



Thoughts on Katrina, The Offshore Operating Agreement, and Business Interruption Claims

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Aftermath: Boats, Recrimination, Opportunity, and More Opportunity

Neighborhood (Boats in the Street)







Aftermath: Boats, Recrimination, Opportunity, and More Opportunity

O'Dwyer Suit, Filed September 19, 2005
(Ranting, Hand-Written Version)

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
2005 SEP 19 11:11:46
LOREY D. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

MAUREEN O'DWYER, ET AL
VERSUS

THE UNITED STATES OF AMERICA, ET AL

NO.: 05-4181
DIVISION:
MAGISTRATE
SECTION:
WEST MAG. 2

COMPLAINT FOR COMPENSATORY
AND EXEMPLARY DAMAGES,
AND FOR REASONABLE ATTORNEY'S
FEES AND TAXABLE COSTS
IN A CLASS ACTION LAWSUIT
FILED PURSUANT TO THE
FEDERAL RULES OF
CIVIL PROCEDURE

Fee 250.
 Process _____
 CtRmDep _____
Doc. No. _____

III.

Made defendants in this action are the following:

- 1) The United States of America which, at all times pertinent, acted by and through its agency and instrumentality, the United States Army Corps of Engineers.
- 2) Louisiana State Governor Kathleen Blanco, both individually and in her elected capacity
- 3) The State of Louisiana

- 4) ~~Mr~~ Mayor Ray Nagin, both individually and in his elected capacity.
- 5) The City of New Orleans.
- 6) Chief of Police Eddie Compass, both individually and in his appointed capacity as Chief of Police for the City of New Orleans.
- 7) Eddie Jordan, District Attorney for the Parish of Orleans, State of Louisiana, both individually and in his elected

- 8) Jim Huey, President of the Orleans Parish Levee Board, both individually and in his official capacity
- 9) The Orleans Parish Levee Board.
- 10) Ray Nagin, of the Orleans Parish Sewerage and Water Board, both individually and in his ~~representative~~ official capacity with the Water Board
- 11) _____, the Criminal Sheriff of the Parish of Orleans, State of Louisiana, both individually and in his elected

defendants herein pursuant to the provisions of the Louisiana Direct Action Statute.

12) _____, Clerk of Court, criminal District court for the Parish of Orleans, State of Louisiana, both individually and in his elected capacity.

13) ABC and DEF and XYZ Insurance Company, who insure the above-identified defendants (Nos. 1 through 12) for liability, and who are named as

VIF.
COUNT 1

(23)

Plaintiffs reaver and reiter
at all of their allegations as
aforesaid, and in addition
over that certain of the
defendants negligently, in-
tentionally, and with mal-
feasance, misfeasance and
non-feasance, failed to
~~make~~ order the ^{timely} evacuation
of critical care patients in
hospitals, nursing homes, etc.
whose very lives depended on
the availability of electricity
or emergency electrical
power for the operation of
life-sustaining medical
equipment, without
which the said critical
care patients were under

VIII
COUNT 2

(34)

Hurricane Katrina, but by ~~the~~ ~~men~~ ~~to~~ ~~whom~~ ~~the~~ ~~citizens~~ ~~of~~ ~~New~~ ~~Orleans~~ entrusted the safety of their lives and property. Plaintiffs reaver and reiterate all of their allegations as aforesaid, and in addition aver that certain of the defendants intentionally, negligently, and with malfeasance, misfeasance and non-feasance, failed in their duty to ensure competent design of the levee systems for the London Avenue Canal and the Seventeenth Street Canal, which were defectively designed, the result being that 80% of "something" was destroyed - not less



Aftermath: Boats, Recreation, Opportunity, and More Opportunity

Industry Suit (Canals Were Dredged, A City Suffers), Filed
September 13, 2005

RECEIVED
DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
2005 SEP 13 PM 4:08
LUCY L. G. WRYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

