FOREWORD

BIG OIL, BIG CONSEQUENCES, AND THE BIG UNKNOWN: EXPLORING THE LEGAL, REGULATORY, AND ENVIRONMENTAL IMPACT OF THE GULF OIL SPILL

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For every wrong, there is a remedy; and for every remedy, there is a lesson learned. When an absent-minded driver rear ends a vehicle stopped at a red light, he or she will have to pay for the damage and will most likely be sure to keep both eyes on the road in the future. When an electronics company sells a laptop with a defective hard drive, the company will be responsible for providing the customer with a refund or a new device, and—if it wants to stay in business—note the complaint in order to prevent future defects in its product line. And when a neighbor allows a fire originating on her property to spread to the home next door, she will be responsible for the substantial repairs, thus teaching a valuable lesson in fire prevention.

One way or another, an innocent party that suffers a loss at the hands of another's misgivings can rest assured that the regulatory scheme in place will ensure that the wrongdoer cleans up the mess, appreciates the error, and compensates the injured party, which in turn curbs future harmful behavior. Yet, what if the injured party is the environment, and it has fallen victim to Big Oil?

On April 20, 2010, the explosion on British Petroleum's S.S. *Deepwater Horizon* oil rig marked the beginning of the worst marine oil spill in world history. What began as a tragic accident—resulting in the loss of eleven workers' lives and serious injury to seventeen others—rapidly morphed into a frantic effort to plug a newly-discovered oil leak that was located 5000 feet below the Gulf of Mexico's surface, and was spewing hundreds of thousands of

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gallons of crude oil into the environment each day.

Between April and July 2010, an estimated 4.4 million barrels of crude oil flowed into the Gulf[1] at a rate of about five hundred thousand gallons per day, altering the Gulf's ecosystem and suffocating all forms of life in its path. Petroleum soon made its way to the southern coast of the United States, where it continued to wreak havoc on property, coastal species, and human life. Arriving first in Louisiana, massive oil pools, about a foot deep, engulfed wildlife on the shores, smothering birds at an ever-increasing rate.[2] At present, the outlook for many of the affected species remains grim.

The oil spill in the Gulf has left many questions unanswered. How did this happen? What is the true extent of the damage? What deterrent effect, if any, will this spill have on industry practice in the future? And, perhaps most importantly, how will this mess be cleaned up?

On October 14, 2010, the *Albany Law Review* hosted its annual fall symposium to explore a myriad of issues surrounding this environmental disaster. This event explored the regulations, or lack thereof, that not only allowed oil to escape into the Gulf, but to persist as an unstoppable force for months on end. In addition, it examined the future of industry regulation and the possibility of developing public and private regulatory standards to safeguard against further destruction at the hands of industry giants.

PANEL ONE: OIL SPILL LIABILITY AND DAMAGES: PAST, PRESENT, AND FUTURE

The first panel of the Symposium focused on the state of the law with respect to litigation arising from oil spills, and the legislation in place before and after the *Deepwater Horizon* disaster. The panel discussed the nature of the remedies for environmental tragedies in the United States as exclusively reactionary, as opposed to proactive, in nature, the system for recovery of natural resource damages under the current regulatory scheme, and the extent to which the legislation currently in place, and that being considered

[1] *Study Affirms Gulf Oil Spill's Vastness: First Independent Well Employs New Imaging Method*, EARTH INSTITUTE OF COLUM. U., Sept. 23, 2010, *available at* http://www.earth.columbia.edu/articles/view/2730.

[2] *See* David Muir et al., *Oil Spill: Mess Gets Worse on Shore as Govt., B.P. Say Leak Will Most Likely Be Contained Next Week*, ABC NEWS, June 9, 2010, *available at* http://abcnews.go.com/WN/Media/bp-oil-spill-thick-crude-hits-shore-workers/story?id=10869546.

for the future, will deter similar behavior in the oil industry.

