

# MARKS & WEINBERG, P.C.

## **Transport International Pool v. Continental Insurance Co.**

2005 WL 1294392 (Tex. App. Ct., June 2, 2005)

In this case, a Texas Court of Appeals held that the insurance company providing liability insurance as required by an equipment lease did not have to defend, indemnify or otherwise cover a lessor with respect to a lawsuit which alleged lessor's negligence as the sole cause of the plaintiff's injury.

Transport International Pool, Inc. d/b/a GE Capital Modular Space (the "Lessor") leased a construction trailer to Vratsinas Construction Company (the "Lessee") which was to be anchored and used as an office on Lessee's construction site. It appears that Lessor was responsible for anchoring the trailer. One of Lessee's employees (the "Plaintiff") was working in the trailer-office when straight line winds blew it over, causing it to roll several times and seriously injuring the Plaintiff. The Plaintiff sued Lessor alleging that Lessor negligently anchored the trailer and was therefore liable for Plaintiff's injuries. Plaintiff did not name Lessee or any other party as a defendant in the suit.

The equipment lease contained standard language requiring Lessee to procure and keep in full force and effect commercial general liability insurance naming Lessor as an additional insured. Relying on this provision, Lessor filed third-party petition against Lessee and Lessee's insurance company, Continental Insurance Company (the "Continental").



The Trial Court agreed with Continental's argument that it had no duty to defend, indemnify or otherwise cover Lessor with respect to Plaintiff's claim since the sole cause of action was based on Lessor's negligence.

On appeal, the Appellate Court stated that an insurer's duty to defend and indemnify another party is determined in accordance with the "eight corners" rule, which requires that the Court compare the allegations within the petition and the insurance policy. The insurance policy contained a fairly common exclusion stating that the insurance does not apply to "bodily injury or property damage arising out of the sole negligence of [the party who otherwise qualifies as an insured]."

The Court held that, since the Plaintiff's petition only alleged that Lessor was negligent in the anchoring of the trailer, the exclusion clearly applied and Continental had no obligation to defend or indemnify Lessor.

Lessor argued that a variety of other factors may have caused the accident and the exclusion should not negate coverage stating, for example that: (1) Lessee had sole responsibility for preparing the site on which the trailer would be used; (2) Lessee had the responsibility of providing firm and level ground for a safe and unobstructed installation; (3) the site selection for the trailer was the responsibility of Lessee; and (4) Lessee assumed all maintenance duties.

The Court rejected these arguments stating that "a determination of whether an insurer has a duty to defend does not consider matters outside the [insurance] policy or [Plaintiff's] pleadings." Since the Plaintiff's pleadings alleged that Lessor "furnished and set up" the trailer and that Plaintiff's damages resulted solely from Lessor's negligence, the Court of Appeals upheld the Trial Court's ruling that Lessor could not require Continental to defend it.



Marks & Weinberg, PC is a law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit [leaselawyer.com](http://leaselawyer.com) or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.

