



Insurance Capacity and Coverage Considerations in a Robust Energy Market

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<http://corner.advisen.com>

Paper titled “Insurance Capacity and Coverage Considerations in a Robust Energy Market”



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Recording of today’s webinar

Today's Moderator



David Bradford- President, Research & Editorial Group, Advisen Ltd.

Today's Panelists



Anthony Carroll

Executive Vice President – Marine, Energy & Construction

Aspen Specialty Insurance Company



Kurt Tentinger

Managing Director

Aon Energy



Costantino Suriano

Partner

Mound Cotton Wollan & Greengrass

Today's Panelists



Anthony Carroll

Executive Vice President – Marine, Energy & Construction
Aspen Specialty Insurance Company

Tony joined Aspen in April 2013 to create a new specialty underwriting unit within Aspen's U.S. platform, and brings broad global experience to Aspen. Tony has 28 years of experience in the global marine and energy market, holding various leadership roles throughout his career, which includes positions at Liberty International Underwriters (LIU), AIU Global Energy, and Cigna Special Risks. While with Liberty, he served on the board of several LIU companies and has spoken at various energy conferences. He has also written several papers on the market opportunities and risk management challenges facing the energy industry. Tony has a B.S. in mechanical engineering, from Manhattan College, and holds a P.E. License.

Today's Panelists



Kurt Tentinger

Managing Director
Aon Energy

Kurt is Managing Director of Aon Energy and Power's Property Brokers group in Houston. His current responsibilities involve developing and managing property insurance programs for the refining, petrochemical, power generation, utility and mining industries. He has significant exposure to placements involving OIL entries. Kurt is also experienced in the feasibility, design and placement of large onshore builders risk programs. Kurt was designated as a 2006 and 2007 "Power Broker" by Risk & Insurance Magazine based upon his expertise and standing commitment to the energy industry. Kurt has 34+ years of experience.

Today's Panelists



Costantino Suriano

Partner

Mound Cotton Wollan & Greengrass

COSTANTINO P. SURIANO has more than thirty-two years of experience in domestic and international insurance coverage and litigation representing leading U.S., London, and Bermuda Market insurers.

Mr. Suriano has litigated cases in New York, New Jersey, California, Arizona, Arkansas, Colorado, Georgia, Illinois, Iowa, Louisiana, Maine, Massachusetts, Missouri, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, and West Virginia, and tried jury cases, including 9/11 second phase jury trial in World Trade Center/Silverstein case, and argued appeals in various state and federal courts.

Energy Industry Trends



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Insurance Market



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A Flood is a Flood is a Flood or is it?

Flood vs. Windstorm vs. Named Storm

- ▶ One common issue after a large storm is whether the damage was caused by Wind or Flood, which can affect sublimits, deductibles, and applicability of flood exclusions
- ▶ Most courts hold that “storm surge” is flood
- ▶ However, some policies define Named Storm, Windstorm, or Weather Catastrophe Occurrence to include storm surge or resulting flooding
- ▶ Policy Wording Matters
 - Compare two Fifth Circuit cases Six Flags (flood sublimit applies where sublimit states it applies “per occurrence as respects flood”) vs. SEACOR (flood sublimit does not apply where it states it applies to losses “caused by the peril of Flood.”)

Application of Multiple Sublimits

- ▶ Another common issue after a large storm is whether multiple sublimits apply and whether peril sublimits apply to time element coverages.
- ▶ Policy wording disputes arise where stacking never intended.
- ▶ Decide if peril sublimits include or exclude time element.
- ▶ Courts have reached contradictory results as to whether peril sublimits apply to time element coverages.
- ▶ Compare Altru Health Systems (8th Cir. 2001) (the lesser flood sublimit, not the civil authority sublimit, applied) with Northrop Grumman Corp. (C.D. Cal. 2011) (flood sublimit referring only to “physical loss or damage” did not apply to business interruption claim, because sublimit did not say it applied to “loss caused by physical loss or damage” and definition of flood did not refer to economic loss)

Contingent Time Element Claims

- ▶ One common issue after a large catastrophe is differences in perception regarding coverage provided for losses related to damage to property of a supplier or customer. Almost all policies only provide coverage when there is damage to a “direct” supplier or customer, but some policies also attend to “indirect” supplies.
- ▶ In a recent case arising out of an explosion at the facility of a natural gas producer, an insured argued that “direct” referred to the physical relationship between parties. The natural gas flowed directly from the gas producer to the insured via a lengthy pipeline. The Fourth Circuit Federal Court of Appeal rejected the insured’s argument, holding that the term “direct” meant the gas producer must have supplied the insured with materials necessary to the operation of the insured’s business “without deviation or interruption from “an intermediary.” The gas producer in that case did not meet that definition, because the insured had a contract with a gas distributor, which was an intermediary with exclusive control over the flow of gas once the gas producer delivered the gas to the pipeline. Millennium v. National Union Ins. Co. (4th Cir. Feb. 20, 2014).
- ▶ Almost all policies require physical damage to property of a supplier or customer, but some forms require prevention of acceptance or rendering of goods or services because of physical damage. Questions often arise as to what is sufficient proof that an insured’s losses were caused by prevention of acceptance or rendering of goods or services. See Arthur Anderson (N.J. Ct. App. 2010) (insured needs to demonstrate more than a generalized loss of revenue to meet the causation requirement).
- ▶ Be clear as to what is needed and understand cost of what asking for.

▶ Crazy Quilt of Regulation for Fracking

- ▶ Local vs. State vs. Federal Regulations
 - ▶ Who is in charge?

Challenges



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