Moderated by Professor Timothy Lytton, the Albert and Angela Farone Distinguished Professor of Law at Albany Law School, the first panel included presentations from the following distinguished speakers:

Joan Bondareff, Of Counsel, Blank Rome. Joan Bondareff has focused her practice of law on marine transportation, environmental law, and legislative issues. She has represented clients in legal matters related to maritime regulations and public policy, government relations, international law, and federal grants. Prior to joining Blank Rome, Ms. Bondareff served as Deputy Administrator and Chief Counsel to the Maritime Administration of the United States Department of Transportation, and Majority Counsel to the House Committee on Merchant Marine and Fisheries. In recent years, Ms. Bondareff was a member of President Obama's Transition Team, handling maritime-related issues for the Department of Transportation. Ms. Bondareff has also made important contributions to legislation through her work on the Oil Pollution Act of 1990[3] ("OPA"), and aided in the development of the National Resource Damage Assessment Regulations as Assistant General Counsel for Ocean Services at the National Oceanic and Atmospheric Administration. Ms. Bondareff attended George Washington University, where she received her Bachelor of Science in Marine Science. She graduated magna cum laude from American University School of Law in 1975.

Ms. Bondareff's discussion at the Symposium focused on quasi-judicial remedies, specifically the Gulf Coast Claims Facility ("GCCF"), BP's $20 billion fund established to settle claims arising from the *Deepwater Horizon* tragedy.[4] The GCCF, administered by Ken Feinberg and outside the scope of OPA, received claim filings for Emergency Advance Payments ("EAPs") from August 23, 2010 through November 23, 2010 from claimants that have sustained losses as a result of the spill.[5] These claims include demands for removal of waste and environmental cleanup costs, damages to real or personal property, lost business profits and earning capacities, lost subsistence use of natural resources, and damages for physical

[3] 33 U.S.C. § 2718 (2006).

[4] *See Deepwater Horizon Gulf Coast Claims Facility Opens for Business—What It Means For You*, BLANK ROME (August 2010), *available at* http://www.blankrome.com/index.cfm?contentID=37&itemID=2305.

[5] *Id.*

injury and death.[6] Whether the compensation that these parties have received is proportionate to their actual losses remains to be seen. However, once claimants have accepted a final payment from the GCCF, they are left without further recourse should they realize the compensation falls short of the losses they have suffered.[7]

Vincent J. Foley,[8] Partner, Holland & Knight. Vincent Foley is a Partner in Holland & Knight's Maritime Practice Group where he focuses primarily on international complex litigation arising out of vessel casualties including collisions, explosions, and oil spills. Mr. Foley has had extensive experience with oil spill claim litigation, oil pollution prevention, and response drills and training. Mr. Foley has also advised clients on environmental policy and compliance, and has defended clients in both civil claims and criminal prosecutions for crimes against the environment. Prompted by the recent oil spill, on May 27, 2010, Mr. Foley testified before the House Judiciary Committee on legal issues relating to oil pollution liability. On June 9, 2010, Mr. Foley provided written testimony to the Senate Subcommittee on Environment and Public Works.[9] Mr. Foley is a cum laude graduate of the U.S. Merchant Marine Academy, and an honors graduate of Tulane University Law School.

Mr. Foley's discussion at the Symposium considered the risk and regulation of transporting oil, examining the leading legislation prior to and following the *Deepwater Horizon* explosion. The OPA, enacted in response to the *Exxon Valdez* oil spill of 1989, is the primary federal statute dealing with compensation and liability for the discharge of oil. It designates a "responsible party" for a vessel or facility, including offshore drilling rigs depending on their activities at the time of the incident, from which oil has been released or discharged. The responsible party is required to provide evidence of financial responsibility for the limits of liability provided

[6] Video: *Big Oil, Big Consequences, and the Big Unknown: Exploring the Legal, Regulatory, and Environmental Impact of the Gulf Oil Spill*, Symposium held by the *Albany Law Review* (Oct. 14, 2010) (on file with *Albany Law Review*) [hereinafter Symposium Video], *available at* http://www.totalwebcasting.com/view/?id=albanylaw (click on "Big Oil, Big Consequences: Morning Session" for Panel One or "Big Oil, Big Consequences: Afternoon Session" for Panel Two).

