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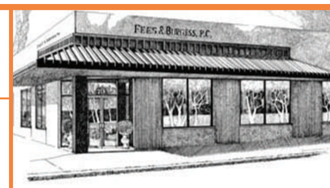

Volume 11, Issue 1

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State of Alabama Involved in High-Profile Litigation

The state of Alabama, along with the state of Louisiana, the United States Justice Department, private businesses, and individual claimants, is suing British Petroleum ("BP") for payouts and fines under the Clean Water Act and the Natural Resources Damage Assessment.

The lawsuit stems from the 2010 explosion of the Deepwater Horizon oil rig, which killed eleven workers. An estimated 172 million gallons of crude oil were released into the Gulf of Mexico over the three months that followed. It is considered the worst offshore oil spill in United States history.

On February 25, 2013, the trial began before Judge Carl Barbier in the United States District Court for the Eastern District of Louisiana in New Orleans. Plaintiffs, led by the Justice Department, claim that the catastrophe resulted from BP's "culture of corporate recklessness." They assert that BP is primarily at fault since it allegedly put profits ahead of people, safety, and the environment. On the other hand, BP is accusing the rig's owner, Transocean Ltd., of failing to properly maintain the rig's blowout preventer, which had a dead battery. BP is also claiming cement contractor Halliburton used a "bad slurry" that failed to prevent oil and gas from traveling up the well.

BP has already pleaded guilty to manslaughter and other criminal charges and has racked up more than $24 billion in spill-related expenses, including cleanup costs, compensation for businesses and individuals, and $4 billion in criminal penalties. But plaintiffs hope to convince the judge that BP and its partners are liable for much more in civil damages under the Clean Water Act and other environmental regulations. If BP is found grossly negligent under this statute, it could face civil fines up to $17 billion. Settlement negotiations have been ongoing, but none have been successful.

This first phase of the trial, expected to last up to three months, is to determine the liability of BP, Transocean, Halliburton, and other companies, and their degree of negligence. Luther Strange, Alabama's attorney general, said he would seek to show all three companies had acted with "gross negligence and willful misconduct." He is also seeking punitive damages from these companies to be paid to the state of Alabama. The second phase of the trial, scheduled to begin in September, will focus on the flow rate of the oil, and the third phase, scheduled for 2014, will consider damages.

PROTECTIVE MEASURES

THE DIFFERENCE BETWEEN TORTS
Or, How a Complaint Affects Coverage

The Alabama Supreme Court reiterated the importance of analyzing a complaint to determine whether defendants are covered. Plaintiff Price-Williams sued for damages related to a battery at a fraternity house and for failure by officers of the local chapter to implement a risk-management program required by the national organization. Admiral (which was not called upon to defend the individual officers at trial) argued its policy excluded coverage because the injury to Price-Williams was caused by an intentional act and the failure to implement a program did not constitute an occurrence. The Supreme Court disagreed.

First, the injury was caused by two acts – the attack and the failure to implement a program. Had the program been implemented, Price-Williams' injuries at least would have been minimized. Second, the wording of Admiral's exclusion was narrow and did not apply to injuries caused by one of the individual defendants. Finally, because the national organization did not expect or intend for the local chapter to ignore the requirement to institute a program, its failure to do so constituted an occurrence.

By carefully pleading the causes of action in the complaint, plaintiff was able to recover from an insurance carrier, even when defendants did not seek coverage. Insureds and insurers need to carefully review a complaint. Had Admiral provided a defense to the individual officers at trial, it might have been able to avoid the judgment for which it was held liable.

Admiral Insurance Company v. Price-Williams, 2013 WL 135738 (Ala. Jan. 11, 2013)

FEES & BURGESS, P.C. — Calendar of Events

Fees & Burgess, P.C., is proud to present, and participate in the presentation of, the following upcoming seminar:

Free Four Part Lunch and Learn Continuing Education at ADTRAN

4 Sessions, Open to the Public. Bring your lunch to the meeting.
11:30 AM to 1:00 PM

Location: ADTRAN, Inc., 901 Explorer Blvd NW, Huntsville, AL, at 2 East Tower, "Waterside" Conference Room 252 (follow the signs when entering the building).