George Barasich, Benny J. Borden,
Courtney Foxworth, Darin Tircuit, and
Ralph H. Long, Jr., Individually and
as representatives of all those
similarly situated

versus

Columbia Gulf Transmission Co.;
Koch Pipeline Company, L.P.;
Gulf South Pipeline Company, LP;
Shell Pipeline Company LP;
Tennessee Gas Pipeline Co.;
Transcontinental Gas Pipeline Corp.;
Shell Oil, Co.;
ExxonMobil Corp.;
Exxon Mobil Corp.;
Chevron Corp.; and
BP Corporation N.A., Inc.

Civil Action

05-4161

Docket:

Judge:

SECT. C MAG. 3

Magistrate:

CLASS ACTION PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel comes George Barasich, Benny J. Borden, Courtney Foxworth, Darin Tircuit, and Ralph H. Long, Jr., who bring this lawsuit individually and as representatives of all those similarly situated, and represent as follows:

canals have developed breaks in the spoil banks thereby leading to additional damage to/destruction of the adjacent marshes.

5.

The Defendants have knowingly failed to maintain these canals and this continuing failure of the Defendants to maintain said canals has caused damage to the stability and ecological function of the marsh property, which provide(d) protection to inland communities from hurricanes, such as Hurricane Katrina. Over 1 million acres of marsh property has already been destroyed, and millions more essentially destroyed, as a result of defendants' negligence in oil, gas, and pipeline operations throughout Southeast Louisiana, thus depriving metropolitan areas such as the City of New Orleans from its natural protection against hurricane winds and storm surges.

6.

Due to Defendants' continuing failure to maintain and restore said marshes which were damaged as a result of their failure to maintain these canals, the canals dredged in the marshes of Southeast Louisiana have altered the hydrology of the adjacent marshes and have adversely impacted the marshes's ecology through the physical removal of marsh terrain, creation of spoil banks, and impairment of natural ebb and flow of tidal waters.

7.

The canals dredged by these defendants have adversely impacted the marshes of Southeast Louisiana, allowing salt water intrusion to destroy indigenous plant life essential to the retention of soil, and as the canals have gradually widened due to erosion.

the erosion and/or submergence of the marshes of Southeast Louisiana as a result of the canals dredged by Defendants, the ecological regime of the marshes of Southeast Louisiana has been dramatically altered and detrimentally changed.

11.

The construction of these canals and negligence in maintaining the canals dredged have resulted in the breach of the integrity of the marsh's substrate.

12.

The presence of these canals dredged by the Defendants in the marshes of Southeast Louisiana are disrupting, and have disrupted, the normal and natural processes that maintain and regenerate the marsh hydrology; but for the negligent actions of defendants in failing to properly manage their canals, marsh property would have existed at the time Hurricane Katrina arrived at the Louisiana coast and Hurricane Katrina's winds and storm surge would have been greatly diminished by the marsh property, thus averting all, or almost all, of the loss of life and destruction of property that resulted from Hurricane Katrina.

13.

While other causes may have contributed to the loss of marsh property, plaintiff allege that defendants' oil, gas and pipeline canals are a, if not the, substantial cause of marsh land loss in Southeast Louisiana, and the damages resulting therefrom.

14.

Plaintiffs aver that prescription has not started to toll as Defendants are still using these canals for current Exploration, Production and Transport of oil and gas throughout the marshes of Southeast Louisiana.



Aftermath: Boats, Recreation, Opportunity, and More Opportunity

Business Interruption Assistance (A Complete Team,
At Your Service)

TO THOSE WHO HAVE
**BUSINESS INTERRUPTION
INSURANCE CLAIMS**

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from Your Insurance Company for Your
Business Interruption Claim?**

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PATRICK G. KEHOE, JR.**

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How Does The Offshore Operating Agreement Deal with This?