[7] *Id.*

[8] Vincent J. Foley, *Post*-Deepwater Horizon*: The Changing Landscape of Liability for Oil Pollution in the United States*, 74 ALB. L. REV. 515 (2010).

[9] *Partner Vincent Foley Provides Congressional Testimony on Oil Pollution Liability in Light of the Gulf Oil Disaster*, HOLLAND & KNIGHT, http://www.hklaw.com/id24660/publicationid2913/returnid31/contentid54929 (last visited Jan. 26, 2011).

under the statute.[10] BP, as the operator of the *Deepwater Horizon*, was a designated responsible party for any release therefrom.

Mr. Foley discussed OPA's three-fold purpose: (1) to require the responsible party to make funds immediately available for removal costs and damages; (2) to reduce the need for litigation arising from oil spill disasters by imposing strict liability on the responsible party, and to seek indemnity from other responsible parties so that claimants may recover; and (3) to require new technology that could eliminate or reduce the number of oil spills onboard oil drilling vessels. He also discussed the limits to liability under OPA, explaining the function of the trust fund that covers liabilities over those limits, and the unlimited liability available when there is gross negligence, willful misconduct, or a violation of a federal statute. The legislation, adopted by twenty-six states, provides an enormous incentive to avoid discharging oil into the United States' navigable waters.

The sheer enormity of the *Deepwater Horizon* disaster provided enough inertia to compel Congress to react once again. In May and June 2010, Congress held multiple hearings to discuss the way in which the law could be changed so that injured persons could recover, and the number of oil spills could be reduced. The response consisted of legislative proposals that failed to address the oil spill problem; instead, they operated to expand damage recovery and affected industry costs for transporting oil, which ultimately would be passed on to the consumer. Included in these legislative proposals are the Securing Protections for the Injured from Limitations of Liability Act ("SPILL"),[11] the Fairness in Admiralty and Maritime Law Act ("FAMLA"),[12] and the Comprehensive Land Energy and Aquatic Resources Act ("CLEAR").[13] These proposals (none of which have yet been made into law) would serve to remove OPA limits of liability and/or aid claimant recovery.

Maureen F. Leary, Assistant Attorney General, New York State Department of Law, Environmental Protection Bureau. Since joining the New York Office of the Attorney General in 1987, Maureen Leary has focused her career on environmental and energy practice on both the state and federal levels. Prior to her work with the Attorney General, Ms. Leary was an associate with Wilson, Elser, Moskowitz, Edelman & Dicker, where she

[10] Symposium Video, *supra* note 6.
[11] H.R. 5503, 111th Cong. (2010).
[12] S. 3755, 111th Cong. (2010).
[13] H.R. 3534, 111th Cong. (2009).

specialized in environmental, toxic tort, and insurance law. Ms. Leary's publications include *Fiduciary Liability Under the Asset Conservation Act*,[14] and she has spoken on environmental issues in programs sponsored by the National Association of Attorneys General, the New York State Bar Association, the Capital District Bankruptcy Bar Association, and the Attorney General's Office. Ms. Leary served as clerk to the Honorable Robert Muir and is a graduate of Seton Hall School of Law.

Maureen Leary's presentation at the Symposium dealt primarily with the legislative trend of formulating "after-the-fact" responses to, as opposed to preventative measures for, environmental disasters, and the need to compel industry behaviorial changes in offshore drilling. She provided a history of the problems that have surrounded offshore oil drilling since it first reared its ugly head in 1896 off the coast of Santa Barbara, California. The first project was aborted six years after it began, leaving behind miles of blackened beaches, waste strewn about the Pacific Ocean, and rotting piers from the rig to the shore.

