OIL SPILL
6/2/2010
BILOXI, MS

Disclaimer: This transcript begins with the first mention of the topic and introductions.

KAY: Good morning. My name is Kay. I happen to be a waterfront property owner. Not necessarily at the forefront of our coastal area but nonetheless, perhaps even more importantly to me at the end of the line. The waterway I live on, is, it does not go much further than that. Things move. Things end up somewhere, and I anticipate in the future, short of, miraculous changes to be a victim of something I didn't start. I already have some concerns that maybe I have some legal issues and some rights that will be impaired. So, reason for being here this morning, and as others in the room, if you looked at the newspaper or listen to other media sources, lawyers, groups of lawyers are out there offering opportunities to participate in what I guess are class action suits or ultimately class action suits. I feel that somewhere in the realm of things, I'll be among class of people that fit one of those actions. I guess I'm asking now what you believe might be the process that will happen as a result of litigation taken against whomever and maybe even offer some insights from your experiences what I can anticipate wanting to do, what to explore in terms of choosing the right course of action to take and enlisting others, perhaps, that don't realize they have a reason to be among the class of people to bring forth action that may hopefully move this process along even more quickly when you set fire to the right seats. I look forward to your response.

(0:04:22.5)
NIKI: When you have property damage or I'm going to speak in a hypothetical sense that yours hasn't happened yet but may happen. So, when it does happen, you have basically three avenues. You can file a claim with BP for damages. You can, um, if BP does not resolve the claim in a way that you are happy with or denies your claim, you can then pursue a claim with the Oil Spill Liability Trust Fund or you can also choose to become part of litigation. Those are your basic three different avenues. Which avenue you choose is certainly up to you. I would be hesitant to say that getting involved in litigation would speed the process along just based on what we had seen from the Exxon litigation and that it took about 20 years for that to be resolved. I'm not, in any way, dissuading you from getting involved in litigation. I'm just saying that that could be a very lengthy process. So, you might choose to pursue a different avenue before you choose that. It's entirely up to you. In

Mississippi, you have three-year statute of limitations. So, you've got three years before you are precluded from bringing a claim by law. Does that help? Did I answer what you're asking? You're looking like I didn't quite address what you are looking for.

KAY: No. I don't know that anybody has answers to questions that any of us may pose, but the Oil Spill Trust Fund, tell me what that is and who enters into that and what's it out there doing or not doing or supposed to do?

(0:06:10.5)
STEPHANIE: The Oil Spill Liability Trust Fund was established following the Exxon Valdez spill. It was the Oil Pollution Act and it is funded by a tax off of barrels of oil sold. It is managed by the U.S. Coast Guard. The role of the Oil Spill Liability Trust Fund is almost a backstop. It is setup for situations where the responsible party does not pay maybe because they are bankrupt or they are refusing to pay for some situation. What the process is supposed to be under the law is a person who is injured as the result of the spill files with the responsible party, here BP. BP has 90 days under the law to respond to your claim. You submit your application, wait 90 days, and see what BP has to say. If you are unsatisfied with what BP is saying, maybe if you think you had $5,000 worth of damage and they've offered you $2,500. That doesn't go with what you wanted. Then you have the option of filing the same claim with the Oil Spill Liability Trust Fund through the Coast Guard. Then, I think, under the procedures that the Coast Guard has setup, their time line is much longer because they just have a lot more going on with the trust fund. But, if they do not respond within six months, then your claim is deemed to be denied. You would be free to then sue the Coast Guard under the Oil Spill Liability Trust Fund for not paying that claim, or go back to BP in litigation to get that claim rectified in that situation. So, one thing to think about in the process and what I am talking about time lines, these are statutory time lines. These are deadlines that are set by the statute. There's no way to guarantee that all of those deadlines would be followed. From start to finish, this Oil Pollution Act creates about a 15-month time line from the time that you would file a claim with BP 'til you would go to the Oil Spill Liability Trust Fund. Say, the Coast Guard took the entire six months to address your claim, then there's an appeals process within the U.S. Coast Guard, which would take a couple more months. At the end, it would be 15 months. If you started today, you'd still be within that statute of limitations for Mississippi. The one thing to think about is just when you're making these types of decisions is to look at the time line for both

options and whether the claims process would be fast enough for what you're looking for or whether litigation would be the option. One thing to keep in mind with litigation is it's rarely quick. It's very slow, tends to be, unless something is settled out of court. That is the concern with class action lawsuits, that can take a while as well.