Sections 2.14 and 25.1. Includes Hurricane within the definition of Force Majeure; excuses performance during period of Force Majeure. Note: This doesn't get us to business interruption. Just tells us that hurricanes are Force Majeure events.

2.14 Force Majeure

An event or cause that is reasonably beyond the control of the Party claiming the existence of such event or cause, which includes, but is not limited to, a flood, storm, hurricane, loop current/eddy, or other act of God, a fire, loss of well control, oil spill, or other environmental catastrophe, a war, terrorist act, a civil disturbance, a labor dispute, a strike, a lockout, compliance with a law, order, rule, or regulation, governmental action or delay in granting necessary permits or permit approvals, and the inability to secure materials or a rig.

25.1 Force Majeure

If a Party is unable, wholly or in part because of a Force Majeure, to carry out its obligations under this Agreement, other than the obligation to make money payments, that Party shall give the other Parties prompt written notice of the Force Majeure with full particulars about it. Effective upon the date notice is given, the obligations of the Party, so far as they are affected by the Force Majeure, shall be suspended during, but no longer than, the continuance of the Force Majeure. Time is of the essence in the performance of this Agreement, and every reasonable effort will be made by the Party to avoid delay or suspension of any work or acts to be performed under this Agreement. The requirement that the Force Majeure be remedied with all reasonable dispatch shall not require a Party to settle strikes or other labor difficulties.



How Does The Offshore Operating Agreement Deal with This?

Section 18.1 is more significant, though somewhat understated. The operator is obligated to maintain insurance. This includes insurance for loss of production - or business interruption.

18.1 Insurance

Operator shall provide and maintain the insurance prescribed in Exhibit "B" and charge those costs to the Joint Account. No other insurance shall be carried for the benefit of the Parties under this Agreement, except as provided in Exhibit "B".



How Does The Offshore Operating Agreement Deal with This?

Note that the Operator's obligation is to maintain insurance. Section 19.7 suggests that there is a considerable downside for failing to maintain loss of production insurance coverage.

19.7 Damage to Reservoir, Loss of Reserves and Profit

NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS AGREEMENT, OTHER THAN ARTICLES 10.8.6 AND 11.8.6, IF SELECTED, NO PARTY IS LIABLE TO ANY OTHER PARTY FOR DAMAGE TO A RESERVOIR, LOSS OF HYDROCARBONS, LOSS OF PROFITS, OR OTHER CONSEQUENTIAL DAMAGES, DAMAGES FOR BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES, EXCEPT TO THE EXTENT THAT THE DAMAGE OR LOSS ARISES FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN WHICH CASE THAT PARTY SHALL BE SOLELY RESPONSIBLE FOR DAMAGE OR LOSS ARISING FROM ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; NOR DOES A PARTY INDEMNIFY ANY OTHER PARTY FOR THAT DAMAGE OR LOSS.



Loss of Production Insurance: Definitions, Schedules, and Waiting Periods

Coverage Clause. Provides coverage for "Loss of Production during the Recovery Period at the Insured's Premises..." [Section 1(A) of Loss of Production Rider.]



Loss of Production Insurance: Definitions, Schedules, and Waiting Periods

Coverage is tied to an "Occurrence," which is defined as follows:

Occurrence shall be defined as an event which can be isolated in time, in place or in the manner of its happening as being the cause of or, where there is no evident cause, as consisting of an instance or instances of physical loss or physical damage:

as respects windstorm, all tornadoes, cyclones, hurricane, similar storms and systems of winds of a violent and destructive nature,

arising out of the same atmospheric disturbance within any period of seventy-two consecutive hours...shall be deemed to be one event...

[Section 2 (K) of Rider.]

Note the requirement for physical loss or physical damage. Where a company shuts in a platform in anticipation of a hurricane that doesn't come, there is no coverage for production losses during the shut in period.



