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EWI Risk Services comments on D&O impact of Deepwater Horizon disaster

Much of the discussion surrounding the impact of the Deepwater Horizon disaster to the insurance and reinsurance industry has not addressed the potential impact to various management liability coverage's for the affected companies and, by extension, it's future impact on capacity for D&O insurance and the quality of coverage available in the next 12-36 months for related E&P oil-services companies.

EWI perceives a significant impact to the availability of D&O coverages (Corporate Reimbursement insurance and Side-A insurance for non-indemnifiable loss assigned to individual directors and officers) for publicly-traded exploration & production (E&P) companies, their joint-venture partners. Additionally, there is a potential impact to publicly-traded mutual funds, closed-end funds, and related fund management companies subject to regulation under the Investment Advisers Act of 1940. This arises from their investment allocations.

In our estimation, the long-term potential insurance market impact of D&O actions is in the range of \$250MM - \$500MM, spread across a variety of carriers and reinsurers in the U.S., Bermuda, and the U.K. This estimate is based on the usual and customary D&O program limits in the aggregate that may have been insuring the three (3) publicly-traded companies that have been subject to either federal and/or state securities litigation thus far as a result of the Deepwater Horizon disaster: BP PLC (NYSE: BP); Transocean Ltd. (NYSE: RIG); and Halliburton Company (NYSE: HAL). To date, EWI is not aware of any public disclosure of available D&O limits purchased and/or exposed by BP, RIG or HAL.

The ultimate impact on capacity and the quality of coverage available for going-forward D&O insurance in the E&P sectors will be largely determined by the set reserves and ultimate insurable losses paid by the insurance carriers and reinsurers at the time of settlement or judgment. As a result of the litigation cycle of federal securities claims promulgated under the Securities Exchange Act of 1934 (alleging fraud) and state court derivative claims (alleging gross negligence), it is likely several years away before insurance companies and reinsurers will know the full size and scope of the tail exposures incurred resulting from settlement or judgment funding requirements.

What is known at the present time is the nature of the allegations levied against the defendants as a result of the investor losses associated with the Deepwater Horizon disaster. For example, the initial strike-suit complaint against BP seeks recovery against defendants for breach of fiduciary duty and corporate waste. The allegations state that despite numerous other prior safety and environmental concerns at BP the director and officers defendants "elected to cut costs, including safety and manufacturing expenditures in pursuit of profitable results..." Further, as a U.K. based corporation, BP is also subject to a requirement of British Companies Act of 2006 that corporate boards ensure that their companies conduct operations with due regard for "the impact of the company's operations on the community and the environment." Taken collectively and in light of the cross-jurisdictional issues at hand, specific exclusion carve-outs and coverage grants

now available in this “soft” D&O market (relative to representations, severability, pollution, bodily injury, others) are likely to be reexamined by carriers and reinsurers in the months ahead and could have a material aggregate impact of the quality and price of coverage for renewals in the second half of 2010 and beyond.

EWI Risk Services can assist energy companies and investment management and advisors in evaluating their various management liability exposures and related options. See www.ewirisk.com and contact **Scott Uhl, SVP** at 972-560-0680 for further input.