

LM Ericsson Telefon AB and Ericsson Inc. vs. Certain Underwriters At Lloyd's London

Year: 2008

Court: Texas Supreme Court

Case Number: 09-0012, 09-0013

This case addresses what it means when an insurance contract incorporates and makes the insured's policy application a part of the policy of insurance. In 2003, Ericsson Inc. submitted an application for errors and omissions liability insurance, which named its parent company, LM Ericsson Telefon, AB ("LM Ericsson"), as an entity requesting coverage under the policy to be issued. The insurer, American International Specialty Lines Insurance Company ("AISLIC"), did not deny the application, but rather issued a policy incorporating the application and making it a part of its policy. Later, after LM Ericsson became involved in litigation, AISLIC denied coverage on the basis that LM Ericsson was not insured by the policy. In the coverage lawsuit that followed between Ericsson, AISLIC and Underwriters (Ericsson's follow-form excess insurers), LM Ericsson argued that the term identifying who is insured under the AISLIC policy, "you," was defined in the application to include "LM Ericsson." Therefore, because the application was part of the contract, LM Ericsson argued that the AISLIC policy should be interpreted to provide coverage for LM Ericsson. LM Ericsson also argued that AISLIC accepted its application by issuing a policy expressly incorporating the application and making it a part of the contract. Alternatively, to the extent that the terms of the AISLIC policy, including the incorporated application are ambiguous, LM Ericsson argued that the AISLIC policy should be construed in favor of coverage. The trial court hearing the coverage lawsuit granted summary judgment finding that LM Ericsson was insured under the primary and follow-form excess policies issued by AISLIC and Underwriters. The Court of Appeals reversed finding that LM Ericsson was not insured under either policy. "

The UP's brief was written pro bono by Lorena Trujillo, John N. Ellison, Toki Rehder, Whitney D. Clymer of Reed Smith, LLP

