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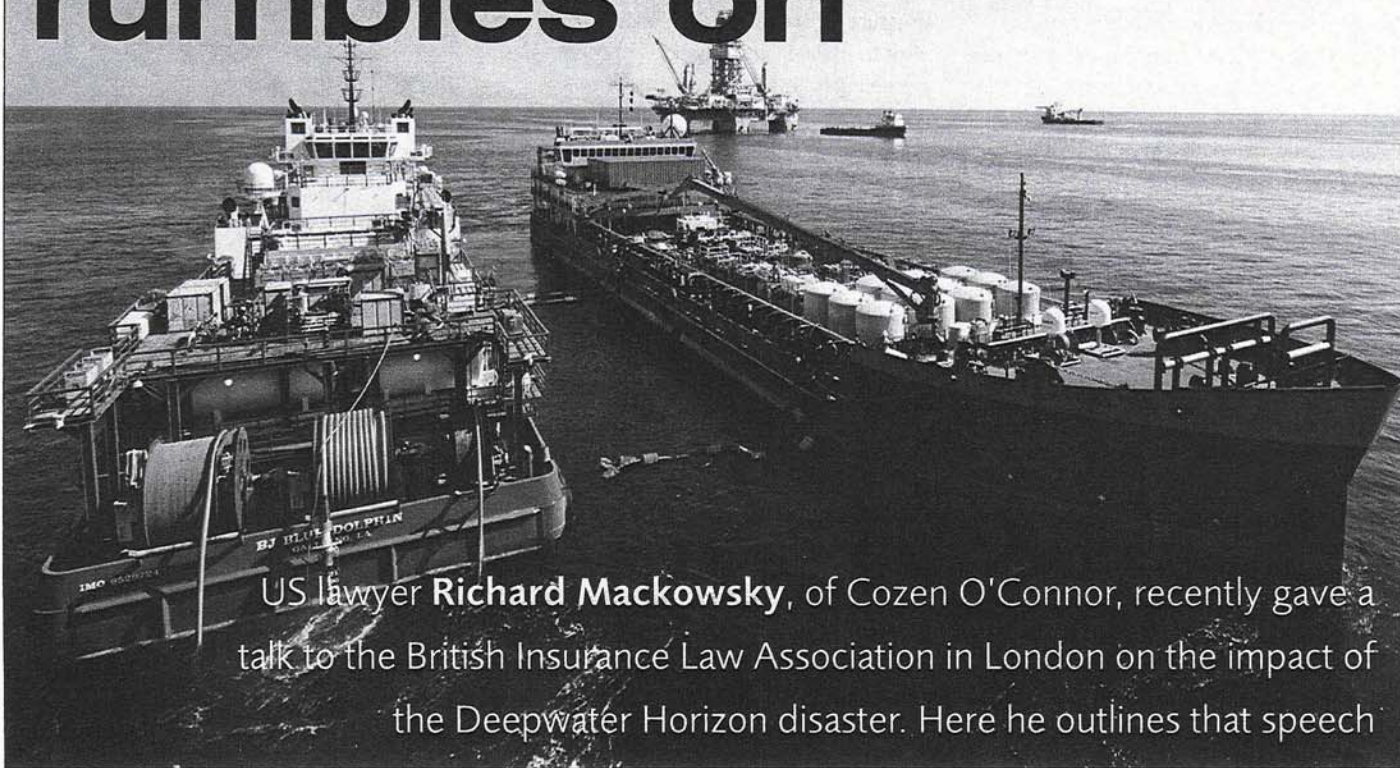
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Deepwater impact rumbles on



US lawyer **Richard Mackowsky**, of Cozen O'Connor, recently gave a talk to the British Insurance Law Association in London on the impact of the Deepwater Horizon disaster. Here he outlines that speech

The Gulf of Mexico has become increasingly important to US oil production during the last decade because of the advent of 'deepwater drilling.'

While production from the North Slope of Alaska and from the shallower waters of the Gulf is now declining, breakthroughs in offshore technology have now made it possible to retrieve oil in waters more than a mile deep.