For decades thereafter, a multitude of oil blowouts polluted the waters near the United States, India, Africa, and Europe. Finally, in 1980 Congress was prompted to pass the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"),[15] offering, for the first time, a natural resource damages remedy. However, CERCLA allowed oil companies to obtain a permit to discharge a limited amount of toxic substances into the environment, thus providing a "permitted release" defense under which they cannot be held liable for the resultant damages to natural resources.[16] But if the Environmental Protection Agency ("EPA") orders these facilities to evaluate other alternatives, or to cease discharging pollutants, does the "permitted release" then become an unauthorized one?

Ms. Leary brought to light the insufficiency of the current legal framework in preventing future oil release disasters. She considered how we can prevent spills from continuing to destroy the environment, acknowledging that we must become less reactive and more proactive in deterring Big Oil's behavior.

John Privitera, Partner, McNamee, Lochner, Titus & Williams, P.C. John Privitera joined McNamee, Lochner, Titus &

[14] Maureen F. Leary, *Fiduciary Liability Under the Asset Conservation Act*, 9 ENVT. LAW IN NEW YORK 1 (1999).

[15] 42 U.S.C. § 9601 (2006).

[16] Symposium Video, *supra* note 6.

Williams, P.C. in 1991, where he is Chair of the firm's environmental department. Mr. Privitera's practice is focused largely on environmental law in the areas of land use, hazardous waste, regulatory affairs, compliance, and citizen suits. Mr. Privitera is also an advisor on the environmental aspects of business transactions. Immediately prior to joining the firm, Mr. Privitera served as Assistant Attorney General in the New York State Department of Law, Environmental Protection Bureau. He is an author and frequent speaker on environmental and regulatory matters. John Privitera is a graduate of the State University of New York at Buffalo, where he received both his Bachelor of Arts and Juris Doctor.

At the Symposium, Mr. Privitera provided a "bird's eye view" of a Natural Resource Damage ("NRD") cause of action, and considered how these actions will play out after *Deepwater Horizon*. Acknowledging the strictly reactive nature of all legislation related to oil spill disasters in the United States, Mr. Privitera reflected on the contamination of the Cuyahoga River in Ohio, and several fires thereon, that prompted a movement to enact the Clean Water Act of 1970. Mr. Privitera explained that, while the Clean Water Act has a "sleeper" provision[17] providing for natural resource damages, it has never been used, has been defunded, and focuses singularly on water quality standards.

An NRD cause of action requires injury to, destruction of, or loss of natural resources as the result of a release of a hazardous substance or discharge of oil into the environment.[18] Such an action is distinguishable from a cleanup action under CERCLA or the OPA in that a response action serves to abate a contamination problem in order to protect human health and the environment from further harm, while an NRD action can only be brought by a limited class that demonstrates a causal link between the release of hazardous substances and the injury to a specific resource.

Further thought was given to the unknown extent of the damage caused by the *Deepwater Horizon* spill. While the injury, for purposes of an NRD claim, occurs upon release, some damages may not occur until years after the injury.[19] As we move forward, Mr. Privitera stressed the need to recognize the economic value of our

[17] 33 U.S.C. § 1321(f)–(g) (2006).

[18] Symposium Video, *supra* note 6.

[19] Mr. Privitera described the impact on wildlife as an example. A release damages the natural habitat of a migratory bird, which continues to cause injury to the animal each winter.

natural resources, and to shift the focus of the NRD cause of action from short-term cleanup, to the residual harm that will inevitably be felt for years to come.

PANEL TWO: DISASTER RESPONSE: ASSESSING THE ADEQUACY OF ENVIRONMENTAL LAWS, REGULATIONS, AND LITIGATION

The Symposium's second panel explored the role the law plays in environmental disasters. While the extent of the damage to the environment remains largely unknown, the panel considered why the remedies available at common law fall short in providing a solution to human-made environmental turmoil, and how the oil industry can be effectively policed so that, going forward, its major players are given incentives to operate within regulatory guidelines.

