

Oil Spill Notice Deadline Asserted By Some Insurers May Be Fast Approaching

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If you believe you have sustained, or may in the future, sustain damages or business interruption in the wake of the oil spill in the Gulf of Mexico at the Deepwater Horizon Rig, you should examine all notice requirements in your insurance policies immediately, and if applicable, provide notice to your insurers as soon as possible of your potential claim. Some insurers are taking the position that 5:00 p.m. E.D.T. on July 8, 2010, is a deadline for policyholders to notify insurers of their claims under certain policies, regardless of when the policyholder became aware of their claim.

Potential Gulf Oil Spill Insurance Claims

More than two months have passed since the Gulf Oil Spill at the Deepwater Horizon Oil Rig in late April 2010. Damage and business interruption in the wake of this spill may give rise to insurance claims for losses under business-interruption coverage provisions in standard commercial property insurance policies. These policies may provide coverage for business interruption even in the absence of damage to the policyholder's property. Other types of insurance may also apply.

Key Points In Making A Gulf Oil Insurance Claim

A. Notice

The first, and most pressing, step in making a claim for Gulf Oil Spill damages is to provide all your

insurers with notice of your potential insurance claim as soon as possible. Insurance policies often contain provisions requiring notice within a certain fixed – and short – period of time. Such notice requirements are not always conspicuously labeled, but can be contained in policy exclusions and carve-outs. For example, some policies' pollution exclusion carve-outs require notice in 80 days. Some insurers are reportedly taking the position with respect to the Gulf spill that this provision institutes a hard-and-fast notice deadline of July 8, 2010 (80 days from the April 20, 2010 explosion at the Deepwater Horizon Rig), regardless of when the policyholder became aware of its claim. Policies also may require a policyholder to give "immediate" notice upon becoming aware of its claim. It is vital to review your own policy language, determine whether your policy includes timing deadlines on notice to your insurer, and notify your insurers as soon as possible.

B. Documentation

Second, it is important to begin compiling information on the extent and nature of business interruption you experienced in order to support your insurance claim. Some examples of such information might include records of cancellations; records enabling comparisons of business done in the wake of the oil spill versus a comparable period in 2009; and records showing delays in receipt of needed goods due to shipping delays in the Gulf.

If you are not familiar with putting together business-interruption claims, a lawyer or an accounting firm with business-interruption experience would be well positioned to help.

C. Claims

Third, conduct a rigorous coverage review and make claims under all applicable policies. For example, whether your company can recover under a business-interruption insurance extension will depend on the specific facts of your business disruption and the relevant policy language. It may be advisable to seek coverage counsel to assist with these claims and maximize your recovery from this significant event.

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