiff Houston Casualty Company's ("HCC") "Motion for Summary Judgment on Insurance Coverage;"[1] (2) HCC's "Second Motion for Summary Judgment;"[2] and (3) intervenor Stone Energy

[4] R. Doc. 240.

1

The question of whether a provision is a warranty or a condition is also a question of law or the court to decide. *Milky Way Barge*, 824 F.2d at 381. Louisiana law is far from clear, however, as to when an insurance provision is characterized as a warranty, an exclusion, a representation, or otherwise.

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Judge Morgan Decision – Sept. 16, 2012

UNITED STATES DISTRICT COURT

In this case, the Court does not find the Coast Guard Provisions in the HCC policy to be clear exclusionary provisions. **Instead, the Court finds the Coast Guard Provisions to be ambiguous.** *See Bonin v. Westport Ins. Corp.*, No. 05-886, p. 6 (La. 5/17/06); 930 So.2d 906, 911; *see also Tex. E. Transmission Corp. v. Amerada Hess,* 145 F.3d 737, 741 (5th Cir. 1998). **Ambiguity in the terms of a contract give rise to a fact question concerning the intent of the parties.** *Liberty Mut. Ins. Co. v. Pine Bluff Sand & Gravel Co., Inc.*, 89 F.3d 243, 246 (5th Cir. 1996).

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The New Frontier?

"It is **warranted** that the Assured fully complies with U.S. Coast Guard regulations with respect to manning and navigation requirements."

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