Loss of Production Insurance: Definitions, Schedules, and Waiting Periods

Recovery Period. This is the period for which the insured may recover for loss of production. Defined as follows:

The period in respect of which Underwriters shall indemnify the Insured for Loss of Production...shall, in respect of each Occurrence, not commence until the Insured has suffered Loss of Production...for the number of days stated in the Schedule as the Waiting Period...the Recovery Period shall then continue for as long as such Loss of Production persists but not exceeding

(i) such time as, with the exercise of due diligence and dispatch, Normal Operations could be restored...nor

(ii) the unbroken length of time stated in the Schedule as the Maximum Recovery Period.

[Section 1 (B) of Rider.]

Note that the recovery period does not start until the Waiting Period has lapsed. Even then, the total period of recovery is stipulated in the Schedule as the Maximum Recovery Period.



Loss of Production Insurance: Definitions, Schedules, and Waiting Periods

Schedule. Here's the Schedule, which clarifies things a bit. The Schedule identifies the facilities that are covered, stipulates production volumes and prices, and sets the Waiting Period and the Maximum Recovery Period.

Schedule

Limit of Liability per Insured's Premises:

<u>Insured's Premises</u>	<u>Unit Volume</u>	<u>Volume Measure</u>	<u>Unit Price</u>	<u>Daily Value</u>	<u>Waiting Period</u>	<u>Maximum Recovery Period (days)</u>

Occurrence Limit: Per Schedule C "Business Interruption Values" of this Policy's Declarations

Standard Period: 365 days

Dependency Premises:

Sublimit for unscheduled Dependency Premises (if not \$250,000): Dependency Premises per Schedule C "Properties Listed with Third Party Interdependencies" of the Policy's Declarations.



Loss of Production Insurance: Definitions, Schedules, and Waiting Periods

There are a couple of important points here:

- a. The Schedule is updated annually, at a minimum. However, the volume/price numbers are often updated on a quarterly basis – to avoid a shortfall in coverage.
- b. At this time, the convention for the Waiting Period is 90 days - a long time. As for the Maximum Recovery Period, there are 180 and 365 day options - usually, the same Maximum Recovery Period applies for each platform that the Schedule covers.

What Happens when There Is No Insurance?





Finally, Judicial Treatment of Deferred Production (Some General Concepts)

1. The cases that deal with deferred production claims usually involve a marine casualty of some kind – say, where a vessel collides with a platform, causing the producing wells to be shut in. Note that this differs significantly from a situation with a hurricane, where wells are shut in due to a natural event.



Finally, Judicial Treatment of Deferred Production (Some General Concepts)

2. For years, the controlling case was Continental Oil Company v. SS Electra, 431 F.2d 391 (5th Cir. 1970). Here, two several platform wells were shut in due to an allision; the parties stipulated that the wells would be off line for 130 days; and stipulated further that the net value of production during the 130 day shut in period would have been \$60,000. There was no contention that the producers lost any oil as a result of the shut in. The parties all expected that the producers would recover the same amount of oil, only 130 days later. The question, then, was the measure of damages for the shut in period.



Finally, Judicial Treatment of Deferred Production (Some General Concepts)

- i. At trial, the producers claimed that they were entitled to \$60,000 in damages - meaning the full value of net production during the shut in period. The ship owners claimed that this would, in effect, allow double recovery - once for the value of the oil during the shut in period and again, for the same oil when the wells went back on line. The district court agreed with the shipowners and awarded the producers interest on production value, the \$60,000, for the time that the well was shut in.
- ii. The Fifth Circuit absolutely disagreed, finding that net production value - again, \$60,000 - was an appropriate measure of damages, at least in this situation:

Profit on oil production is simply one means of measuring the damage suffered. The plaintiffs have lost the use of their capital investment in lease, platform, and producing wells for 130 days during which that investment was tied up without return. The fact that the same amount of profit can be made up at a later time with the same investment of capital by removing from the ground a like quantity of oil at the same site does not alter the fact that the plaintiffs are out of pocket a return on 130 days use of their investment...The plaintiffs must stay on the site 130 days longer, with investment in place, than necessary but for the ship's negligence. 431 F.2d at 392.