AUDIENCE1: This is in regard to the current needs for some of the clients and the people, the immediate affected by which is the fishermens. My question is that, is there a legal monitors that oversees the BP claims process that can help them? Because, I have family members, friends, clients and stuff like that, some received and some haven't, some are still in the loop of the BP process. They claim that they haven't received their claims where they have the file numbers or they claim that it is in the process and stuff like that. We are looking at 46 days into this disasters already and these people are normally out there, already make their earning coming in already. If they're daily shrimpers or fishermen, or if their freezers, they would already make an abundance amount of money for a $2,000 to $5,000 check. That's nothing to them. What is the prices that can help? I know that there is no such thing as guarantee, but at least help them to ease their stress, you know, for the daily expenses. I myself as a real estate broker I have a lot of my clients that's coming in and say, listen, I am into two months of not paying my monthly payments already, and I am getting nasty letter from Bank of Americas from Chase Mortgage and stuff threaten to foreclose my house. I do not want to lose my house. What is there, what is there, that we can do?

(0:11:29.2)
STEPHANIE: I think I heard two questions there so I was going to answer the first. Yes, I'll answer the first. I don't know how this process is working because I just saw the press release but BP has hired an independent mediator for their claims process. One thing, maybe one option if somebody is having trouble getting their claim, moving their claim through BP. Supposedly, this independent mediator is going to be there so you can elevate the claim from BP to the independent mediator who is then going to take a separate look at the issue. There is a press release on BP's website about that with a phone number. That might be one option. But then there was a separate question about kind of what you do now.

NIKI: Unfortunately, there's nothing we can do. There's nothing under the law the way it is written right now to speed the 90-day process. BP does have 90 days. Other than them offering interim payments

which you mentioned, I do not know of any other avenue to speed up the 90-day process. Regarding the financial assistance, we may not necessarily be the best people to speak about that. It might be a better topic for another room, but there is information like the Small Business Association is providing loans right now. I know that is not ideal but it might be one avenue to pursue. There may be some other loan assistance to the Oil Pollution Act that will be set forward. We do have some fact sheets out front. One of which is on the oil, I can't spit it out, the trust fund. On the back of that trust fund, if you flip to the last page. This is not it, there's a list of resources.

STEPHANIE: It's the two, the bigger one and on the back, it has...

(0:13:15.7)
MODERATOR2: It has some information about the Small Business Association, like where to go for more information about the loans process on there.

AUDIENCE1: We have direct contacts with small business because there's a lot of language barriers for some of our clients too. They were kind enough to send a Vietnamese representative for a lot of the shrimpers that are not getting the representative. The problems that they're wanting, that they are afraid of and this is just an ethnical traditions that what they're worried about is that they don't want to get a loan to try to get themselves out of their holes. Another question is there is a lot of attorneys that are out there or lawyers, that do want them to get in into litigations, the MDLs, multiple districts litigations. What they want us to do, their main concern is that, if I can get into these class actions cases I signed on with these people, of course it is better to have representative than not, but would then would I be a target for BP delaying my interims payments? That is the main concerns in their mind. If I do not get on to the MDL's litigations in the long run, if I'm getting interim check for $2,000, $5,000 in four or five months down the line, they say that's it, I'm not paying you anymore. What then? The livelihood is affected not just currently but possibly...

(0:15:08.1)
NIKI: You can certainly in four to five months still choose to become part of it. What you are talking about is that there is a move right now to consolidate all the class actions into a multidistrict litigation. BP has proposed that all of those cases be moved to Houston. The last time I checked, and I have been out of the office a lot lately, they have not actually created the MDL yet but that seems to be where this is going. And, that is how a lot of large litigation gets handled

just to kinda streamline the process. You are potentially looking at it being 20 years before you get a settlement out of that. It could really be a long time. So, it might be in your best interest to see what you can get out of BP. It might not be everything you want. It might not be what you feel you deserve, but you might could see what they are willing to do, and then what they are not willing to do, you sue them over that part they are not willing to do. Do you know what I am saying?

