

MACONDO'S WAKE AND THE GOVERNMENT RESPONSE: SAVING THE GULF AND ITS ECONOMY

J. Gordon Arbuckle

Patton Boggs LLP

2550 M Street N.W.

Washington, DC 20037

Email: Garbuckle@pattonboggs.com

Gordona123@earthlink.net

MAJOR ISSUES AND QUESTIONS

1. Putting the Gulf Back to Work

Expedite permits and appeals; speed up and expand leasing; make regulators accountable

- Will Chairman Hastings's simple approach be sufficient or will we eventually need more detailed fixes like those put forward in last year's S. 3516?
- How will the regulatory system develop and enforce safety requirements?
- Developing and incorporating Industry Best Practices?
- How to coordinate NEPA procedures?
- Use or lose?

MAJOR ISSUES AND QUESTIONS

2. Compensating the Injured

The Big Issue with the Least Attention: Onshore and offshore businesses and individuals have suffered tens of billions in damages and lost income but unclear who will pay

- BP/Feinberg Fund -- 20 Billion committed; much less actually paid out – not paying for damages impacted by Moratorium; documentation requirements
- OSLTF Fund -- 1billion per event limit, eligibility requirements; supposedly relaxed documentation requirements; not currently paying for moratorium-related damages

THE QUESTION: WHO PAYS FOR MORATORIUM DAMAGES AND WHEN?

- The need for governmental commitment and a coherent approach to enforcement

MAJOR ISSUES AND QUESTIONS

3. Liability

Limits: Currently 75 million per event on damages; not applicable to response costs or where there is gross negligence, misconduct or violation of regulatory requirements:

- How high will the limit be and what does it cost?
Increased Fund Size and per barrel assessments
- Per event limits, assessment amount, uses, funding sources:
Is the “Fund” an illusion?
- Financial Responsibility requirements:
How to prevent entry barriers for smaller companies?
Large Companies’ Ability to Self Insure
- Mandatory “mezzanine” coverage
Is “Gulf Only;” “Deepwater Only;” or “Offshore Only” in U.S. Interest?

MAJOR ISSUES AND QUESTIONS

4. “Restoration”

Funding restoration from penalty collections, lease payments:

- How much? Macondo-related or cumulative?
- Where do penalties go?
- Bypass the Fund?
- What about Economic Damages?
- Per Event Limits?
- How to protect funds?

Major Issues and Questions

5. Response Capability and Institutional Expertise

- Transparency and participation in development of Standards & Best Practices
- MWCC, MSRC, Helix
- Salazar's Offshore Energy Safety Institute proposal