

ROUTE TO:

*A publication of Robert Hughes Associates, Inc., an international litigation support, actuarial, risk management and insurance consulting company*

## What to Do Until the Doctor Gets There



by Robert L. Carson, Jr., CPCU, ARM

Actually, the doctor - or to be more exact - the doctors, are the attorneys and the expert witnesses. And the "what to do" part is a rebuttal of the insurance carrier's denial of a claim. Now, to keep from jumping ahead of myself, let's review an actual case that is in progress. (The names will be withheld to protect the guilty.)

This has to do with a Control of Well policy - an insurance coverage that pays for the expense that occurs when an oil or gas well is being drilled and hits an unexpected layer of pressure, ergo a blowout. The costs can run into the millions, not to mention the cost to redrill the well back to the depth reached when the blowout occurred (also covered by the policy).

One of the interesting incongruities is the fact that the policy does not mention the term *blowout*. Instead, it

uses the term *well out of control*, a definition that can be broader than that for a blowout. It is an incongruity in that the insurers and the adjusters, while they know that the policy addresses the event as a well out of

the sides of the hole, and back down the drill pipe and so forth and so on) finds a porous and much-less-pressured area, and all the circulating fluid goes down that area (called a thief zone).

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***"It is an incongruity in that the insurers and the adjusters, while they know that the policy addresses the event as a well out of control, still look to see if there has been a blowout, and they usually address the claim with that mind-set."***

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Lost circulation occurred on this well, and when the drilling fluid went out of the well, the hydrostatic pressure that the fluid exerts on the sides of the hole went with it. The sides of the hole collapsed, sticking the drill string and eventually losing the hole. To make a long story short (if it is not too late), it cost \$7,000,000 to redrill and restore the hole, a figure the insurers did not take too lightly.

control, still look to see if there has been a blowout and, they usually address the claim with that mind-set.

In my initial report I reminded the adjuster and the claims department that the loss did not have to be a blowout, but rather a loss of control. Realizing that the situation was becoming a bit of a sticky wicket, the insurer requested a more official opinion from a coverage attorney. The attorney stated that there was not a loss of control, according to the definitions in the policy. One definition states that there must be an "uncontrolled flow

In the case at hand, the incident was not a blowout; rather it involved "lost circulation." This occurs when the circulating system (the process of drilling fluid going down the drill pipe, out through the drill bit and back up the space between the drill pipe and

(What to Do, continued inside)

### IN THIS ISSUE:

- **What to Do**
- **From Near and Far**
- **BI Survey Results**

(What to Do, continued from cover)

from the well to the surface,” and that such a flow did not exist. The second definition said that there must be a flow from one “subsurface zone to another subsurface zone.” This flow did not exist, either. The result: no flow, no claim.

Our rebuttal stated that when the drilling fluid rushed out of the circulating system, the sides of the hole “cratered” (using oilfield terminology), dropped to the bottom of the hole and forced the remaining fluid in the drill pipe back up the pipe and onto the rig floor. Since the policy did not say how long the flow must last nor what must cause the flow, this action constituted

“flow” above the surface. The flow stopped when the fluid was expended on the rig floor. Once again the policy did not say what must cause the

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***“First, regardless of what the underwriters had in mind when they wrote the policy, what the wording says is what is going to control the outcome.”***

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cessation of the flow, only that the flow must stop or be stopped. So, by the wording in the policy (or lack of wording), there was a flow.

Next, and most important, was the wording that triggered the “redrill and restoration” section of the policy. The wording here was that the hole must be damaged by a crater or a well out of control. Unfortunately for our client’s argument, there was a definition in the policy of “crater,” and it was more specific than the oilfield usage. The cratering of the hole did not meet this definition. There was a flow to the surface, but this was caused by the collapse of the hole rather than the flow causing the collapse. We admitted that the definition in the policy of “crater” was detrimental to our client.

We next reviewed the “well out of

(What to Do, continued opposite)

## FROM NEAR AND FAR



Austin – The Texas Department of Insurance granted rate increases of 12.3 percent for residential and 15.6 percent for commercial policies, effective February 1, 2009, for the Texas Windstorm Insurance Association, the state’s insurer of last resort for windstorm coverage.



Florida – Tropical Storm Fay, which made landfall on four separate occasions, was responsible for more than \$246 million in insurance claims according to the Florida Office of Insurance Regulation. More than 7,000 claims were filed in Brevard County alone.



Somalia – According to Reuters, pirates hijacked a fully loaded oil tanker off the coast of Kenya. The ship, the *Sirius Star*, is thought to be heading to Somali waters. The crew of 25 were all said to be safe at press time. The cargo was said to be worth more than \$100 million. According to the International Maritime Bureau, there have been 92 pirate attacks off the coast of Somalia this year.



London – Lloyd’s of London is insuring the youngest person ever to attempt to sail solo and non-stop around the world. 16-year-old Michael Perham is being insured for all physical and liability risks to his yacht, as well as being given personal accident, health and death coverage, by Underwriting Risk Services, Ltd., a subsidiary of Talbot.

# SEASON'S

# Greetings



## From Robert Hughes Associates, Inc.

(What to Do, cont'd. from opposite)

control" definition of "flow from one subsurface zone to another subsurface zone." And, much to our surprise, there was no definition of "zone" in the policy, and after reviewing *Black's Law Dictionary* and not finding an applicable one there, either, we then went to Webster's and there found one right on point. It said, "a zone is an area of which the characteristics are different from the areas surrounding it." This fit the annulus (the area between drill pipe and the sides of the hole) and matches the definition of a well out of control. The flow was from the annulus to the thief zone.

The coverage attorney's reply to my rebuttal was as expected - that is, "Don't bother me with the facts. There was no flow." (Or something to that effect.)

The case is now preparing for trial.

My guess based on my experience in more than 200 control-of-well claims (as either the broker who wrote the coverage, a consultant called in to assist in settling a claim or an expert

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***"Second, the response by the insurer's legal team will usually fulfill the old maxim, 'The insurers have the money, and they intend to keep it.'"***


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witness when the case went to court) is that at the last minute, after much posturing, the insurer will offer to settle.

The moral of this story is that two things must be observed in an insurance claim. First, regardless of what the underwriters had in mind when

they wrote the policy, what the wording says is what is going to control the outcome. If there can be two definitions of an important term, they should have thought of that and entered what they meant.

Second, the response by the insurer's legal team will usually fulfill the old maxim, "The insurers have the money, and they intend to keep it."

And that's an ailment the doctors must heal. 

*Robert L. Carson, Jr., is an associate of RHA, Inc., and vice president of the energy division of Higginbotham & Associates, Inc. His field of expertise includes risk allocation in oilfield contracts; coverage analysis and interpretation of well control, general liability, excess (umbrella) liability, platform and related policies; marketing these coverages to underwriters; and claims handling in these areas.*

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