- iii. In a footnote, the Court clarified that the standard of lost profit was not an exclusive standard. But in this case, the shipowner did not propose an appropriate alternative to the lost profit measure that the producers proposed:

We need not consider whether lost profit or a fair return on investment is a better measure...The only evidence before us is of lost profit. The shipowner has not asserted that the profit is excessive but has stood on the erroneous theory that profits are not recoverable at all, only interest on profits. 431 F.2d at 393, n.3.

- iv. The lesson from Electra - from the standpoint of tortfeasors - was that the damage standard was going to involve some theory dealing with loss of investment. While the Court was open to an alternative to lost profits, the burden was on the tortfeasor to propose an acceptable alternative.



Finally, Judicial Treatment of Deferred Production (Some General Concepts)

3. More than fifteen years later, in Nerco v. Otto Candies, Inc., 74 F.3d 667 (5th Cir. 1996), the Fifth Circuit showed that it would consider a standard other than lost profits, as long as the proposed alternative seemed sensible. Nerco involved another allusion, where three wells were shut in for more than a month.



Finally, Judicial Treatment of Deferred Production (Some General Concepts)

- i. The producers, relying on Electra, argued that lost profits was the appropriate measure of damages.
- ii. The shipowners offered a different standard - one that measures the discounted present value of the deferred production, taking into account the additional time required to produce the same reserves, the loss of cash flow during the shut in period, and the monthly delay in receiving revenue over the life of the wells. At bottom, the shipowners compared monthly net revenue assuming no shutdown to monthly net revenue after the shutdown - with the difference being discounted to present value.
- iii. This time, the Fifth Circuit agreed with the shipowners, finding that the discounted present value approach was better than the lost profits approach. The Court also noted that the producers had offered no alternative to the measure of lost profits: "(I)t is important at this juncture to note that the platform owners offered no other method of calculation for the fair return on investment." 74 F.3d. at 670.
- iv. Perhaps just as importantly, the Fifth Circuit clarified that Electra was just one approach for resolving the question of damages for deferred production:

Contrary to the platform owner's position, our holding in Electra did not determine that "lost profits" was the required measure. We only determined that it was one measure of damages and that it was a better measure than interest on lost profits. 74 F.3d. at 669.

- v. The lesson here: the standard of damages for a fair return on investment is fluid - but it requires considerable forethought because it will always be measured against the alternative measure that the other party proposes.



Finally, Judicial Treatment of Deferred Production (Some General Concepts)

4. Again, none of this deals with the formulas that apply under a Loss of Production policy. But it does give a sense of how business interruption is addressed in other contexts.

Section A (ii)

LOSS OF PRODUCTION INCOME
Production Loss Sustained

1. INSURING CLAUSES:

A. COVERAGE

Subject to the EXCLUSIONS, CONDITIONS AND DEFINITIONS of the Policy, and also to the following ADDITIONAL EXCLUSIONS CONDITIONS AND DEFINITIONS, this Section shall, following necessary interruption of the business, indemnify the Insured for:

- (i) Loss of Production during the Recovery Period at the Insured's Premises as defined hereunder;
- (ii) Increased Cost of Working as defined hereunder; directly caused by either
 - (a) accidental physical loss of or physical damage to real or personal property; or
 - (b) Well Out of Control as defined hereunder occurring while this Section is in force.

