

# Insurance Industry: Claim baby claim

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The insurance industry is notorious for collecting premiums and not paying claims. Court action underway in Houston suggests that Lloyds is seeking to prevent claims from a (what looks like uninsured) BP leaking into the Transocean insurance covered by the market.

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## If at first you can't claim on your own policy...

Robert the Bruce was crowned King of Scotland 1306. He tried, and ultimately succeeded, in freeing Scotland from the rule of the English.

Ancient legend tells how, after being defeated at a battle, Bruce escaped and found a hideout in a cave. Hiding in a cave for three months, Bruce was at the lowest point of his life and considered leaving the country and never to return.

While in hiding, Bruce watched a spider building a web in the cave's entrance. The spider fell down time after time, but finally he succeeded with his web. This inspired Bruce to retry his fight, telling his men: "If at first you don't succeed, try, try and try again".

## In deep water

One of the first major law suits to follow from the Deepwater Horizon rig disaster has started in Houston. BP was generally understood to be uninsured for the consequences of the catastrophic oil spill. It now seems they are trying to make a claim of up to \$700m on the insurance cover held by the rig operator Transocean. Thirty eight Lloyd's syndicates together with a number of insurance companies including Axis Specialty Europe, Berkeley Insurance Company, Houston Casualty Insurance Company and Zurich American Insurance Company have filed suit in Houston asking the court to reject BP's claim. The insurers say that the insurance protection is for the rig itself and not for pollution emanating from the well. It would appear that BP is trying again to find insurance cover.

## Pollution exclusion

The dispute is in many ways a surprising one. The practice developed over many years of underwater drilling is for the drilling contract to lay out pretty clearly mutual liabilities and indemnities. These include the interests of the oil company under any insurances where the oil company is named as a co-insured. Normally this only relates to damage to the rig. Pollution is normally excluded.

## A drop in the ocean

In contrast to the oil spill, even if BP is successful the claim is likely to be a drop in the ocean. The \$700m policy limit is significantly smaller than the total losses from the incident. These are variously estimated to be between \$3.5 and \$12 billion.

## Small pond

The claim however affects about half of all the syndicates in Lloyd's. According to Catlin which is one of the biggest players in the Lloyd's market involved in the legal proceedings, the losses from this disaster will be the biggest loss in the energy market since Piper Alpha in 1988.

## Higher stakes

The market will continue to watch developments with interest. It would seem that there is more at stake than \$700m. BP's reputation and possibly even its right to drill in deepwater are at stake. These risks are very real, uninsured and in fact uninsurable. It is in BP's interests to bring Transocean and Halliburton into the frame to protect it from the full backlash of American public opinion. Americans seem to much prefer oil in their SUVs rather than on their beaches.

## BRAVE Partners' services

The insurance industry is notorious for complex litigation over subtleties. The court action over whether or not the 9/11 attacks were one event or two under the World Trade Center insurance policy is perhaps the most famous example. This incident is likely to take its place in the history books too.

Often the litigation is less about the result, which is often reasonably clear to both sides, but more about other factors relating to the incident or the insurance business. When taking on insurance risks, it is important for capital markets investors to distance themselves as far as possible from the delays and uncertainties of insurance litigation. The BRAVE partners have substantial experience in achieving this within structures.

## Interaction

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- A Houston court is hearing BP's claim for cover on Transocean's insurance coverage for the Deepwater Horizon rig.
- The claim appears to have little merit both legally and financially.
- BRAVE Partners suspects that more is afoot in this action. In particular it would appear that BP is keen to highlight the other companies involved in the operation.
- Litigation is a much used tool in the insurance industry to achieve a variety of results.
- BRAVE Partners is well versed in building structures that can provide capital markets investors with some protection from this risk.

[enquiries@bravepartners.com](mailto:enquiries@bravepartners.com)

[www.bravepartners.com](http://www.bravepartners.com)