

# PRESIDENT'S PAGE

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I write my last President's Page from Europe, where I gave a presentation to the Pan-European Organisation of Personal Injury Lawyers titled "Fundamental Rights in Personal Injury Law: A Global Issue?" My presentation focused on the need to recognize that corporate misconduct today is often global and that all citizens of planet Earth are entitled to certain fundamental rights when they are harmed by inexcusable corporate wrongdoing.

It was fitting that my presentation was in Geneva, Switzerland, home of Transocean Ltd., the multinational corporate owner of Deepwater Horizon, the oil-drilling rig that now sits at the bottom of the Gulf of Mexico. The rig's explosion in April caused the deaths of 11 workers, leaving their families emotionally and financially devastated. And the well's as yet unstoppable flow of oil now threatens the health of fragile Gulf ecosystems, rich fisheries, and some of the most spectacular barrier islands and beaches in the world.

Transocean was joined by two other multinational corporate giants, BP and Halliburton, in the reckless acts and omissions that culminated in this disaster of epic proportions, with current estimates of \$15 billion to \$25 billion in monetary damages. The environmental losses are unprecedented and incalculable.

The Gulf oil disaster underscores both the need for a strong civil justice system and the folly of tort "reform" measures that shield corporations from accountability for wrongdoing. The U.S. Chamber of Commerce's Institute for Legal Reform spends \$25 million to \$30 million annually trying to immunize corporations from liability through caps on damages, preemption, mandatory arbitration, and other regressive measures. It should come as no surprise that the funding for this effort comes largely from the oil industry, automobile manufacturers, and pharmaceutical companies—all multinational corporate forces.

While congressional hearings on the oil spill continue, let's not forget that just a few months ago, Toyota executives appeared before Congress, trying desperately to minimize the causes and effects of its runaway vehicles. Nor should we forget that the pharmaceutical industry is currently spending untold millions to stop passage of the Medical Device Safety Act, which would effectively reverse the Supreme Court decision in *Riegel*

*v. Medtronic*, a ruling that immunizes manufacturers of medical devices from liability when their products kill and maim.

## **A need for quick action**

In the wake of the oil spill, Congress should act decisively to

- amend the Death on the High Seas Act (DOHSA) to provide a full range of noneconomic damages to the families of the 11 workers killed in the explosion
- repeal the arcane admiralty limitation of liability, which permits a seagoing-vessel owner, like Transocean, to limit its liability to the postincident value of the vessel (here, the damaged rig sitting 5,000 feet underwater)
- repeal or raise the Oil Pollution Act's damages cap of \$75 million, which now limits BP's liability to a small percentage of the damages caused by the explosion and oil spill.

AAJ's Public Affairs Department is working day and night on these issues, which are being considered by several committees in both the House and Senate. And the Communications Department is educating the media and the public about the need for judges and juries to be free to award damages based on the harm inflicted by corporate misdeeds.

With respect to DOHSA, we are educating lawmakers and the public alike about how unfair it is to limit damages to pecuniary losses—rendering familial relationships worthless and reducing the value of human life to one's ability to earn a paycheck. The wives of the oil rig workers killed in the explosion should be permitted to recover for their loss of spousal consortium and all that it entails. Their children should be allowed to recover for the loss of their fathers' love, affection, guidance, and advice.

Why should these multinational corporations be held to any lower standard in this or any other instance of corporate wrongdoing? Justice demands otherwise.

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