AUDIENCE1: Yes.

(0:16:04.2)
NIKI: You are certainly not going to be precluded from later joining a lawsuit unless you are signing releases with BP and you are releasing them from liability. So, you have to be very careful what documents they want you to sign when you accept that money.

AUDIENCE1: That come to another problems. I have a lot of clients that came in during this first week or two weeks. They signed a lot of documents with BP trying to get the interims payments. They don't have a copies, or nothing at all, except the claim numbers and a phone number to call. A lot of them would call constantly and wouldn't get an answers. Again, it's due to the language barriers also that they are having problems too. And they'd be on the phone for hours. They're so confused and so frustrated and stuff like that. Their question is that I don't even know what I am signing. I don't even have the copy of what I am signing. Everybody was going to the claim center and sign some stuff, and you know, it was a madhouse at that time. They did not even get a copy so they did not know what they were signing also. What should they do?

(0:17:21.3)
STEPHANIE: Yes, that is really a hard one when those type of things. First thing, it may be that now if things have slowed down a little bit that maybe they could go back to the claim center and try to get copies of what it was. One thing now, moving forward, everybody needs to be very careful about what they are signing. Make sure that you read it. If there are language barriers, you should have the time to take those documents back to a family member or somebody else that can look them over. Also, there is no reason why you can't take the documents to a lawyer that you know. Find your own individual representation. The other thing to think about with class actions and why you have more time is that you are not precluded from bringing individual lawsuits on your own behalf. You can opt-out of class actions and have your lawyer of your choosing file

a lawsuit on your behalf. I think that the most caution is that a lot of times it feels like you might not have time. But, you actually do have time and try to take that time for yourself to get copies of things, thoroughly review them before you sign them and make sure that everyone knows what's going on.

KAY: I'm going to guess that you're much more well-informed of what happened in Prince Edward Sound and the Valdez. I personally see it as considerably different. That was a ship that went off course for whatever reasons and a different company. Nonetheless, I believe big corporations use stalling tactics to slow the pace of restitution to those individuals up there in Alaska. Just like maybe if you will elaborate on what you know from your readings and experience of what happened as a result of the Valdez and the course of action with the development of this trust fund, for instance. And just kinda maybe offer some of your own thoughts.

(0:19:55.7)
STEPHANIE: A couple of big things happened after the Exxon Valdez. One thing was at the time when the Valdez grounded, there was no mechanism for the federal and state governments to get paid back or get reimbursed for all of these clean-up costs that they were laying out. So at the time, that the federal government and the state of Alaska had to file a civil lawsuit against Exxon, that went through the normal process. That wrapped up fairly quickly. Exxon settled for $900 million to pay back the clean-up costs and they setup a fund up in Alaska that was then used to cover some of the clean-up cost. What you heard about and saw in the news was a separate civil tort action by the residents and Prince William Sound. The class up there had 32,000 members in it, and it was fishermen, it was property owners, it was business owners. That's the one that took so long to come to the process. What happened was, I think, the typical course of action in litigation that involves a lot of money. Originally, the jury in that case found that there was about $500 million owed to the class members in compensatory damages. That was their loss of income, property damage, those types of claims. But, they also wanted to send a message to Exxon that this was egregious behavior and they awarded $2.1 billion in punitive damages. That was one of the highest punitive damage awards in environmental damages case. And, Exxon, as expected, appealed that $2.1 billion punitive damage award. If I understand things correctly, I think that the class member, I think Exxon paid the compensatory damages. They did not challenge what they owed the class members that money, but they fought the punitive damages. That went up back and forth through the courts for years.

It went to the California courts. It went through the federal courts. Last year, it ended up in the front of the U.S. Supreme Court. It was one of the biggest decisions of the Supreme Court last year. What happened in that case, I think, could have significant ramifications for any litigation moving forward here in the Gulf under the Oil Pollution Act because the U.S. Supreme Court said that in maritime cases or cases that are happening out at sea, the punitive damages cannot be more than compensatory damages. What that meant in the Exxon Valdez litigation was that since the class had only suffered $500 million in compensatory damages, punitive damages could only be $500 million. They significantly reduced that award. By now, since it had been 20 years, many of the class members had died, you had a lot of changes up there. When I checked a few weeks ago, there is a big range in the damages or the percentage of those punitive damages that class members got. Some class members got $15, $20,000. There were a few that got $85 because of what maybe they were not able to prove their income at that time, but maybe they were individual fishermen versus seafood processors. So, that is the way that punitive damages often work in class actions. You have got two things, most likely changing the litigation that is going to happen in the Gulf. You now have the Oil Pollution Act that says BP is responsible for these things. And, you have a ruling in the U.S. Supreme Court limiting punitive damages in maritime cases. This is really going to affect what jury's and what judges can do in this situation.

