AKO
POLICYHOLDER
ALERT

ANDERSON
KILL &
OLICK, P.C.
Attorneys and Counsellors at Law

May 2010

Insurance Coverage for the Gulf Coast Oil Spill Losses

By Robert M. Horkovich, John G. Nevius and Marshall Gilinsky

The massive losses due to the Gulf of Mexico oil spill are covered by a variety of insurance policies already purchased by those being harmed. First-party property and business interruption insurance will provide coverage for certain losses. Liability insurance, both general liability and pollution liability policies, should provide defense and indemnity for lawsuits. Directors and officers (D&O) insurance also will provide coverage for derivative lawsuits against directors and officers.

The Size of the Loss

The size of the loss is hard to conceive. Just one reported oil slick is 10 miles long and 4 miles wide. That single oil slick is bigger than many Caribbean islands. It now has been reported that a million gallons of oil have been released each day for the past several weeks. Fishing areas off the Louisiana coast already have been impacted. Louisiana's shrimp industry already is shut down. As of May 18, fishing has been banned in 19% of the Gulf of Mexico due to the oil spill. The whitest sand beaches in the world already are lined with oil balls. Some predict that the oil slick will make its way into the Gulf Stream and then impact the east coast. The initial explosion itself caused a massive loss with the loss of numerous lives, dozens injured and the total loss of a major oil drilling platform.

Swiss Re Insurance Company has estimated insurance coverage for the loss to exceed $3.6 billion. J.P. Morgan estimated a $1.6 billion insurance loss, but noted that its estimate does not include the impact of the oil coming ashore. The owner of the oil rig that blew up already has received over $481 million in insurance recoveries.

What Types of Losses are Covered?

Liability Insurance

As of May 10, 2010, more than 100 lawsuits related to the oil spill already had been filed in courts. Companies facing liabilities due to property damage from spoiled beaches, closed fishing areas, interruptions in shipping or due to bodily injury from deaths and injuries on the oil platform itself, can look for defense and indemnity from their liability insurance coverage. Both general liability insurance policies and pollution liability insurance policies will come into play.

Companies facing lawsuits should give notice to all liability insurance companies in their insurance program (including any captive insurance companies) all the way up to the top of their coverage charts despite a

ANDERSON KILL & OLICK, P.C.
1251 Avenue of the Americas
New York, NY 10020
(212) 278-1000 Fax: (212) 278-1733

ANDERSON KILL & OLICK, P.C.
Two Sound View Drive, Suite 100
Greenwich, CT 06830
(203) 622-7668 Fax: (203) 622-0321

ANDERSON KILL & OLICK, P.C.
One Gateway Center, Suite 1510
Newark, NJ 07102
(973) 642-5858 Fax: (973) 621-6361

ANDERSON KILL & OLICK, P.C.
1600 Market Street, Suite 2500
Philadelphia, PA 19103
(267) 216-2700 Fax: (215) 568-4573

Anderson Kill Wood & Bender, P.C.
864 East Santa Clara Street
Ventura, CA 93001
(805) 288-1300 Fax: (805) 288-1301

ANDERSON KILL & OLICK, L.L.P.
1717 Pennsylvania Avenue, Suite 200
Washington, DC 20006
(202) 416-6500 Fax: (202) 416-6555

www.andersonkill.com



who's who

Messrs. **Robert M. Horkovich**, **John G. Nevius** and **Marshall Gilinsky** are shareholders in the New York office of Anderson Kill & Olick, P.C. Horkovich, a trial lawyer with substantial experience in trying complex insurance coverage actions on behalf of corporate policyholders, has obtained over $5 billion in settlements and judgments from insurance companies for his clients over the past decade. Gilinsky's practice is focused on property insurance, commercial general liability insurance, directors' and officers' insurance, captive insurance and reinsurance issues. Nevius, also a Registered Professional Engineer, has successfully resolved and litigated a variety of legal and technical matters, most of which involve insurance coverage. He provides advice and scientific expertise to clients on a wide range of engineering issues and has represented numerous Fortune 500 companies.

rhorkovich@andersonkill.com
212-278-1322

jnevius@andersonkill.com
(212) 278-1508

mgilinsky@andersonkill.com
(212) 278-1513

present $75 million statutory cap on clean-up liability. Legislation has been proposed eliminating caps on liability. A prudent policyholder facing oil spill liability claims ought to provide notice now, rather than waiting, to see what happens with such legislative initiatives.

Directors & Officers Insurance

Derivative actions already have been filed in court against directors and officers of companies involved in the Gulf of Mexico oil spill. Dozens of such lawsuits are sure to follow. D&O insurance should be tapped to provide defense and indemnity of directors and officers facing such claims.

First-Party Property and Business Interruption Insurance

The massive Gulf Coast oil spill will cause extensive property damage, business interruption and contingent business interruption losses to businesses all along the Gulf Coast — from fisheries in Louisiana to beachfront hotels in Florida and all kinds of business around the Gulf. There also are businesses away from the coastline whose property is safe, but that might suffer business income losses anyway — for example, due to the oil spill's impact on ports or shipping lanes, including the Mississippi River. While such businesses are looking first at responsible parties to cover their losses, over 100 lawsuits have been filed and hundreds more likely will ensue — they also should start thinking now about their own insurance coverage.

In addition to coverage for damage to tangible property such as ports, marine equipment or beachfronts, affected business owners should look to the business interruption coverage included in most business property policies. Business interruption or contingent business interruption coverage is designed to protect businesses from losses stemming from unavoidable interruptions in their daily operations. Business interruption coverage may apply in a variety of circumstances, such as a forced shutdown, a downturn in business due to the damage from the oil spill, or a substantial impairment in access to products, services, a business' physical plant or premises.

Because the economic effects of the spill likely are to extend well beyond the Gulf region, businesses nationwide may be eligible to file contingent business interruption claims — also a standard coverage grant in many property insurance policies, though many small businesses are not aware of it. Contingent business interruption covers policyholders that did not suffer physical damage but still lost revenue after a property loss crippled a major supplier or customer. For example, a manufacturer in St. Louis will be safe from the oil slick, but nevertheless may suffer losses because of problems shipping its product down the Mississippi River or receiving material from suppliers shipped via the Mississippi — or fish suppliers denied shrimp shipments in Omaha, Nebraska.

Steps To Take

If you are facing any of these types of losses, please consider taking the following steps:

- Locate all of your insurance policies;
- Look to liability, D&O or first-party property insurance;
- Remember that property damage, business income, contingent business income and extra expense coverage may be available;
- Remember that coverage may be available even without direct physical loss or damage;
- Give notice to all levels of coverage;
- Secure tolling agreements with your insurance company to protect your rights;
- Understand thorough emergency responses and preservation of property;
- Consider help in submitting your claim, including your broker, public adjuster and attorney;
- Consider whether insurance coverage may be available under other insurance policies.

Taking these steps now will help prudent policyholders secure the insurance coverage for which they paid precious premium dollars and which they are due for this enormous and tragic loss.

The article appearing in this alert does not constitute legal advice or opinion. If you require more information, legal advice or an opinion with respect to a specific situation, please contact the authors.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.