

SARASOTA LITIGATOR Journal

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The law firm of Wittmer & Linehan is accepting referrals of cases in the areas of personal injury, wrongful-death, insurance disputes, workers compensation, and trust and estate litigation. We promise to work hard to earn and preserve your trust in referring cases to our firm, providing prompt, diligent and aggressive representation.

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How well are property and business owners protected from Gulf oil spill damages?



Act immediately to investigate and protect your rights.

With Deepwater Horizon oil lurking in the Gulf of Mexico, it's time for property owners and business owners to dive into their insurance policies to get a clear picture of the potential liabilities they face and the potential benefits of insurance should the oil reach our shores.

Given the potential devastating impacts from the spill, owners of businesses that could be affected if parts of the regional economy shut down should prepare to make business interruption claims for economic losses.

Like business owners, homeowners wonder if their homeowner's insurance will soak up the losses should the spill damage their properties. The scope and language of your insurance policies would largely determine whether insurance would cover any damages. The experts at Wittmer & Linehan can untangle the sometimes arcane language of insurance policies and help you determine your rights.

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CASE REVIEW

Bozeman family to benefit from DeSoto County's largest personal injury judgment.

On August 17, 2009, two weeks before the start of trial, a subsidiary of insurance giant AIG (American South Insurance Company) and the Personal Representative of the Estate of Matthew McCreary agreed to the entry of a \$9.0 million dollar judgment in favor of our client, Ken Bozeman. This is the largest personal injury judgment documented in DeSoto County, Florida. On October 23, 2006, Mr. Bozeman was a passenger in a car traveling to work down County Road 760-A in Arcadia. Matthew McCreary approached

from the opposite direction and left his lane of travel, running head-on into the vehicle in which Bozeman was a passenger. The wreck claimed the life of Mr. McCreary and three others. Mr. Bozeman survived, but was left with very extensive brain injuries. Mr. Bozeman suffers and will continue to suffer for the remainder of his lifetime from the long-term effects of a diffuse axonal traumatic brain injury. Ken requires 24-hour home health care and cannot care for himself in any manner at all. He needs full-time assistance

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Oil spill damages

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Waterfront Homeowners

Floridian homeowners understand the risks of living in paradise. In addition to their basic policy, most carry federal flood insurance, windstorm protection, hurricane coverage, sinkhole provisions, and more on their residences.

But, oil spills?

“If a homeowner’s waterfront land or beach is tarred, damages usually are not recoverable,” says Sarasota attorney Steve Wittmer.

“Homeowner property policies don’t cover land,” Wittmer says. “Insurers argue that policies only cover damage to structures. Unless oil physically damages your home, your standard homeowner’s insurance policy will not cover any damages.”

Furthermore, more defensive insurers may argue that raw crude oil is not a “pollutant” and may not be covered by pollution-cleanup provisions in home insurance coverage. Crude oil is “a naturally occurring substance,” not a pollutant as defined in federal and state laws, they argue. Few expect that defense to hold water.

Nonetheless, homeowners should check to see if their homeowner’s insurance policy provides coverage against explosions. If the government determines that the explosion aboard the Deepwater Horizon oil rig resulted in the spill, a homeowner with an oil-damaged home could possibly find some relief through this “explosion” coverage.

Interruption of Business

The Federal Oil Pollution Act of 1990 clearly marks BP as the party responsible for the Deepwater Horizon spill, liable for



clean-up costs and for damages resulting from the oil’s release. The \$20 billion escrow fund and claims process does not preclude any aggrieved business owners from subsequently suing BP in court for damages. Nor does it exclude business owners from seeking relief through their insurance policies.

For many businesses, their first party property insurance would provide the primary relief. In addition to the loss of or physical damage to property, a property policy that includes “business interruption coverage” may cover financial losses due to the inability to conduct business.

“Business interruption coverage is usually found in ‘all risk’ and package policies,” Wittmer explains. “Business interruption insurance indemnifies policyholders for economic losses caused by the destruction of the policyholder’s building, or plant, or parts of one. In many policies, unless there is direct physical loss to the property, business interruption coverage may not apply.”

However, the loss or damage causing the interruption need not be loss or damage to property of the insured. Such may be the case with the destruction of the oil rig operated by BP. Policyholders should look for specific types of business interruption coverage in their policies.

“Contingent business interruption coverage” focuses on the interruption to the policyholder’s business because of the loss of another. The inability to get a supplier’s goods, for example, might prevent a business from bringing its product to the marketplace. Consider the possibilities of disruptions in the supply chain of a regional seafood industry: fishing is banned in parts of the Gulf, fishermen can’t supply seafood processors, and distributors can’t supply restaurants and stores.

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Oil spill damages

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“Order of civil authority coverage” claims could qualify some businesses for mitigation of lost income. This scenario involves a government directive that denies a business operator access to its property because the property of others has been damaged or destroyed. For example, after the Sept. 11, 2001 terrorist attacks, the government closed parts of Manhattan. Several businesses in the area sought coverage for business losses under an order of civil authority claim although there was no physical damage to their properties.

Other business interruption coverage extensions include gross earnings coverage, which reimburses the policyholder for gross earnings minus normal expenses (profit) that the policyholder would have earned but for the interruption. Some cover extraordinary expenses incurred in dealing with the effects of this disaster, such as the purchase of a special generator to keep the doors open when power is lost. This coverage can also apply to expenses incurred while operating the business from a temporary location.

Case review-Bozeman family

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to dress, eat, and move from his bed to his wheelchair. His functioning brain activity is like that of a six-year-old child.

American South retained an attorney to defend McCreary. Liability for causing the accident and responsibility for the damages and injuries caused by their insured were all denied. An extensive analysis of the accident and damages sustained by Ken was prepared by our Firm in anticipation of trial. Finally,



Documentation Critical

To lay the groundwork for any claim, accurate documentation is critical. Insurance claims must include financial information documented prior to the oil spill. Compile several years of sales and related data.

Right now, Wittmer advises, business owners should document the effects of the spill on sales. For instance, an hotelier should detail cancellations and document the reasons for them, including correspondence from would-be customers.

“If this disaster reaches your property, document with photography and videography: oil slicks, tar balls, injured wildlife,” he says.

“The right to coverage will depend on your business and homeowner policies and the impact to your property or business,” Wittmer says. “But, considering the enormity of the Deepwater Horizon disaster, you should act immediately to investigate and protect your rights. Don’t hesitate to call us at Wittmer & Linehan if you have any questions regarding your rights.



at the last hour before trial was to begin, American South and their client finally admitted that their client was completely responsible for the accident and all damages caused to the Bozeman family.

We are proud that the Bozeman family chose our Firm to represent them in this matter. We continue to pursue American South for payment of the judgment.