MATT: My name is Matt. In light of that, how are you compiling economic data or how are they compiling economic data to substantiate the real economic cost of the disaster, whereas all about that, because there's environmental, there's scientific, there's loss of marine life, there's effects on people, restaurants, fisheries and all. All these different sources of data. How are they going about compiling all of that economic data into what is the compensatory cost that BP is actually going to be? And then, and then, based on that, then they can come up with a punitive number.

(0:24:54.3)
NIKI: One question. Who are they? I'm sorry; you were saying how are they. I was just wondering who you were...

MATT: I kind of walked in late so I am not sure where we started as for as who's...

(0:25:04.1)

NIKI: Are you just talking about like individual attorneys that have lawsuits or something...

MATT: Yes exactly. Attorneys are going to be looking for data.

(0:25:11.4)
NIKI: The data is going to come from an economist and certainly we are not economists and can't speak to that. Generally in litigation, the attorneys are going to hire their own economist experts, and BP is going to hire their own economy experts. They are both going to present information that would then go to a jury and then jury will decide which is one is right. So, it will be an issue that is litigated during the trial. It will certainly come down to basically who the jury believes more and what data they bring forth in court. Both sides will have their own set of economists I would imagine.

(0:25:52.2)
STEPHANIE: The other piece that is going on as well is that NOAA, they mentioned it in the larger session, there's a natural resource damage assessment process that is going forward. This is to help the federal and state governments recoup the cost of the clean-up but also the damages to natural resources. As part of that assessment, NOAA economists and federal economists will be compiling data on the lawsuits that will then feed into the federal and state processes. There's actually multiple data collection analysis that will be going on as we move forward. And, there may be competing numbers along the way that will only be straightened out in litigation.

BOB: Bob Bretner. I live in North Gautier, kind of in the same boat as this lady right here. I own waterfront. I don't think I'll ever get hurt by the oil unless we have storm surge, which we have had, in the five years I lived here, twice. I also got an investment property. According to this thing here, it says that you got three years. You got to prove what your stuff is worth before and after, whatever, after damages. I'm not looking at any damages but except for monetary. What is this property going to be worth in three years? Should I get an assessment now and say here is what his property is worth today or 46 days ago and then say what the property is going to be worth three years from now and go for litigation for the difference? We can't even get visitors down here. How are we going to get people to move here? I also got a $150,000 fishing boat that is sitting in the driveway because you cannot go past the port out here. I am losing a lot of money, which I think was a direct

result from a, if not criminal, I can say criminal because they cut corners from what I read and this disaster is a sole result from trying to make more money at the end, cutting corners, in which I was a safety personnel for a public utility for 20 years. You don't cut corners in safety. First thing is safety, getting the job done and then how much money we're going to make at the end. OK. He says I'm done. What can I do as a property owner?

(0:29:02.4)
STEPHANIE: One thing to start at the beginning of the question that I don't admit anybody could, that if you're worried that damage might be headed your way. It certainly is appropriate to start to document what your property is worth now, I would say you can go out you can take pictures, you can start to create a file that will be useful in the future. That is something you might want to have for insurance purposes anyway. I think that having property assessed that this is its current value, so that you will have all of that information that if the oil does head your way and does affect your property, then you are not in the position of having to go back and say will this is what I think it was. You will actually have an appraisal that says this is what it is worth. Moving, looking into the future, that's a lot harder to be like what my future damages might be in three years because it all depends on the currents and the tides and how much oil is floating around there, what happens with hurricanes and things like that. That was the first thought I had.