B. RECOVERY PERIOD

The period in respect of which Underwriters shall indemnify the Insured for Loss of Production and/or Increased Cost of Working shall, in respect of each Occurrence, not commence until the Insured has suffered Loss of Production, consequent upon such Occurrence, for the number of days stated in the Schedule as the Waiting Period (for the purpose of ascertaining the Waiting Period days of lost production shall be aggregated and will not be required to be consecutive); the Recovery Period shall then continue for as long as such Loss of Production persists but not exceeding

- (i) such time as, with the exercise of due diligence and dispatch, Normal Operations could be restored and prioritising, when appropriate in the interest of Underwriters and the Insured in reducing loss hereunder, the repair, reinstatement or replacement necessitated by the Occurrence, nor
- (ii) the unbroken length of time stated in the Schedule as the Maximum Recovery Period.

The Recovery Period hereunder shall not be limited by the expiry date of this Section.

C. LIMIT OF LIABILITY

Underwriters hereon shall in no circumstance be liable for more than the amount stated in the Schedule as the Occurrence Limit in respect of Loss of Production at all Insured's Premises combined in respect of any one Occurrence. Any payment within the Occurrence Limit shall itself be subject to the following Sublimits of Liability:

- (i) The amount calculated in accordance with the Measure of Recovery Clause hereunder for each Insured's Premises separately as stated in the Schedule; and
- (ii) \$250,000 in respect of Loss of Production at Insured's Premises directly caused by physical loss of or physical damage to Dependency Premises unless the Insured has made a specific declaration of such Dependency Premises as stated in the Schedule

The Limit of Liability hereunder shall not be limited by the expiry date of this Section.

D. MEASURE OF RECOVERY

Subject to the Limit of Liability hereunder, the Measure of Recovery hereunder shall be calculated as the Loss of Production multiplied by the applicable Unit Price.

2. DEFINITIONS

- A. Actual Production shall in respect of each Insured's Premises be defined as the Volume actually produced during the Recovery Period.
- B. Adjusted Production shall in respect of each Insured's Premises be defined as Standard Production adjusted as may be necessary to provide for variations in Volume or other special circumstances including but not limited to planned or unplanned shutdown or a change in the Insured's financial and/or working and/or ownership interest which affects Volume either before, during or after the loss and which would have affected Volume had no loss occurred, so that the Adjusted Production shall represent as nearly as may be reasonably practicable the Volume which, but for the loss, would have been obtained during the Recovery Period.

- C. Completed Well shall be defined as an Insured Well where any of the following activities have first occurred after the last string of casing has been set and cemented:
- (i) the running and setting of subsurface completion assemblies, production tubing, downhole packers, subsurface safety valves, or tiebacks; or
 - (ii) the perforation and/or stimulation of the Well; or
 - (iii) the act of setting a Christmas tree; or
 - (iv) the installing of pumping equipment on the well head for the purpose of intentionally extracting formation fluids.
- D. Dependency Premises shall be defined as real or personal property upon which the Insured's production at the Insured's Premises is dependent, other than the scheduled Insured's Premises themselves, but including
- (i) real or personal property situated at Insured's Premises in which the Insured has no interest as owner, operator or co-venturer
 - (ii) real or personal property situated elsewhere, whether or not the Insured has an interest as owner, operator or co-venturer.
- E. Increased Cost of Working shall be defined as additional cash expenditure necessarily and reasonably incurred for the sole purpose of reducing a claim amount otherwise payable hereunder.
- F. Insured's Premises shall be defined as facilities and/or platforms and/or pipelines as stated in the Schedule which are owned by or in the care, custody or control of the Insured and/or in which the Insured has an interest as co-venturer.
- G. Insured Well shall be defined as an oil and/or gas and/or sulphur and/or thermal energy Well in which the Insured has a financial and/or working and/or ownership interest and in respect of which such Insured Well is covered under Section Y of this Policy.
- H. Loss of Production shall be defined as the shortfall if any for each Insured's Premises of the Insured's proportionate share of Actual Production below Adjusted Production but not exceeding the Daily Value or Unit Volume stated in the Schedule for the Recovery Period.
- I. Maximum Recovery Period shall be defined as the period of consecutive days as stated in the Schedule hereunder.