Deepwater rigs now generate almost 10% of oil production worldwide. A significant number of wells in the Gulf – which generates 1.6m barrels per day or roughly 30% of America's domestic oil production – are now deepwater platforms.

Offshore technology is extraordinarily complex. It operates in an extremely hostile environment and, as demonstrated by the Deepwater Horizon catastrophe, it is not without risk. There were 173 blowouts in the Gulf between 1980 and 2008.

The devastating explosions at the Deepwater Horizon semi-submersible drilling rig on the night of 20 April, 2010 led to the loss of 11 lives and injuries to 17 of the 126 people on board. By the morning of 22 April, just 36 hours after the explosion, the rig capsized and

sank leading to what has become the largest accidental spill in history.

On 20 April, the rig was located in 5,000 feet of water in the Mississippi Canyon Block 252 above a perspective oil deposit known as the Macondo Prospect. BP was the operator. Transocean was the owner and operator of the Deepwater Horizon, which was leased by BP to drill the well.

In the immediate aftermath of the blowout, both BP and the US Coast Guard reported that there was virtually no leakage of oil at the site. That soon changed. By 25 April the well was reported to be leaking at the daily rate of 1,000 barrels, or 42,000 gallons, and the government's estimate of the spill rate kept going up, damaging both BP's and the government's credibility, particularly after the public was given access to live underwater video feeds of the leak which showed oil gushing into the sea like an underwater volcano.

By 28 April government scientists concluded that the well was leaking at the rate of 5,000 barrels a day. By 15 June the estimated spill rate was increased to between 35,000 to 60,000 barrels a day. To put this into context, the 1989 *Exxon Valdez* disaster in

Prince William Sound, Alaska, previously the worst oil spill in US history, involved a total spill of 258,000 barrels. At a rate of 60,000 barrels per day, the Gulf oil spill was putting the equivalent of the *Exxon Valdez* spill into the Gulf every four days.

A number of efforts were undertaken to stop the ongoing release and it was stopped for the first time on 15 July. However, the permanent sealing of the well was only accomplished on 21 September, after BP's relief well enabled it to penetrate the bottom of the shaft and pump concrete into the well.

Once this 'bottom kill' was accomplished, Admiral Thad Allen, the retired Coast Guard officer who led the federal spill response, announced 'that the Macondo 252 well is effectively dead' and 'poses no continuing threat'.

Various actions were taken to remove or contain the oil that had spilled into the Gulf, including the use of containment booms, manually removing any oil that did reach the shore, skimming oil from the surface of the sea, and conducting controlled burns of corralled oil. The latter released pollutants into the air, but it was decided that the benefits of burning the oil before it could

Dispersants break up the surface tension of oil molecules so that the larger slick "disperses" into smaller droplets, reducing the oil's buoyancy, causing it to sink and also enhancing biodegrading. Smaller droplets are easier for maritime organisms to digest.

Unprecedented amounts of dispersants were used. These are usually sprayed from aircraft, but for the first time ever dispersants were also injected directly onto the oil spewing from the leaking well on the seafloor. In all, approximately 1.8m gallons of dispersants were reported used.

While few dispute that the dispersants were effective in breaking up the visible plumes of oil, scientists and environmental groups have complained there has been little scientific research on the dispersants' potential chronic toxicity. Some warned that dispersants mixed with oil 'pose great health risks to marine life and human health'.

Others observed that dispersants merely move the oil from one part of the ecosystem to another because the dispersed oil now hovers diluted in the water column. While this prevents tides of oil from washing up on shore and may have helped spare avifauna, it may also have increased the risk to other species lower in the food chain.

The use of toxic chemicals in the spill response was clearly a trade-off based on the assumption that dispersant use is less environmentally harmful than allowing the oil to migrate to the coastline.

The current government estimate of the total amount of oil spilled is around 4.9m barrels or 206m gallons. In August, the US Geological Survey released a study preliminarily concluding that only 25% of all of the oil released into the Gulf remained, with 49% of the oil disposed of by evaporation or biodegradation.