(0:30:21.0)
NIKI: One thing I wanted to be clear about is the three years we're talking about is the three years you have to file the suit. The loss, the harm that would happen to you would not be the value now and the value in three years per se. It would be the value of your property before the harm happened, before the spill. So, you would be looking at that value versus the value afterwards as far as calculating how the value of your property had been diminished. The three years is just a legal statute of limitations for how long you have to file that in court, but it doesn't affect when they assess the value of the property.

BOB: I'm sorry. Like I said, I bought one property for investment, and I was figuring on putting it for sale this year. Like I said, we can't even get visitors down, you know vacationers, anymore according to the paper, according to the casinos and according to everybody else. Restaurants and seafood industry is crap and everything else. To me, the property is not a total loss right now, but I'm paying out of my pocket because it's no longer a sellable value. The one guy

that started the thing this morning says this thing isn't going to be resolved in his lifetime. I'm older than he is. What should I do, set it on fire or what?

(0:32:12.6)
NIKI: No. No. No, definitely not. I'm very sympathetic to this situation you're from. I grew up in Vancleave, fishing down here and I have a lot of family members with fish camps on the coast and stuff like that. I completely understand where you're coming from. I was just talking about from the technical standpoint of the valuation of the property. That would be the difference and all these other factors that go in would go into play, like how long you couldn't sell the practice, the economy affecting the lack of interest in living down here and things like that. There would be externalities that an attorney would argue in your case as to why your damages were more or should be higher or such things like that. That would probably be more of a legal strategy for arguing the value of your damages and why they're higher as opposed to what perhaps you were being offered.

(0:33:06.9)
AUDIENCE1: In his case, he doesn't even know what the loss of his value's going to be. If you work from 9:00 to 5:00, you make X number of dollars amount of money, then you can calculate, okay, in five years, I'd be losing this much money, but he bought it with intentions that the property is going to appreciate. So, therefore, if the property is going to appreciate, now, it's not going to appreciate. What is his recuperation? I have a client of mine, you know, that's gone through hurricane Katrina that's right here in Highway 90. It took him five years to finally be able to get his financial situations in order and he just rebuilt the frontage of his hotel right here, Bayfront Hotel. He lost little convenient store and little office and stuff like that. He put in a little over two million dollars now. His occupancy rate went from, at this time, it would be 80-90 percent down to 40 percent because he's getting about 50 percent of his occupancy calling to cancesl that they're not coming because they're from out-of-state customers that say they're afraid that they're getting harm from the oil coming into the Gulf Coast because they don't know that it hadn't reach quite yet but it will be. He just put in two million dollars, he doesn't even know what the compensations is, what's he's going to come out of his income. In his case...

(0:34:49.5)
STEPHANIE: There's so much uncertainty with respect to real estate and the one thing that's hard in situations with uncertainty is that no one knows right now. These are questions that nobody has any answers to. The focus so far I think on the BP claim side has been on direct impacts, which are fisheries and that one is easier to tell. BP is also responsible for property damage and that doesn't necessarily mean that that's just property that gets oil on it. There would also be loss of income from investment properties and those type of things. I haven't seen anything only because we don't have claims when we're not with BP, so we don't know how their process is moving forward. But, those type of claims can at least be submitted to BP and you can try to start making those arguments, how you're going to prove that and what BP may accept. Right now, nobody knows the answer to that. Unfortunately, it may take a long time before you really get a handle on what BP is going to accept. It's easier with income. They can ask for tax returns. It's harder with property damage.

AUDIENCE2: I wanted to go to the fisheries. Document?

STEPHANIE: Yes, definitely document.

Document, assess, and document.

If you'd like to ask some questions, I want to get ***[0:36:32.6 inaudible]***.

PATRICK: Okay. My name is Patrick. I don't know what's been asked here but I have what I feel is a legal question. The staging area in Gulfport for the response, all response to boats, Vessels of Opportunity is full of out of state boats. There's way more out of state than there are from Mississippi and there are a number of contracts that's been signed here including myself. We're not being activated or called to go to work, but there's out-of-state boats here. Governor Barber has said that the people from the other states could not work here on the beach clean-up. Why would they be allowing the boats in here?

(0:37:18.9)
NIKI: Unfortunately, we don't have a lot of information about the Vessel of Opportunity and it is a program through BP. It appears that there had been efforts. You are not the first person to raise this concern. It's been heard in Louisiana. There’s been efforts to alleviate this problem, but we don't have any insight that I'm aware of in that

and BP hasn't been very forthcoming with sharing information about that.