Moderated by Albany Law School Professor Keith Hirokawa,[20] the second panel included presentations from the following distinguished speakers:

Rebecca Bratspies, Professor of Law, City University of New York School of Law. Professor Bratspies joined CUNY School of Law in 2004, where she teaches Environmental and Public International Law. Her teaching and research focuses on environmental liability, regulatory reform, international fishery regulation, and sustainable development. Prior to joining the CUNY faculty, Professor Bratspies was an Associate Professor at the University of Idaho College of Law, an Acting Professor of Law and Lawyering at New York University, and a visiting Professor of Law at Michigan State School of Law. She was recently appointed to the American Bar Association's Standing Committee on Environmental Law. Professor Bratspies earned her Bachelor of Arts in biology from Wesleyan University and graduated cum laude from the University of Pennsylvania School of Law. She served as clerk to the Honorable C. Arlen Beam of the United States Court of Appeals for the Eighth Circuit.

Professor Bratspies focused her discussion on a phenomenon known as "agency capture," which, in the wake of *Deepwater Horizon*, evokes the following inquiry: *how is it that deepwater oil construction technology has progressed so quickly, while cleanup technology has not?* It took a massive crisis to prompt this inquiry, although there are hundreds of other deepwater rigs still in

[20] Assistant Professor, Albany Law School. J.D., M.A., University of Connecticut; L.L.M., Lewis and Clark School of Law. *See* Keith H. Hirokawa, *Disasters and Ecosystem Services Deprivation: From Cuyahoga to the Deepwater Horizon*, 74 ALB. L. REV. 543 (2010).

operation. According to Professor Bratspies, this highlights a serious regulatory problem: poor private decision-making. The United States Coast Guard warned in 2002, 2004, 2007, and again just before the recent spill, that the oil industry's drilling capacities vastly exceeded its cleanup capacity.[21] Unless the government insists upon controls of cleanup technology, however, Big Oil refuses to change. Better regulatory choices could have remedied the industry's defiance, but instead of setting rigorous safety standards, the federal government simply accepted the industry's assurances that they had everything under control.

Professor Bratspies proposed three reasons why better regulations were never established: (1) regulators were repeatedly told that burdensome regulation hinders business; (2) the Minerals Management Service ("MMS") has a corrupt internal culture; and (3) MMS was overwhelmed, with only about sixty inspectors for over 3500 rigs.[22]

Finally, Professor Bratspies proposed that the government confuses its role when it adopts private standards as law, thereby governing based upon a dichotomy between the interests of the oil industry and the public. Industry best practices derive from economic criteria and are propelled by the industry's interest in maximizing profit; the concern is not for the best technology available for spill cleanup. The *Deepwater Horizon* spill "represents the failure of the idea that regulation is unnecessary."[23]

Aaron Gershonowitz,[24] **Partner, Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana, LLP.** Throughout his legal career, Aaron Gershonowitz has concentrated his practice primarily on environmental issues, including representing clients in Superfund matters and the environmental aspects of corporate transactions. Mr. Gershonowitz also represents military contractors in negotiations with the United States and local governments. Prior to joining Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana, Mr. Gershonowitz served as in-house environmental counsel for the Northrop Grumman Corporation. He has also been a teaching fellow at the University of Chicago Law School and a Professor of Law at Western New England Law School. Mr. Gershonowitz has contributed many written works on

[21] Symposium Video, *supra* note 6.

[22] *Id.*

[23] *Id.*

[24] Aaron Gershonowitz, *Crisis in the Gulf of Mexico: Is New Federal Legislation the Answer, and If So, to What Question?*, 74 ALB. L. REV. 531 (2010).

environmental issues to the legal community, and has been published in West's *Environmental Law and Litigation in New York* and the *New York Law Journal*, in addition to several scholarly publications, including the *Duke Environmental Law and Policy Forum*, and *Environs*, the environmental law journal of the University of California, Davis. Mr. Gershonowitz earned his Juris Doctor from the George Washington University Law Center in 1980, where he served on the Editorial Board of the Law Review.