Map available at: https://www.adtran.com/pub/Library/Corporate/ADTRAN_Campus_map.pdf

Session 1: Reducing Risk in Your Purchasing Terms and Conditions - How to Contract on YOUR Terms
Wednesday, February 27, 2013

Session 2: Contract Indemnity and Limitation of Liability Provisions - Understanding, Drafting, and Negotiating in any Context
Wednesday, March 20, 2013

Session 3: Key Concerns Specific to International Contracting and Related Risk Allocation and Management, What You Don't Know CAN Hurt You
Wednesday, May 22, 2013

Session 4: What Happens When a Good Deal Goes Bad? Planning and Drafting for Dispute Avoidance and Resolution
Wednesday, September 18, 2013

Presented by NCMA Certified Professional Contract Managers and attorneys Allen Anderson and Jeff Roth of Fees & Burgess P.C., regular speakers at the NCMA World Congress, and ISM International Supply Management Conference. Speaker biographical information at www.feesburgess.com.

Attendees at each session will be qualified to receive 1.3 hours of continuing education from each session for both the National Contract Management Association (NCMA) and the Institute for Supply Management (ISM).

Space is limited to 45 attendees per session!

For more information, including how to register for this class click here. Or call Fees & Burgess P.C. at 256-536-0095 and ask for Vered Zylberman or email: vzylberman@feesburgess.com.

Seminars

During these rough economic times, it is important to get the most for your money. The lawyers of Fees & Burgess, P.C., combined, have many years experience working in various fields, as both in-house and private counsel, representing a diverse clientele. Our attorneys have extensive experience in many areas of law, including employment law; intellectual property; supply chain management; mergers and acquisitions; contract negotiation; dispute resolution; and various other fields.

This wide field of knowledge provides our attorneys with the insight and know-how to be able to provide quality training on various topics. Our programs can be customized to fit any business need while keeping the costs of our training competitive, without sacrificing quality.

Topics that Fees & Burgess, P.C., can provide training on include, but are not limited to:

A Recession Era Guide to Collecting on Construction Contracts

Conducting Effective Workplace Investigations

Construction Contracting

Contingent Employees and Labor Outsourcing

Diversity Training

Elements of an Electrical Manufacturing Services Contract

Employment Law Survival Training for Managers

Family Medical Leave Act

Hiring and Firing

Immigration Compliance

Incoterms® 2010

Indemnity and Limitation of Liability Contract Clauses

International Contracting

Limiting Liability for Sexual Harassment

Managing Gender Identity Issues in the Workplace

Negotiation and Resolution of Federal Contract Claims

Privacy in the Workplace

Reducing Employee Benefits Costs for Alabama Businesses

Reducing Risk in Purchasing Terms and Conditions

Reduction in Workforce Strategies

Retaliation and Whistleblowers

Uniform Commercial Code: Primer to Articles 1, 2, and 2A

Violence in the Workplace

Wage and Hour Issues/Fair Labor Standards Act

Americans with Disabilities Act

Managing Employee Use of Internet and E-mail in the Workplace

Ethics, Business Conduct and Compliance in Government Contracting

For more information on these and other programs, please visit us online at www.feesburgess.com; contact us by e-mail at seminars@feesburgess.com; or by phone at (256) 536-0095.

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SPEAKERS

FEES & BURGESS, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program, please contact us at seminars@feesburgess.com.

NEWSLETTERS

FEES & BURGESS, P.C., also publishes *F&B HR Corner,* focusing on human resource issues; and *F&B SCM Memo,* focusing on the supply chain management industry. To receive any of these e-newsletters, please provide your contact information to newsletters@feesburgess.com.

To remove your name from our mailing list, please contact us at newsletters@feesburgess.com.

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"No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers."

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