STEPHANIE: It's been a concern in Florida as well. Unfortunately, yes, we don't have information about how BP is running that program or what their criteria are or how they're selecting boats. I don't know if that...would that be the attorney general that can file that stuff?

NIKI: It might be something to raise with the state attorney general and on the back of our Liability Trust Fund website, there is a website and I think a phone number maybe for the state attorney general. Certainly, if you are Internet savvy, the state attorney general has an entire web page devoted to the oil spill and that might be a good resource. It would be certainly something, perhaps, we might need them to weigh in on the behalf of Mississippi boaters.

AUDIENCE2: I agree.

(0:38:34.1)
MODERATOR: Can you fill out one of those forms, the first question with that information.

STEPHANIE: Okay.

The one thing, what is challenging about the Vessel of Opportunity program, is that it's a BP. That's being run by BP. As an individual company, they can set the rules with how they want to do that. Currently, right now, while there have been efforts in all of the states to rework that program, so that it benefits Gulf Coast boaters. Right now, we are not aware of any state of federal oversight of that program.

AUDIENCE2: Right, but being a loss to recreation from having our recreational boats. If we work and make money with them, then there's no damages, there's no way for us to sue them. You would think they would be activating the local boats and leaving out of states intheir states. They have worked there already.

May I go?

(0:39:49.1)
MODERATOR: Yes, you can.

KAY: On a program out of Louisiana and I would imagine the emotions of the people from Louisiana would be a little different in this

group today than maybe you're experiencing or seeing. There was mention that litigation could possibly be handled out of New Orleans federal courts or out of Houston federal courts. They were quick to remind listeners that BP's headquarters happens to be Houston, and the state that's most seriously affected right now, perhaps, and who has close connections with the refinery activities of the oil that would have been being taken and collected any way out of the Deepwater Horizon rig is our Louisianans. You had mentioned, Ms. Stephanie, that you thought the litigation would go to Houston. Why would you say that and is there, just as, an opportunity for New Orleans to be the site and center for litigation?

STEPHANIE: Yes. If I made that sound more certain, I misspoke. I'm not sure if it will move to Houston. What we do know is that both Transocean and BP have filed motions in federal court to move their litigation to Houston. Under different mechanisms, Transocean's operating under some federal admiralty laws. BP has moved to create multi-district litigation in Houston. So, what's happening right now is you're seeing a battle between lawyers about where they want the litigation to proceed. Plaintiffs' attorneys would like it to be in Louisiana. They want it to be where the injuries happened, where their clients live, and where they have most of the damages. The oil companies, maybe because of ease of access in where their headquarters are, which is in Texas, would like to litigate in Texas because it's more convenient for their lawyers. There's also some, you know, speculation as there always is with regard to litigation about the courts, what the courts are used to handling. The Texas courts you often see a lot of cases involving oil companies. That may be another that you have more experience in Texas with regards to oil litigation but that's not usually the issue. It's usually just where is the best place to hear the litigation, what's the best venue for the litigation. I think there's a hearing near the end of the month on BP's motion to create a multi-district litigation, so we'll see what happens with that. Some litigation has been put on hold until that hearing is done. There was some litigation in Alabama that the judge put a stay on to see whether or not it would be moved to Texas. Right now, it's completely wide open about where that litigation would happen. It's going to be a battle of the lawyers.

(0:43:40.0)
MODERATOR: Do you have a question?

AUDIENCE3: I don't have, really. (Chuckle) It is a quick question. I'm a retired Army engineer. I have a degree in industrial engineering. I believe that the federal government is negligent or not doing what they should be doing to stop this oil leak. I believe they've just been allowing BP to try one attempt after another, all failures, when our federal government has the capability to stop the oil leak. I could go into a long explanation of how that could be done. My question from a legal standpoint is, when all is said and done, if it takes three or four months for this leak to be stopped, would it be possible for someone who has suffered a loss because of how long it was drawn out to sue the federal government for their negligence and not taking the lead in doing what can be done militarily to stop this leak?