While environmental law is statute-based, Mr. Gershonowitz considered the common law recovery mechanisms that are in place to determine whether we need legislative response to this and similar environmental disasters. Specifically, Mr. Gershonowitz looked to common law negligence with an emphasis on foreseeable injury, and a definition of duty that suggests that rational decision makers will take precautions to prevent foreseeable injuries, as long as the precautions are less costly than the burdens of implementing them.

What aspect of the common law fails to address environmental issues? According to Mr. Gershonowitz, there are three areas in which tort law fails to offer protection in this area. The first is foreseeability: agencies are required to examine the environmental impact of their actions before engaging in certain activities, but are held to the standard negligence standards. The lack of expertise of the common law renders it difficult for environmental agencies to know what to look for in determining what constitutes a foreseeable harm. The second area is proof: the resulting harm can be so widespread that it is difficult for plaintiffs to prove their case. In turn, the incentive for businesses to prevent environmental harm is lacking because if they will not be held responsible, there is no need for concern. The third issue is harm; the harm at issue in environmental litigation is different than the type the common law addresses. While traditional tort law protects against property damage, it does not offer protection to environmental interests, which cannot truly be classified as property.

Mr. Gershonowitz pointed to a need for expertise. When regulations are highly-specialized, as they are in the oil industry, common law courts have difficulty establishing a standard. The solution is to find the right set of incentives to encourage industry to not only obey the law, but to refrain from engaging in destructive behavior that will inevitably result in damage to the environment.

Tracy D. Hester, Professor of Law, University of Houston Law Center; Director, University of Houston Law Center's

Environment Energy, and Natural Resource Center. In addition to serving as Senior Counsel and head of the environmental group at Bracewell & Giulliani, LLP, Tracy Hester is a Professor at the University of Houston Law Center. Professor Hester has focused his legal career on issues in environmental law, including environmental strategies, land use, climate change, internal investigations, environmental diligence in acquisitions and transactions, and cost-recovery litigation. Professor Hester has been praised for having excellent problem-solving skills and developing new, innovative ways to apply existing law to emerging environmental technologies. Professor Hester graduated with high honors from the University of Texas at Austin in 1983 as a member of Phi Beta Kappa. He then went on to become a Stone Scholar at Columbia University School of Law, receiving his Juris Doctor in 1986.

During the Symposium, Professor Hester described when motivation stemming from environmental disasters goes too far. After the *Deepwater Horizon* explosion, questions from media and investors focused predominantly on the level of criminal and civil penalties that oil companies, particularly BP, were likely to incur. The biggest concern was that the viability of those companies was in danger, as the penalty itself could be extraordinarily high, and that the threat that BP employees could serve jail time would disrupt BP's cleanup efforts in the Gulf. Further, while the spill response was still underway, Attorney General Eric Holder announced a criminal investigation of the circumstances surrounding the spill.[25]

In the criminal realm, oil companies face strict liability when a statute is violated.[26] Negligent violations have been prosecuted at the federal level simply because of the resulting disastrous ramifications. Under federal environmental law, there is a mechanism in place to allow for the prosecution of actions that cause environmental catastrophes if those actions themselves are negligent. Professor Hester proposed that if the consequences of oil companies' negligence are going to be criminalized, and liabilities imposed, special attention will need to be paid to protecting critical due process rights.

Jeffrey G. Miller, Professor of Law, Pace Law School. Professor Miller joined Pace Law School in 1987, where he has taught torts, constitutional law, and a multitude of environmental

[25] Symposium Video, *supra* note 6.
[26] *Id.*

law courses, and currently serves as the Vice Dean for Academic Affairs. Prior to joining the faculty at Pace, Professor Miller worked in Boston with the EPA as an enforcement official, and later moved to the EPA's headquarters in Washington, D.C. to lead its Water Pollution Permitting and Enforcement Program. While in Washington, Professor Miller initiated the EPA's Hazardous Waste Enforcement Program and later led its national enforcement program. He has lectured on and taught environmental law throughout the United States and in six foreign countries. Professor Miller is a graduate of Princeton University and Harvard Law School.

