

MEDIA ADVISORY

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Relief Ahead: Key Asset Recovery Options Available to Gulf States in Aftermath of Deepwater Horizon Oil Spill

CRISIS AND RESPONSE: States and localities in the Gulf coast are in crisis response mode as they deal with the unprecedented oil spill that threatens their shores. It is crucial that these states take quick and aggressive action to assess and pursue resources available to them to help deal with this catastrophe. Likewise, Members of Congress and state and local government officials can play a key role in ensuring that their constituents have the knowledge and tools necessary to maximize recovery of assets to deal with the consequences of the spill.

Gilbert LLP partner Richard Shore, whose firm specializes in recovering insurance and other assets for mass disasters and mass torts, emphasized the importance of focusing on asset recovery early in the crisis response effort: "Given the billions of dollars in damages that are predicted here, insurers and the Oil Spill Liability Trust Fund will be inundated with claims. It is important that anyone impacted by the spill be at the front of the line and actively manage the claims process from that vantage point – not simply throw their claim into the hopper and hope for the best."

OIL POLLUTION ACT:

FRAMEWORK: The Oil Pollution Act allows claims for oil removal costs and damages to be made against the "responsible party" and the Oil Spill Liability Trust Fund. The liability of the "responsible party" for damages is capped at \$75 million (caps do not apply in certain cases). In response to a request by the Obama Administration for clarification of previous statements concerning the cap, BP recently stated that it is "prepared to pay above \$75 million on these claims and . . . will not seek reimbursement from the U.S. government or the Oil Spill Liability Trust Fund." Claims against the Oil Spill Liability Trust Fund are subject to a \$1 billion per-incident cap.

TYPES OF CLAIMS: States can recover against the "responsible party" or the Fund for removal costs incurred to clean up an oil spill. Removal cost claims against the "responsible party" are not subject to the caps set forth above. States and their political subdivisions also can recover

natural resource damages, increased costs of public services, and lost revenues due to oil spills in the Gulf. Private parties can recover for property damage, lost income and profits, and the like.

LEGISLATION TO RAISE RECOVERY CAPS: On May 3, 2010, Senators Robert Menendez (D-NJ), Frank Lautenberg (D-NJ), and Bill Nelson (D-FL) introduced legislation known as the Big Oil Bailout Prevention Act. Among other things, the legislation would raise the liability cap on spills to \$10 billion, eliminate the \$1 billion per incident cap on claims against the Fund, and permit claimants to collect from future revenues of the Fund (with interest) if amounts in the Fund are insufficient to pay all claims in full.

INSURANCE COVERAGE: Various types of insurance coverage also may be available to parties that suffer property damage or other economic consequences related to the spill. These include, but are not limited to, first-party property coverage, business interruption and related types of coverage, and directors and officers coverage. Parties sought to be held liable for the spill and its consequences also may have environmental coverage, third-party liability coverage, directors and officers coverage, and errors and omissions coverage that may apply.

OTHER PROGRAMS: Businesses and individuals affected by the spill should think broadly about all potential sources of recovery. For example, there is a Federal crop insurance program group risk policy covering oysters. As currently formulated, coverage is limited to losses caused by natural disasters such as drought, flood, and hurricane. As a result of the Gulf oil spill, there is now discussion of adding a rider to the policy that would specifically cover reduced landings of oysters due to oil spills.

IMMEDIATE ACTION ITEMS: As part of their broader crisis response efforts, Members of Congress and state and local officials, as appropriate, should take immediate steps to:

- Assess, formulate, and pursue state and local government claims for removal costs, natural resource damages, increased costs of public services, and lost revenues in connection with the spill; and
- Provide information and guidance to constituents (individuals and businesses) on what assets are available under the Oil Pollution Act, applicable insurance policies, and otherwise to deal with the economic consequences of the spill, and how best to pursue them.

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The lawyers of Gilbert LLP, with offices in Washington, DC, and Austin, TX, have extensive experience in recovering assets to deal with the consequences of mass torts, environmental matters, and large-scale disasters including Hurricane Katrina and the Exxon Valdez oil spill. This includes federal programs dealing with oil spills, flood damage, and a broad range of insurance coverage. The firm's focus is on the creative and aggressive pursuit of all potential avenues of asset recovery to deal with major losses and liabilities.

For more information on oil spill recovery options, please contact Gilbert LLP attorney Richard Shore at (202) 772-2317. For more information on Gilbert LLP, visit www.gotofirm.com.

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