

## Energy Industry Insurance Coverage Experience



K&L Gates' insurance coverage practice group has represented and counseled energy industry clients, including oil and gas exploration, production, and transmission companies; oilfield service companies, power generation and transmission companies; electrical utilities; independent power producers; alternative energy project developers; and members of the nuclear power industry, among others. Our public representations of energy sector companies in insurance coverage matters include those on behalf of ABB Lummus Global, Babcock & Wilcox Company, Anglo-Suisse Offshore Partners LLC, Southern

Natural Gas Company, Halliburton Company, Koch Industries, Murphy Oil USA, Charter International Oil Company, Columbia Gas Transmission Company, El Paso Corporation, Dresser Industries, Duke Energy Corporation, Exelon Corporation, Key Energy Services, Kvaerner U.S., PECO Energy Company, Pinnacle Mining Company, Pinnoak Resources, Taylor Energy Company LLC, Washington Natural Gas Company, and Westinghouse Electric Corporation. In addition, we have represented, on a confidential basis, many other companies in the energy industry.

Our insurance coverage practice includes experience in coverage litigation for our energy industry clients from coast to coast and abroad, in jurisdictions including Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Illinois, Kentucky, Louisiana, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, Washington, West Virginia, London, Singapore, and Trinidad. We also have significant experience representing energy sector clients in London-based arbitrations under "Bermuda Form" insurance policies.

Certain recent representative coverage matters for energy industry clients include the following, by way of illustration only:

- K&L Gates represented a natural gas production company in a dispute with AIG regarding coverage for third-party pollution claims that alleged drinking water contamination. The dispute involved the number of related pollution incidents under a pollution liability insurance policy. A settlement was reached prior to litigation.
- K&L Gates represented Anglo-Suisse Offshore Partners ("ASOP") against a number of excess underwriters in a case filed in Harris County (Houston), Texas, seeking coverage for wreck removal and decommissioning expenses incurred in connection with offshore platforms and pipelines destroyed during Hurricane Katrina. The policy at issue sat in excess of ASOP's first-party energy package policy for wreck removal coverage with an aggregate limit of \$50 million. ASOP's wreck removal costs and expenses exceeded underlying limits by substantially more than full limits of the excess policy at issue. The case was tried to a jury in Houston in February 2010. A settlement was reached before the jury reached a verdict.
- K&L Gates lawyers represented a major oil company in a confidential London arbitration proceeding against OIL, Ltd. and Underwriters at Lloyd's, London, concerning coverage for

damages related to the alleged failure of assets in the North Sea. The matter involved complex issues of causation, as well as the interplay between direct insurance, captive insurance liabilities, and Underwriters' responsibilities under a "wrap" policy to cover losses not covered by underlying insurance. Neither the client nor its captive were assigned any liability.

- K&L Gates represented a natural gas production company and an oilfield service company in a dispute with St. Paul/Travelers that arose out of an explosion that killed one employee of the oilfield service company and seriously injured another. The dispute involved various additional insured and employer liability exclusion issues under an oil and gas commercial general liability policy and an excess liability policy. A settlement was reached prior to litigation.
- K&L Gates represented Murphy Oil USA, Inc., a subsidiary of Murphy Oil Corporation (Murphy), from El Dorado, Arkansas, in disputes with certain of its excess insurers, Swiss Re International Se, Arch Reinsurance Company, HDI-Gerling AG, and Zurich Insurance Company (Underwriters), arising out of losses valued in excess of \$430 million suffered in connection with a crude oil spill at Murphy's Meraux, Louisiana, refinery caused by Hurricane Katrina. The spill (which has been characterized by the U.S. Environmental Protection Agency as the largest Katrina-related environmental release) and concomitant property damage and related alleged injuries and harm resulted in more than 26 class action lawsuits filed against Murphy by residents of St. Bernard Parish, Louisiana, all of which were consolidated into one action, styled *Turner v. Murphy Oil USA, Inc.* A settlement of the lawsuit was approved by the federal court in January 2007. After the settlement of the *Turner* litigation, Underwriters instituted four related London-based arbitration proceedings. Shortly thereafter, Murphy Oil filed a coverage action in Arkansas federal court and obtained a temporary restraining order enjoining arbitration, but this Arkansas action was ultimately dismissed for lack of jurisdiction. All four arbitration tribunals were then consolidated and fully constituted in October 2007 in London. Murphy sought insurance coverage for the class action settlement and related claims. After a full hearing on all issues in late 2009, the tribunal issued its confidential award and a final disposition regarding costs.

In addition, we have assisted our energy clients in connection with a wide range of complex and substantial insurance claims and losses, such as:

- Hurricane-related property damage, business interruption, decommissioning, casualty, and/or wreck removal claims
- Environmental property damage claims arising from historical operations
- Manufactured gas plant liabilities, including a case in which the court awarded our client all of its remediation costs, attorneys' fees and interest, totaling tens of millions of dollars
- Asbestos-related bodily injury claims, including products and non-products claims
- Global warming and greenhouse gas emissions claims
- Insurance coverage strategies in bankruptcies
- Insurer bad-faith claims
- Insurance coverage risks in corporate asset transfers
- Products liability claims (other than asbestos)
- Business interruption claims arising after catastrophic events

- Business torts
- First-party property losses
- Ocean marine cargo claims
- Intellectual property claims
- Directors and officers liability coverage issues
- Employment practices claims
- Nuclear and radiation-related liabilities
- Domestic and foreign insolvent insurer claims
- Insurance policy commutation and buy-back agreements

Our focus is maximizing insurance recoveries on complex and substantial claims, through litigation, alternative dispute resolution and/or settlement. In addition, we advise our clients' legal and insurance departments, senior management and boards of directors on terms of coverage and draft and negotiate insurance contract wordings. Where appropriate, our coverage lawyers draw upon the knowledge and experience of K&L Gates' leading practices in the areas of energy regulation, environmental law, toxic tort claims defense, construction litigation, maritime, mergers and acquisitions, and securities enforcement in providing coverage advice to our clients.