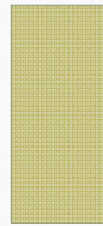


**C O R E Y L. M A Z E**  
SPECIAL DEPUTY AG, STATE OF ALABAMA

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## MACONDO UPDATE JANUARY 2016



## AGENDA

- Additional Insured Coverage
- Oil Pollution Act & Clean Water Act
- Government Settlements: BP, MOEX, Transocean
- Anadarko Civil Penalty Assessment
- BP Company Men Criminal Exposure
- State of the Law Post-MDL
- Q&A's

## ADDITIONAL INSURED COVERAGE

*In re Deepwater Horizon*, 2011 WL5547259 (E.D. La. No v. 15, 2011)

*Ranger Insurance, Limited et al. v. BP P.L.C., et al.*, 710 F.3d 338 (5th Cir. 2013), *vacated by* 728 F.3d 491

- Procedural History
  - District Court
  - Fifth Circuit I
  - Fifth Circuit II
  - Texas Supreme Court
  - Settlement

## ADDITIONAL INSURED COVERAGE

- Manuscript Policy
  - Insured: Named Insured and “any . . . entity to whom the ‘Insured’ is obliged by any oral or written ‘Insured Contract’ . . . entered into before any relevant ‘Occurrence’, to provide insurance such as is afforded by this Policy . . . .”
  - Insured Contract: “any written or oral contract or agreement entered into by the ‘Insured’ . . . and pertaining to business under which the ‘Insured’ assumes the tort liability of another party to pay for ‘Bodily Injury’, ‘Property Damage’, ‘Personal Injury’ or ‘Advertising Injury’ to a ‘Third Party’ or organization. Tort Liability means a liability that would be imposed by law in the absence of any contract or agreement.”
  - “[A]dditional insureds are automatically added” “where required by written contract.”
- Contract
  - Indemnity allocations
  - Additional Insured: “[BP] shall be named as additional insureds in each of [Transocean’s] policies, except Workers’ Compensation for liabilities assumed by [Transocean] under the terms of this Contract.”

## ADDITIONAL INSURED COVERAGE

### Policy Endorsement 4:

BP is "Insured" if Transocean is "obliged ... to provide [BP] insurance" in an "Insured Contract" "under which Transocean assumes the tort liability of another."

### Policy Endorsement 1:

"[A]dditional insureds are automatically added" "where required by written contract."

### Drilling Contract, Ex. C and Art. 24:

Transocean obliged / required to name BP and affiliates "additional insureds ... for liabilities assumed by Transocean under the terms of this Contract." Those liabilities do not include subsea pollution.

### Coverage Prerequisite Missing: No Assumption of Liability for Subsea Pollution

Drilling Contract is "Insured Contract" for assumed risks, but not subsea pollution

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BP is additional insured for assumed risks, but not subsea pollution

## ADDITIONAL INSURED COVERAGE

### ATO FNA Contractor Policy & Contract

#### **POLICY:**

Insured is "[a] person or organization for whom you have agreed to provide insurance as is afforded by this policy."

#### **CONTRACT**

"[ATO FNA] shall be named as additional insured in each of Contractor's policies, except Workers' Compensation; however, such extension of coverage shall not apply with respect to any obligations for which [ATO FNA] has specifically agreed to indemnify Contractor."

### Transocean Policy & Contract

#### **POLICY:**

Additional Insured coverage where Transocean "is obliged by any oral or written 'Insured Contract'" or "where required by written contract, bid or work order"

"Insured Contract", whenever used in this Policy, shall mean any written or oral contract or agreement entered into by the "Insured" ... and pertaining to business under which the "Insured" assumes the tort liability of another party. ... Tort Liability means a liability that would be imposed by law in the absence of any contractor agreement.

#### **CONTRACT**

"[BP] shall be named as additional insureds in each of [Transocean's] policies, except Workers' Compensation for liabilities assumed by [Transocean] under the terms of this Contract."

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