NIKI: Generally speaking, the federal government has sovereign immunity and only in instances where they have waved immunity can you sue them. There might be procedural avenue that is not coming to mind right now, for instance, the Administrative Procedures Act allows ways for you to sue the government for not following certain procedural requirements that are written into other laws. So, it might be something that if you were seriously interested in pursuing, you might want to consult with an attorney that would have more knowledge of that. Nothing is coming to mind though right away like a particular avenue to pursue that.

STEPHANIE: The one that you may have heard of which is moving forward after Katrina is there's the Federal Tort Claims Act and what Niki said, normally, the federal government has sovereign immunity. They have waived it for certain torts. Originally, it was enacted for things like a postal worker hit somebody on the road and you can sue them for those damages. They have been trying that in New Orleans with respect to Hurricane Katrina. The challenge with trying to bring something out of the Federal Tort Claims Act is that sovereign immunity is waived except for things that are considered discretionary functions, which are things that government can do at their discretion. That's a very high bar to get over, because, in responses like this, there isn't a lot that's mandated by the law. All of what the federal government is doing is at their discretion for what they want to do. Those are probably the two laws that might provide an avenue. Those cases are just really hard to bring.

AUDIENCE3: Okay. A follow-up. I'm also a home owner. I came in at the end of that gentleman's question about recovering his loss and the value of his properties when this is all over. I moved down here about four years ago. I was up in the northeast, retired, and bought a

home worth about a quarter of a million dollars here. I'm concerned about what the value of that home is now and what it will be a few months from now or even a few years from now because of this disaster. I'm wondering, what is the extent of BP's liability. Is there a limitation? I heard something about a limitation on their civil liability. I don't know whether it's concerning the cost of the cleanup or what.

STEPHANIE: There's no limitation on cleanup cost. BP is completely responsible for all cleanup cost. Under the Oil Pollution Act, there is a $75 million cap per incident on other type of damages. Now, there are some movements in DC within Congress to try to change those but that would be looking forward. BP has publicly stated that they will pay all legitimate claims even if that goes above the cap. How that's going to work in the future, I don't know, but right now, they're publicly saying that they're not going to enforce that $75 million cap. At least publicly, they should pay all legitimate claims for property damage.

AUDIENCE3: Mm-hmm (Affirmative). Am I allowed to follow up to my follow-up? (Chuckle)

(0:48:44.1)
MODERATOR: That's okay. (Chuckle)

AUDIENCE3: It's okay. That limitation, $75 million, that's for civil liability. What if they are found criminally liable? I understand that the federal government is now suing or getting ready to sue BP.

(0:49:11.1)
STEPHANIE: That will be over and above. The $75 million is just on certain damages that are outlined in the Oil Pollution Act that they're responsible for. The criminal investigation that the government announced yesterday is under a whole range of environmental laws that all have their own civil and criminal penalty assessment. For instance, BP might be found to be criminally liable under the Migratory Bird Treaty Act and the Endangered Species Act and assess civil penalties by the federal government. But now, that money will go back to the federal government for use however they see fit.

AUDIENCE3: Mm-hmm (Affirmative). That's all I have. Thank you.

KAY: No. I'll just end with my remarks. I think that for me, the learning curve is extreme, and I hope that there are people on the other end

of the learning curve who already know what needs to be done. I just want to thank you for your insights. The fact that we don't know what we need to know is a problem, but the more information perhaps that each and every person can garner, the better off we will be. It's not going to go away. This is not Katrina; this is well beyond what anyone around the world has probably experienced. It's a tragedy that we can only hope maybe will help the next rig that's in trouble keep from exploding or whatever actually happened and limit what problem will be in the future.

STEPHANIE: One thing I wanted to say to you two is you're not alone. We're all learning what is going to happen. One thing to keep in mind is that this is the first spill of any significance since we've passed the Oil Pollution Act. And so, environmental law scholars, federal attorneys and state attorneys and private practice attorneys, none of us know how this is going to play out. There are very few court cases interpreting provisions of the Oil Pollution Act. We've never had a claims process of this size. And so, I think that we're all going to be learning this together.

NIKI: One thing that came to mind, something that you had mentioned the first question you had asked is about what you could tell other people and homeowners and stuff is that I don't have any official information for them but I know that there are non-profit groups that are working on the ground to help the people with oil pollution claims, nonprofit attorneys. I know that the Mississippi Center for Justice that was involved in Katrina is also trying to help with this, and as we get more official word about those groups and their permission to share more information, we'll certainly distribute their contact information in the future.