Many groups question this conclusion and contend that vast plumes of dispersed oil droplets remain underwater or have settled to the bottom of the Gulf at levels toxic to sea life.

As massive as the spill indisputably was, observers remain hopeful that the environmental damage may not involve an ecological catastrophe. Less than 1% of the number of birds killed in the *Exxon Valdez* spill in Alaska 21 years ago were killed in this spill. So far all of the region's fish and shrimp have tested clean.

And while scientists have warned that the oil could accelerate the destruction of Louisiana's disintegrating coastal marshes, assessment teams to date have found only 350 acres of oiled marshes.

the black 'glop' from the *Valdez*, is unusually light and degradable. Second, the Gulf of Mexico, unlike Alaska's Prince William Sound, is very warm, helping bacteria break down the oil. Third, heavy flows of Mississippi River water may have helped keep the oil away from the coast.

"The Gulf oil spill was putting the equivalent of the Exxon Valdez spill into the Gulf every four days"

Others have raised concerns about possible long-term problems. The chemical dispersants and the oil-eating bacteria may have lowered oxygen levels in the water, creating dead zones for marine life. There are also concerns that dissolved oil – while not as unsightly as globs of oil that cover beaches – may ultimately find their way into the food chain as microorganisms are themselves eaten by shellfish and finfish.

There can be no dispute that the economic impact on the Gulf region has been enormous. At its height, 86,000 square miles of fishing grounds were closed. 20% of America's fish and shellfish presently come from the Gulf; the Louisiana shrimp industry alone is a \$1.3bn per year business.

Commercial fishing boat owners and their crews have already suffered enormous losses and are gravely concerned about the long-term impact of the spill on the reputation of seafood harvested from the Gulf. As with other regional catastrophes, the economic impact of the Gulf spill ripples out beyond those immediately impacted areas like a stone thrown into a pond. Seafood processing plants, restaurants and other businesses will also be harmed.

Gulf Coast beaches from Mississippi to the

the Florida panhandle and this past summer saw a decline in tourism all along the Gulf coast even in areas that were not directly impacted. Restaurants, hotels and other businesses dependent on tourism saw declines in their business.

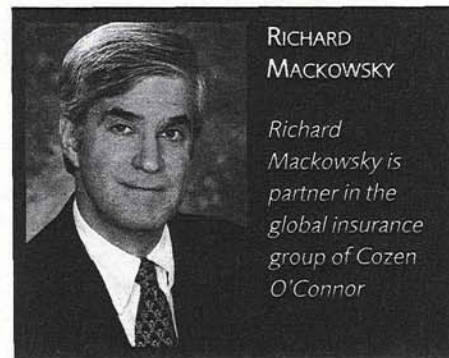
There are approximately 4,000 active oil and gas platforms operating in the Gulf. Oil and gas is a major local employer and has enormous economic and political clout throughout the region. Following the April spill, President Obama imposed a moratorium on deepwater drilling operations in the Gulf.

Not surprisingly, despite the devastating impact of the Deepwater Horizon spill, the moratorium has come under criticism not only by the oil and gas industry but also by local officials and residents. It is due to expire on 30 November, but federal officials have indicated it could end early.

Beyond the destruction of the Deepwater Horizon and the damage to natural resources, damage to other property resulting from the spill may be relatively minor. Coastal property may have come into contact with oil, and some homes and businesses could be exposed to fumes that affect their use. The amount of property coming into contact with oil from the spill as a result of normal tidal movement is limited, however.

In the aftermath of the Deepwater Horizon catastrophe there have been a flood of investigations into what went wrong and what measures can be taken to prevent similar incidents. Hopefully, the offshore drilling industry will carefully evaluate their practices and adopt reasonable changes to reduce the risk of future blowouts.

Governing regulatory bodies will also likely adopt new regulations and operating rules. The world's appetite for energy is growing, however, and as current sources become depleted, the search for oil in deeper waters will continue. While every effort must be made to extract oil as safely as possible, it can never be a risk free endeavour and that risk may be one society is forced to take. ■



**RICHARD
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