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TO: PIA National Members
FR: PIA National Business Issues Committee
RE: 2010 U.S. Gulf of Mexico Oil Spill — Claims Questions

On June 4, 2010, PIA National President Jon Spalding asked publicly about the oil spill what was being whispered around the industry: “What about claims?”

With the BP oil spill in the Gulf of Mexico ongoing, the southeastern United States is facing the largest man-made economic and environmental disaster in our nation’s history, Jon pointed out that the insurance industry needs to prepare now to answer questions from consumers about what’s covered and what’s not.

Claims questions are now front-and-center. Claims are coming in from local, state, and federal governments, as well as all the individuals and businesses being adversely affected. There are claims for direct damages, and loss experienced indirectly. And as any PIA members know and understand, policyholders adversely affected will naturally ask whether the insurance that they have in force will be a source of timely recovery.

All U.S. Laws Will Apply:

Under intense pressure from President Obama, BP agreed on June 16, 2010 to set up a \$20 billion escrow account to pay claims resulting from the ongoing oil spill. This fund will be administered by an independent third party, Kenneth Feinberg, the administration official who oversaw compensation for executives at companies that received federal bailout funds and who also oversaw payments to victims of the September 11, 2001 terrorist attacks.

The President made clear that \$20 billion would not cap BP’s total liabilities, emphasizing this by declaring that this was a federal disaster that was man-made by BP’s negligence. A federal commission has been formed to both determine the scope of legal responsibility BP will be assigned under federal criminal and civil statutes. When BP advised that it would pay “all legitimate claims,” Congress and the White House

made clear that is a federal determination, not a determination to be made by BP.

By declaring federal domain – the right to define and control this issue early on – officials were putting everyone on notice that all applicable federal and state laws would apply, not just the ones that the negligent parties would like to argue apply.

Scope Of Liability:

At first BP, Transocean and Halliburton “assumed” that their collective obligations for economic damage would be capped under the federal Oil Pollution Act of 1990. This law was enacted after the Exxon Valdez spill; it limited corporate liability to \$75 million for economic damages resulting from an oil spill.

Transocean petitioned the federal district court in Houston to limit its liability in the lawsuits and claims filed against it to about \$27 million. Spurred by its insurers, Transocean made this argument under the Limitation of Liability Act, an international maritime law that allows a vessel owner to limit liability to the value of the vessel and its freight. The law dates back to the mid-1800s, when it was passed to protect U.S. vessel owners, eliminating some risk in crisis situations in order to give aid to U.S. fleets in competing with foreign ships in international waters.

Now, The White House and Congress have made clear that previous limitations on liability will not apply in this case.

The liability situation is further complicated by the fact that some of the parties (and/or a significant portion of their insurance) are not really United States firms. All together, this sets the stage complicated and protracted court battles.

The actions by the federal government assert that this is a United States event and will be dealt with fully under U.S. law. The federal government is holding BP directly responsible for all claims and losses, but has not restricted BP’s rights to pursue other parties who may be at fault.

Insurance Claims Questions Arise:

While the setting up of the \$20 billion fund to pay claims will remove some of the pressure on the insurance industry, consumers will still have one basic question: “Am I covered?”

So far, we’ve seen this question come up regarding the National Flood Insurance Program (NFIP), specifically regarding what would happen if a hurricane in the Gulf pushed oil-soaked water onshore.

In the end, an official memorandum addressing NFIP coverage was issued by Jim Sadler, head of claims adjusting for FEMA/NFIP. The statement confirmed an earlier statement from Mississippi Insurance Commissioner Mike Chaney that there needs to be

a declaration of flooding conditions and then residents needed to prove a flood occurred under standard flood policy definitions to obtain coverage for hurricane-driven oil damage to the building structure insured through the NFIP.

Meanwhile in Louisiana, oyster harvesters were advised by the U.S. Department of Agriculture's Risk Management Agency that federal crop insurance won't cover oil damage. This year, about 50 percent of Louisiana's oyster crop is expected to fall under the Agriculture Department's group risk plan developed in 2009 by the Louisiana Oyster Task Force. Growers pay premiums based on how many pounds of oysters they haul in from oyster beds leased from the state and gain crop protection from hurricane, drought, and flood damage — everything except crude oil. As a result the policy, designed to cover natural disasters, will not cover damage caused by millions of gallons of oil and chemical dispersant stemming from the site of the Deepwater Horizon rig explosion.

So the federal government made clear that their insurance coverages are at best limited in scope, if they apply, and don't necessarily cover all losses suffered from this event.

But consumers need assurance that their claims will be covered, and to them insurance is the most “known” vehicle for that purpose.

On June 3, 2010, the Insurance Information Institute, an insurance industry group, published a presentation <http://www.iii.org/presentations/Deepwater-060210/> by its president Dr. Robert P. Hartwig. He reviews the insurance issues relating to the Deepwater Horizon oil rig loss, including the types of coverage that might apply and the number of parties that might be involved. The liability factor and legal ramifications are discussed. Dr. Hartwig, too, observes that “A lot of activity is expected around business interruption, but under business insurance policies the suspension of the insured's business operations must be caused by direct physical loss or damage.”

A recent news report makes clear the traditional travel insurance does not cover a vacationer's loss because of a man-made pollution event that is not the fault of the ship line ([hyperlink](#)). And in contrast to what the Mississippi Commissioner advised, Dr. Carol Jordan, a leading scholar of risk management and insurance at Troy University, advised <http://www.lagniappemobile.com/articles/3509-oil-spill-could-cause-insurance-nightmare-gas-station-keeps-on> that traditional insurance policies for dwellings, homeowners, condominiums, and mobile homes all “specifically exclude the cleanup of pollution,” and that homeowners affected by the BP oil spill may be left with few options but to seek eligibility for a Superfund cleanup or pursue BP with claims.

