

Statement of
The Honorable Sheldon Whitehouse

United States Senator
Rhode Island
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NEWS FROM U.S. SENATOR SHELDON WHITEHOUSE

FOR IMMEDIATE RELEASE

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Opening Statement of Senator Sheldon Whitehouse

Judiciary Committee Hearing, June 8, 2010

"The Risky Business of Big Oil: Have Recent Court Decisions and Liability Caps Encouraged Irresponsible Corporate Behavior?"

As Prepared for Delivery

Thank you Chairman Leahy, for holding this hearing.

Like you, I believe that Congress must do whatever it can to prevent another family from having to hear that their loved one has perished on an oil rig. Congress must also take every available measure to avoid the environmental destruction we are seeing unfold day after day as this spill continues. Shrugging our shoulders and hoping for the best in the future is not good enough. 11 men died. The Gulf ecosystem has been devastated. This is a national catastrophe.

How did it come to this? Well, we already know that BP, Transocean, and Halliburton all failed to meet important safety standards. They undertook their highly risky drilling without a proper degree of care - here, 5,000 feet below the surface of the Gulf, 18,000 feet to the oil reservoir, amid methane hydrate deposits that are highly dangerous when they get inside the drill column. They were irresponsible. The result was tragedy.

Sadly, key regulatory agencies were asleep at the switch, shirking their responsibilities to protect our oceans and American workers at sea. I am convinced that something was fundamentally amiss at the Minerals Management Service at the Department of Interior. I strongly suspect that MMS had been captured by the oil industry and that it had ceased to serve the public interest.

But even when functioning properly, regulatory agencies never have been America's sole line of defense against disasters. We also should make sure that it is in a corporation's economic interests to adhere scrupulously to the law. Meaningful civil and criminal fines and damages are one crucial tool for ensuring that an oil corporation takes proper precautions to avoid tragic

errors. In contrast, a corporation that does not have to pay for its mistakes does not have to worry about making them.

Unfortunately many of our current laws - whether by statute or by court decision - cap the liability of big oil corporations, both for worker injuries and deaths, and for harms to the environment. Rather than making responsible parties pay for harm done, they foist this burden onto the families of the deceased and onto the American taxpayers. As a result, corporations lack proper market incentives to act responsibly. That must not continue. Congress must act.

One note of caution: in providing for appropriate liability, we must not pay heed to the endless and disdainful attacks upon the jury by powerful moneyed interests. The Founders put the jury in the Constitution and Bill of Rights three times, and for a reason: to ensure that in at least one forum, the powerful and the powerless have equal standing. Not for nothing did DeTocqueville describe the jury as "before everything a political institution; . . . a mode of the sovereignty of the people." That is as true today as it was at our nation's founding.

You know this as well as anyone, Mr. Chairman, and I am proud to cosponsor the legislation you are introducing today. It will eliminate the strange quirks in American law that, left unchanged, would result in the survivors of the eleven men killed on the Deepwater Horizon being treated unfairly. The Senate should pass that legislation promptly. I also urge my colleagues to support two bills that I have introduced. The first would raise penalties for worker safety and environmental violations under the Outer Continental Shelf Lands Act. The second would overturn the Supreme Court's misguided *Exxon v. Baker* decision that capped maritime punitive damages at the level of compensatory damages. The Exxon Court believed that predictability for corporations was more important than deterring misconduct, and that it understood the case better than the jury that heard the testimony. I disagree.

I know that the people of my home state Rhode Island - the Ocean State - would put our environment and our safety ahead of profits for irresponsible corporations. In fact, that is exactly what Rhode Islanders have done. John Torgan, the Narragansett Baykeeper in Rhode Island, has submitted a letter which I will introduce for the record, cataloguing the legislative and regulatory reforms put in place after the 1996 North Cape/Scandia oil spill off South Kingstown.

Rhode Islanders know what an oil spill can do to an ecosystem. We know just how important penalties and fines are to keeping our seaman safe and our marine ecosystems healthy. Like my fellow Rhode Islanders, I demand that, in the future, oil companies do everything they can to prevent needless deaths and catastrophic environmental harm, whether in the Gulf, off the coast of New England, or anywhere in our great country. Today's hearing is an important step toward that goal.

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