Professor Miller focused his discussion on the role of catastrophe in environmental law, and the ramifications of the recent Gulf oil spill in particular. Professor Miller contended that "disaster is the mother of environmental law."[27] In the 1940s, in a small Pennsylvania steel-making town, air pollution control was non-existent, resulting in an air inversion that stagnated over the town and caused the death of forty people.[28] As a reaction, the grandfather of the Clean Air Act was born.[29] The bald eagle was headed toward extinction because of the effect DDT was having on the strength of eagle eggs.[30] This led to a change in the federal pesticide statute, ensuring that all farmers' pesticides were not only effective, but safe to both humans and wildlife.[31] Similarly, the burning of the Cuyahoga River in Ohio inspired the enactment of the Clean Water Act, and after it was discovered in national surveys that there were elevated levels of polychlorinated biphenyls ("PCBs") in every mother's milk, the Toxic Substance Control Act was born.[32]

According to Professor Miller, legislators need to turn their focus from viewing each disaster in a vacuum, to looking at the whole picture. If this reactionary behavior continues, the likely result will be reaching the tipping point of a disaster (i.e., global warming), preventing us from backpedaling because we have focused so much on the past that we have failed to anticipate future disasters.

In the area of environmental law, Professor Miller proposed that instead of continuing to react each time a particular disaster occurs,

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[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*

legislators should consider the status of the regulatory regime in its entirety, identify where the faults lie, and formulate a solution that will ensure that we reach desirable results. Unless something changes, the result will always be ineffective piecemeal legislative "solutions."

Judd Sneirson, Visiting Associate Professor of Law, Hofstra Law School. Prior to joining the faculty at Hofstra Law School, Professor Sneirson was Associate Professor of Law at the University of Oregon School of Law since 2001. Prior to joining the University of Oregon, Professor Sneirson taught at Willamette University School of Law. His scholarship focuses mainly on fiduciary duties in corporate law. Professor Sneirson clerked for United States District Court Judge Joseph Irenas in the District of New Jersey, and has worked in private practice with Wilkie, Farr & Gallagher, LLP in New York City. Professor Sneirson is a graduate of Williams College and the University of Pennsylvania School of Law, where he was Articles Editor of the *University of Pennsylvania Law Review*.

At the Symposium, Professor Sneirson considered whether we can internalize sustainability questions within the corporate governance framework, categorizing the BP oil spill as a failure of corporate law. Referencing Tony Hayward's memoirs, released only two months prior to the *Deepwater Horizon* spill, Professor Sneirson discussed BP's recent shift from British Petroleum to "Beyond Petroleum," attempting to alter its image and be considered a green operation.

Arguably, the job of a corporate officer is to produce as much profit as possible for shareholders at the expense of all else. Violating environmental laws, and paying fines as a consequence, is considered nothing more than a business expense. Professor Sneirson considered the different levels upon which petroleum companies can exercise corporate social responsibility, observing that they do so only to the extent that money can be derived their conduct. Analyzing the current issues under the business judgment rule—which insulates officers and directors from liability for decisions made in good faith and without a conflict of interest—Professor Sneirson observes that there is no affirmative duty on managers to act for the benefit of shareholders and their profits.

Professor Sneirson touched upon the concept of "greenwashing," a phenomenon by which companies portray themselves as more environmentally-friendly than they are in reality. This deceptive use of advertising promotes the misleading perception that the

company has set forth socially-responsible and environmentally-sound policies, with the goal of attracting the attention of investors. This problem, however, can be policed through laws and legislation already in place. Specifically, laws against false advertising and securities fraud can be applied in policing greenwashing, as well as the Dodd-Frank Act and private certifications, in order to set forth more accurate views of how corporate managers are to conduct themselves and their businesses.