



Not for Bermuda Only—"Bermuda Form" Pollution Insurance for Hurricanes Harvey and Irma

Prompt Notice Is Required

If your company has insurance under the so-called "Bermuda Form" of liability insurance, it might have coverage for property damage or personal injury that otherwise might be excluded by a pollution exclusion. But prompt notice is key.

Notwithstanding the Bermuda reference, many insurers across the globe, including some U.S.-based insurers, write insurance on this form to provide coverage for worldwide liabilities. Insurance written on the "Bermuda Form" refers to a type of liability insurance known generally as "occurrence reported" insurance. Bermuda Form insurance normally is high-level excess casualty insurance purchased by large commercial enterprises to protect against the potentially severe financial consequences resulting from catastrophes. Despite some similarities to other excess insurance forms, the Bermuda Form also provides pollution coverage under specific terms.

As we have seen as a consequence of Hurricane Harvey, and could see with Hurricane Irma, widespread flooding and wind damage can themselves result in fire, explosion, or other severe losses. Some of these events can also involve the unexpected and unintended discharge of pollutants.

Like some forms of liability insurance coverage, the Bermuda Form has a rather broad pollution exclusion. However, in a provision unique to the Bermuda Form, there is a write-back of coverage for certain pollution events. But there is a catch—the form contains strict notice requirements. Unless the time periods have been relaxed by negotiated endorsement, the [Bermuda Form](#) requires that:

- The policyholder becomes aware of the commencement of pollutant discharge within **seven days** of commencement; and
- The policyholder gives proper notice to the insurer within **40 days** of commencement.

It is important to meet both of these criteria. Moreover, notice must be given within the specified time from **commencement** of the pollutant discharge, not from the time the policyholder becomes aware of the discharge.

Insurers are likely to attempt to apply these time periods strictly, and therefore it is prudent for potentially affected policyholders to review their Bermuda Form coverage promptly with insurance professionals, including legal counsel, who are familiar with such coverage.

Three Things to Consider

1. Have you suffered a discharge of pollutants?
2. Do you have Bermuda Form or equivalent coverage?
3. Have you promptly evaluated the need to give notice, potentially within 40 days of commencement of the discharge?

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