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
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.