- J. Normal Operations shall be defined as the condition present at such time that production and/or pipeline throughput could, with reasonable dispatch and the exercise of due diligence be restored to the condition that would have existed had no loss occurred.
- K. Occurrence shall be defined as an event which can be isolated in time, in place and in the manner of its happening as being the cause of or, where there is no evident cause, as consisting of an instance or instances of physical loss or physical damage;
- (i) as respects windstorm, all tornadoes, cyclones, hurricanes, similar storms and systems of winds of a violent and destructive nature, arising out of the same atmospheric disturbance within any period of seventy-two consecutive hours commencing during the period of insurance provided by this Section, shall be deemed to be one event;
 - (ii) each earthquake shock or volcanic eruption, shall constitute one event hereunder, provided that if more than one earthquake shock or volcanic eruption shall occur within any period of seventy-two consecutive hours commencing during the period of insurance provided by this Section, such earthquake shocks or volcanic eruptions shall be deemed to be one event.
- Clauses (i) and (ii) above shall not operate if such peril(s) is/are excluded under Section X of this Policy.
- L. Standard Period shall be defined as the 365 consecutive day period which immediately precedes the inception date of this Section or such other consecutive day period as may have been specifically agreed by Underwriters and stated in the Schedule.
- M. Standard Production shall in respect of each Insured's Premises be defined as the Volume actually produced during the Standard Period.
- N. Unit Price shall be as stated in the Schedule.
- O. Unit Volume shall be as stated in the Schedule. Where no Unit Volume is stated in the Schedule, Unit Volume shall be calculated as the Daily Value stated in the Schedule divided by the applicable Unit Price.
- P. Volume shall be defined as actual production and/or pipeline throughput and shall be expressed by measure of barrels or millions of cubic feet or such other measure as may have been specifically agreed by Underwriters as Volume Measure as stated in the Schedule.
- Q. Waiting Period shall be defined as the applicable period of days as stated in the Schedule hereunder.
- R. Well shall be defined as a hole bored into the ground with the intention of producing from or exploiting and enhancing the recovery of oil and/or gas and/or sulphur and/or thermal energy resources or deposits, including such conductor, casing, liner and/or tubing as may have been installed therein and such wellhead, christmas tree, blow-out preventer or mechanical pressure control equipment as may have been installed immediately above the bore of a Well

- S. Well Out of Control shall be defined as an insured Well from which and only when and only while, there exists an unintended flow of drilling fluid, oil, gas, water or other substance, either from an Insured Well above the surface of the ground or water bottom or from one subsurface depth interval into another subsurface depth interval via the bore of an Insured Well, and which flow has not been or cannot be stopped or diverted into production.

Nevertheless, a Well shall not be defined as a Well Out of Control solely because of a flow of oil, gas, water or other substance into the Well bore which can be circulated out or bled off through the surface controls.

3. **EXCLUSIONS**

THIS SECTION DOES NOT INSURE AGAINST:-

- A. Loss of Production resulting from interference by strikes, lockouts, political or labour disturbances, riots or civil commotions, confiscation or expropriation or any delay caused thereby;
- B. Loss of Production following and subsequent to abandonment of Insured's Premises for any reason whatsoever;
- C. Loss of Production caused by the suspension, lapse or cancellation of any lease, licence, contract or order, unless such suspension, lapse or cancellation results directly from an Occurrence in respect of which a claim has been paid or liability admitted under this Section and then Underwriters shall be liable for only such loss as affects the Insured's production income during, and limited to, the Recovery Period covered under this Policy;
- D. Fines, liquidated damages, penalties or damage for breach of contract or for late or non-completion of orders or for penalties of whatever nature;
- E. Infidelity or any dishonesty or fraud on the part of the Insured or any officer or employee of the insured;
- F. Loss of market or loss of contract;
- G. Loss of Production in respect of any Well which at the time when the Occurrence giving rise to the Loss of Production commences, is not a Completed Well.

