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Gulf Oil Catastrophe Insurance Coverage Claims – Update

BP Counterclaims against Transocean’s Excess Insurers

By Charles Platto* and Joseph G. Grasso**

In an article in the June 18, 2010 issue of *Insurance Litigation Reporter* entitled “Gulf Oil Catastrophe—Round 1 Transocean Insurers v. BP Additional Insured Claim” (*Insurance Litigation Reporter*, vol. 32, no. 9), we reported that Transocean’s excess liability insurers (who provided \$700 million excess of \$50 million of coverage to Transocean under marine liability policies), filed a declaratory judgment action in federal court in Texas on May 21, 2010, challenging a notice of claim by various BP entities as additional insureds under the Transocean policies. *Certain Underwriters at Lloyd’s and Various Insurance Companies vs. BP Exploration & Production Inc. (and other BP entities)*, Civil Action No. 10-01823 (SD Tex.) The insurers acknowledged in the complaint that BP was an additional insured under the policies, but they asserted that Transocean and its insurers were not responsible for damage relating to the pollution from BP’s well.

On August 6, 2010, BP, represented by Covington & Burling LLP, a leading policyholder firm, filed an answer and counterclaims. Not surprisingly, the counterclaims included as counts One and Two declaratory judgment and breach of contract assertions for coverage by BP. But what was most interesting and somewhat unexpected, was a Third count for Subrogation, Contribution, or Indemnity. That count disclosed that BP had a \$300 million liability policy with National Union Fire Insurance Company of Pittsburgh, PA (an AIG entity), coverage that has not previously been generally reported. The count further reveals that National Union has

tendered its full policy limits to BP and assigned its rights to contribution, indemnity or subrogation to BP. Accordingly, BP is pursuing National Union’s (AIG’s) claims against Transocean (and its insurers) as assignee.

As previously reported, according to the Court’s docket, a status conference is scheduled for September. We will continue to keep you posted as developments unfold.

* Mr. Platto is Adjunct Professor of Insurance Law and Litigation at Fordham Law School, a Vice Chair of the ABA Insurance Coverage Litigation Committee and a Member of the Editorial Board of the *Insurance Litigation Reporter*. He was formerly Chair of the Insurance Practice Group at Wiggin and Dana LLP, and previously a partner at Cahill Gordon & Reindel, and is now an independent arbitrator and mediator in domestic and international commercial and insurance matters.

** Mr. Grasso is the current Co-Chair of the Insurance Practice Group of Wiggin and Dana LLP and Chair of the Committee on marine insurance and General Average of the U.S. Maritime Law Association. He is counsel to the American Institute of Marine Underwriters and wrote the Institute’s amicus brief to the United States Supreme Court in the Exxon Valdez case. Mr. Platto and Mr. Grasso have been appointed as co-editors of the *Additional Insured Handbook*, to be published by the American Bar Association in 2011.