Also, as the federal government begins to take more direct control of the containment/clean-up efforts, firms and persons potentially being hired by the federal government must comply with federal insurance requirements, the coverages' content of which may not be readily available in the private insuring marketplace.

What It Means to Consumers, Agents & Insurers:

To the general consumer under this stress, all these experts' comments are confusing. They have specific claims questions. This is materially different than asking general questions about what a policy covers or excludes.

When insurance customers have needs and questions, they come to their agents for answers, and agents must respond.

PIA members know that their primary reference sources for questions about insurance claims and coverage assessments are defined by the specific policy language in question, along with the past claims practices of the insurer. Secondary sources for information regarding claims include FC&S, PF&M, CPCU, ISO, AAIS and NCCI – but in the end, whether a particular insurance policy will or will not respond, and if so how, is the sole responsibility of the insurer.

PIA appreciates the delicate situation in which we all, insurance producers and carriers, find ourselves. PIA members know there is a critical difference between discussing the nature of insured risk that the consumer has purchased under their policy vs. the specific circumstances of the claim they're making and the claims settlement decision to be made.

That said, need their questions answered and PIA member need reliable guidance from each of their carriers. **This is not a time when carriers can sit back silently.**

Initial Coverage Questions:

Beyond the overriding consumer question, "Am I covered?" PIA National believes that the industry needs to prepare to answer more detailed coverage questions that are starting to be asked of PIA members. These include:

- Wind driven oil affecting homes, vehicles and other property.
- Health effects on those working in the recovery efforts.
- Private vessels operating as contractors in the oil cleanup effort affected by oil.
- Fish deemed not fit for human consumption due to oil, and the resulting losses to individual fishermen.
- Effect of a "pollution event" on the function of business interruption and/or loss earnings coverage for direct loss claims.
- Independent BP franchise owners who suffer economic losses from consumer boycotts.
- P/L vs. C/L perspectives.
- Private leisure boats moored and affected by the spill vs. damage when on the open seas.
- How does private sector insurance policy coverage comply with federal insurance requirements for contracted jobs?
- Workers comp distinctions among independent contractors working for government entities or in the private sector.
- Coverage of potential damage from the effects of the recovery methods used,

- including chemical retardants.
- Liability in the case of contractors being forbidden to wear respirators.
 - Private insurance coverage as it may be called upon to respond to federal insuring requirements.
 - How may the long-tail nature of this event affect requirements concerning timelines for claims filings?
 - If any loss is paid, will carriers make clear that losses will be:
 1. Paid as a condition of the terms of the policy.
 2. Paid as a business decision of the insurer under a reservation of rights.
 3. Paid under a right of subrogation by the carrier back to BP.

PIA Action Plan:

This report is an additional follow up to the outreach PIA has already begun with carriers and insurance forms organizations, urging them to activate their instructions to their insurance producers. This should specifically include informing PIA agencies where to direct their customers for their claims questions.

I. PIA National is sharing a developing series of real claims and coverage questions (see above) with ISO, AAIS, NCCI and PIA partner carriers to engender industry discussion in order for carriers to issue reliable guidance memos to their individual producer forces.

II. PIA National also encourages PIA members to contact every one of their insurers (in writing) and request their written guidance. We've included a suggested format <http://www.pianet.com/doc/Issues/CarrierInquiryGulfOilSpill.pdf> that members may use to guide their own individual written communiqués.

III. PIA asks all insurers and PIA members to please share with us the guidance information that you make available or receive. PIA will work with insurers to help facilitate the flow information between insurers and their insurance producers to answer claims questions from insureds. A special section on our website at <http://www.pianet.com/IssuesOfFocus/HotIssues/GulfOilSpill> is devoted to this.

IV. PIA will continue to work with federal and government officials to assure that PIA members receive authoritative federal agency memorandum as to any claims-related questions that may arise. Federal insurance programs may still be subject to political pressure as to their coverage, before, during or even after formal claims decisions have been rendered. So, just as PIA members need their carriers to guide them based on that carrier's written word on their stationary, we need written correspondence from federal insurance programs.

V. PIA is also working with the appropriate federal officials to encourage the use of FEMA disaster grants and payments systems, expedited as we did during Katrina, to provide another source of immediate partial claims payments to citizens. The federal government would recoup these funds as an additional aggregated claim against BP.

Summary:

Losses either as a direct or indirect result of BP's Deepwater Horizon oil spill are man-made pollution losses, not losses from natural disasters to which insurance generally responds. The federal government is holding BP primarily responsible for all the claims arising from this man-made pollution event. Ultimately, what's covered and what is not covered under private sector insurance will be determined by each carrier's individual decision on each claim.

All of us in the business – producers, insurers and regulators – need to be working together to provide the more accurate, reliable, and timely guidance that insurance customers require and need. PIA National is committed to fulfilling its part in this process and looks forward to working with you.

Your input is needed: The members of the PIA National Business Issues Committee (BIC) welcome your questions, comments and information. We've created a resource area for PIA members at <http://www.pianet.com/IssuesOfFocus/HotIssues/GulfOilSpill> where much of this information will be posted. Please direct your input to patbo@pianet.org and they will be shared with the BIC Technical Working Group. Thanks!