

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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Statement of Senator Patrick Leahy (D-VT),
Chairman, Senate Judiciary Committee,
Hearing On "The Risky Business of Big Oil: Have Recent Court Decisions
And Liability Caps Encouraged Irresponsible Corporate Behavior?"
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It has now been 50 days since BP's Deepwater Horizon oil rig exploded and oil began gushing into the Gulf of Mexico. Deadly contamination has reached the shores and wetlands of the Gulf Coast. Our Nation faces an environmental catastrophe. Americans are angry.

The American people want to know how and why this happened. As Attorney General Holder and others investigate this disaster, I am confident that the facts will become known and if criminal conduct occurred, it will be prosecuted to the fullest extent of the law.

Senators on both sides of the aisle believe that those responsible for this disaster should be held fully accountable. We cannot let big oil companies play roulette with our economic and environmental resources. A region that has suffered so much is now enduring yet another tragedy, this time at the hands of one of the largest oil companies in the world.

Much attention is being given to the unfolding environmental disaster but we cannot forget that 11 men lost their lives -- men who have left behind children, wives, parents, brothers and sisters. Christopher Jones, whose brother, Gordon, lost his life on the oil rig, is with us today to represent these men and their families. He is accompanied by his father, Keith Jones. I believe President Obama is also having some families to the White House later this week. Mr. Jones, you and your family have our condolences. And you have my commitment to work to achieve some fairness under the law for your brother's family and the families of all who lost their lives in this disaster. You deserve a measure of justice.

Today's hearing will examine how the applicable laws have shaped big oil's behavior. Going forward we need to evaluate perverse incentives in our legal system. We will ask whether the Supreme Court's decision in the Exxon Valdez case and current liability caps in the Oil Pollution Act of 1990 and Limitation of Liability Act encourage corporate risk and misconduct. We will ask whether current maritime statutes that compensate the survivors of those killed are fair and whether the current legal structure tempts corporations to devalue human life in their calculus of profitability. No one's life should become an asterisk in someone's cost-benefit analysis.

The Death on the High Seas Act is the exclusive remedy for the families of those killed in international waters. But this law does not recognize all that is lost with the death of a loved one,

such as loss of consortium, care, or companionship. Contrast this with what happens when a BP employee is killed while working at a facility on land. The disparity adds further insult to the 11 families who are victims of this tragedy. Ten years ago, Congress amended the Death on the High Seas Act to achieve fairness for those who perish in airline crashes over international waters. It is time we modernized this law again. Later today, I will introduce the Survivors Equality Act to make sure that these families are treated fairly.

Another law that Congress should consider updating is the Limitation of Liability Act, which limits a vessel owner's total liability to the post-incident value of the vessel. That law was passed in 1851, for a different time and before the Civil War. The company that owns the Deepwater Horizon, Transocean, wasted no time filing a motion in Federal court to limit its total liability under this arcane law to the value of the sunken drilling rig. That is perverse. Congress should act to avoid this absurd result.

Then, of course, there is the statutory liability cap of \$75 million on consequential damages in addition to the costs of clean up for an oil spill that needs reexamination.

Two years ago, the Supreme Court's decision in *Exxon v. Baker* created an arbitrary limit on punitive damages in maritime cases. When I chaired a hearing to examine the decision, I expressed my concern at that time that the Supreme Court's *Exxon Valdez* decision would encourage corporate misconduct because it reduced the consequences to a discounted cost of doing business. Is anyone surprised that, after the Supreme Court effectively capped damages designed to punish corporate misconduct, oil companies cut corners and sacrificed safety?

The *Exxon Valdez* decision was another in a string of business friendly Supreme Court decisions in which a narrow majority has essentially written new law and disregarded laws duly enacted by Congress. The impact of these decisions on the lives and livelihoods of Americans is enormous. Two years ago, we heard from Alaskan fishermen. Now we are worried about the livelihoods of shrimpers and oystermen in the Gulf.

I have joined Senator Whitehouse's effort to overturn the Supreme Court's *Exxon Valdez* decision so that when juries determine that corporate wrongdoing is so egregious as to warrant punitive damages, those decisions will not be overturned on appeal based on the sympathies of business friendly judges.

I am also looking into legislation to prevent corporations from deducting punitive damage awards from their taxes so that they bear the full cost of their extreme misconduct.

Our laws should encourage safety and accountability. Where they do not create the right incentives, we must change them. Whether as the result of greed, incompetence, or negligence, BP's conduct has devastated the lives and livelihoods of countless people and their communities and may threaten the Gulf Coast's very way of life. The residents of the Gulf Coast deserve better and the American people deserve better from all big oil companies who exploit our natural resources for enormous profit.

In the months ahead, the people of the Gulf Coast will work to reclaim their coastline, their livelihoods, their wetlands, and their fisheries. Unfortunately, the families of those who lost their

lives on that tragic day will not be able to reclaim their loved ones. The 11 men who were killed on the Deepwater Horizon rig deserved better.

I thank Senator Whitehouse for co-chairing this hearing and all of our witnesses for being here. We look forward to their testimony.

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