4. **CONDITIONS**

A DIRECT DAMAGE

No claim shall be payable under this Section:

- (i) unless and until a claim has been paid, or liability admitted, in respect of direct physical loss or physical damage to the Insured's Premises under Section X of this Policy or unless or until direct physical loss or physical damage to Dependency Premises occurs which would if said Dependency Premises were scheduled herein as Insured's Premises be indemnifiable by application of the terms, conditions and exclusions applicable to Section X of this Policy; or
- (ii) in respect of Well Out of Control, unless and until a claim has been paid, or liability admitted, under Section Y of this Policy.

This condition shall not apply if the sole reason for no such payment having been made, or liability admitted, is the operation of a deductible.

B. RESUMPTION OF OPERATIONS

The Insured shall act at all times with due diligence and dispatch in reducing loss hereunder and prioritising, when appropriate in the interest of Underwriters and the Insured in reducing loss hereunder, the repair reinstatement or replacement necessitated by the Occurrence. If the Insured could reduce Loss of Production:

- (i) by complete or partial resumption of operations at the Insured's Premises or property affected, and/or
- (ii) by enhancement to or of other facilities subsequent to the loss at the Insured's Premises or property affected,

then such possible reduction shall be taken into account in arriving at the amount of loss hereunder. The Insured shall make all reasonable efforts to ensure that operators and/or owners of non-owned property act in concert with the interest of Underwriters and the Insured in reducing loss hereunder.

C. BYLAWS/STATUTORY AUTHORITY

Coverage hereunder shall not be prejudiced to the extent that repair, rebuilding, reconstruction or replacement of the Insured's Premises or Dependency Premises may be prolonged, suspended or delayed by reason of any State or municipal law or ordinance governing or otherwise affecting their repair, demolition, rebuilding, reconstruction or replacement in force at the time when the Occurrence giving rise to Loss of Production commences.

D. INSPECTION OF RECORDS

Underwriters and/or their representatives may examine and audit the Insured's books and records at any time during the period of this insurance and thereafter, as far as they relate to the subject matter of this Section.

DENIAL OF ACCESS BY ORDER OF CIVIL, OR MILITARY AUTHORITY

Subject to the exclusions conditions and definitions applicable to the Policy and to this Section, the Insured will be indemnified for Loss of Production during the Recovery Period at the Insured's Premises when, directly as a result of accidental physical loss or physical damage to real or personal property within 1,000 meters of the Insured's Premises, access to the Insured's Premises is specifically prohibited by order of civil or military authority.

In any case, coverage hereunder shall be limited to 4 (four) weeks and shall not commence until the Insured has suffered Loss of Production consequent upon such Occurrence for the number of days stated in the Schedule as the Waiting Period.

DRILLING WELLS

Subject to the exclusions conditions and definitions applicable to the Policy and to this Section and in consideration of the Insured declaring Unit Volume and such declaration being stated below in respect of any Drilling Well which, at the inception of this Section, is projected as commencing or continuing whilst this Section is in force, Exclusion G hereunder shall be deleted.

For the purposes of such declarations a Drilling Well shall be defined as a Well during the course of its being bored into the ground or water bottom.

Declared Drilling Wells: Drilling Wells shown per "Premium Worksheet" of Declarations.

Unit Volume: To Be Declared

Schedule

Limit of Liability per Insured's Premises:

<u>Insured's Premises</u>	<u>Unit Volume</u>	<u>Volume Measure</u>	<u>Unit Price</u>	<u>Daily Value</u>	<u>Waiting Period</u>	<u>Maximum Recovery Period (days)</u>

Occurrence Limit: Per Schedule C "Business Interruption Values" of this Policy's Declarations

Standard Period: 365 days

Dependency Premises:

Sublimit for unscheduled Dependency Premises (if not \$250,000): Dependency Premises per Schedule C "Properties Listed with Third Party Interdependencies" of the Policy's Declarations.