(0:52:58.1)
MODERATOR: There are only so many commissioner's questions you can ask.

VANESSA: Hi. I'm Vanessa Gibson. I heard on PBS yesterday, NPR actually, that the insurance companies are already saying you're not covered if something happens. That just concerns me and I don't know if the oil comes ashore and gets on my property. I'm pretty close to the water. Have you heard that at all yet that they are already saying this claim is not in your policy and it's not going to be covered?

I haven't heard anything about that. Of course, insurance always depends on what your policy says. I honestly don't know. That's a question that we would have to follow up.

I'm just putting that out there because that was the first time I've heard it and then someone brought the question up again in the other room. I went, wow, that's just great, we just rebuilt and...

I would say that a lot of insurance policies do have exclusions for environmental pollution. If they are trying to classify this as environmental pollution on your property, then they would probably argue that it falls within that disclaimer. You would certainly still have a claim against BP for property damage.

(0:55:21.9)
MODERATOR: Right. Okay. Thank you.

(0:57:07.5)
MODERATOR: Attendance is going down.

AUDIENCE4: Is that obligatory too? (Chuckle) Again, I was wondering if you can maybe talk a little bit about if only something like this or during something like this, what's the most common kinds of either lawsuits or legal problems and kind of cases you see arising short term and long term?

STEPHANIE: Probably the most common ones, this one, one thing that maybe gets lost a little bit in the litigation following the BP spill is going to be that because 11 people did lose their lives in the explosion. You're going to see a wrongful death action; you may see criminal action based on that against Transocean and some of the other companies. That has been moving ahead. Some of the reports that have been out there right now talking about litigation are actually involving those litigations by those family members and you also see some emotional distress claims for workers that were on the rig. That's one piece of it and that is actually going to go ahead separately. Transocean has been arguing under some other maritime laws that they have limited liability with respect to the oil rig workers. Then, the other big group of claims is most likely going to be negligence and those type of tort actions because BP and Transocean and Halliburton operated with negligence and that resulted in the spill and has given rise to all of these injuries that you will have civil tort action because of that depending on how the investigation proceeds on the federal. In state government levels, you may also see civil and criminal enforcement actions by the federal and state government. In my mind, there's three big groups or classes of litigations: you'll have the wrongful death litigation and the claims of the oil workers who are out on the rig

that the day of the explosion, you'll have the negligence and civil tort claims from the property and economic damage from the spill and then you'll have the action by the federal and state governments.

[1:01:42.3 inaudible].

STEPHANIE: Oh, true. That the other group is environmental lawsuits based on the federal government and BP's either compliance or non-compliance or enforcement with existing law. For instance, there are several environmental groups that have already filed lawsuits based on, what the technical term is, categorical exclusions under the National Environmental Policy Act. Under the Environmental Impact Statements, BP was allowed to not fully disclose, not disclose, analyze certain impacts under the regulations. Lawsuits have been filed challenging the federal regulations with respect to Environmental Impact Statements of oil development. We'll see more of those as environmental groups find out what the federal government was doing and what BP had been doing. Yes, that's probably the fourth class.

AUDIENCE4: I actually respect that. (Chuckle) I was just going to say that I've spent basically the last month and a half, two months up around Meridian area and it's actually, this is before the oil spill happened. I was working on a project. It was an oral history project on offshore oil work and offshore oil industries. It was ironic that I came in when I did because it was a week after I got here, that oil spill actually happened. What you mentioned as far as the different kinds of lawsuits, that thing you hear about all the time up there is actually is actually the deaths of the 11 people because a couple of them came from around that area but you don't really hear too much as far as the environmental stuff goes because people up there don't live anywhere close to it. I just thought that was strange about there.

(1:03:45.2)
MODERATOR: Yes and the laws are different under which they're seeing them and there are times those are different laws that protect oil workers. From the lawyer's perspective, it's much more specialized litigations. Do you really put that in an organization? Then, you could see, for instance, ***[1:04:16.0 inaudible]*** as this happened offshore. There's another layer of federal laws in specialized areas got involved.

END OF AUDIO.