We Want Our Lives Back Too: Expanding Absolute Liability To Include a Recovery for the Victims of Ecological Catastrophies

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EXPANDING ABSOLUTE LIABILITY TO INCLUDE A RECOVERY FOR THE VICTIMS OF
ECOLOGICAL CATASTROPHES

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When April 20, 2011 arrived, several national news stations recognized the date as the anniversary of the world’s most devastating man-made disaster in history. Just one year earlier, every news station in the country—and many European news stations—descended onto the Louisiana coast for the purpose of discussing the explosion aboard BP’s Deepwater Horizon’s oil platform in the Gulf of Mexico. The Deepwater Horizon was less than fifth (50) miles away from the coast line, but the explosion shown brighter than fireworks in a midnight sky.

If any Louisiana citizen wanted to have their 15 minutes of fame, all they had to do was drive to Venice, Louisiana and select any one of the news reporters sitting or standing on the beach. Hotel rooms were sold out. The number of men and women dressed in neon orange and draping the Louisiana coastline with booms resembled an AT&T commercial showing how much coverage the AT&T mobile phones have in the United States. The Gulf of Mexico waters had turned black from the hundreds of thousands of gallons of crude spewing into the gulf. Marine life could be seen trying to avoid the oil, but to no avail. Cable news stations continuously monitored the live feed of the blow-out valve, and reporters interviewed

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3 The Oil Pollution Act of 1990, as enacted, imposes strict liability for vessel spills upon the “owner” and “operator” of the discharging vessel, but not the cargo owner. See 33 U. S. C. § 2702.

Plaquemine Parish President Billy Nungesser more times\(^5\) than they did of President Barak Obama during the 2008 Presidential Elections.

In fact, President Obama declared it to be the worst environmental disaster in the United States history.\(^6\) President Obama later ordered Interior Secretary Ken Salazar to conduct a comprehensive review of the blowout valve and to report, within a thirty-day period, “what, if any, additional precautions and technologies should be required to improve the safety of oil and gas exploration and productions operations on the outer continental shelf.”\(^7\) Generally speaking, it could have been much worst had it not been for BP’s unusually deep pockets,\(^8\) and its ability to full compensate those individuals injured from the oil spill.\(^9\)

A year after this horrible event in our nation’s history, all that could be found on this once vibrant beach area were three lonely people. Standing inches away from the water stood a middle-aged man wearing a white T-shirt, a pair of blue jeans and knee-high white rubber boots. This man, whom we shall refer to as Jim, had been a Louisiana shrimper since he was 13. Jim had later started his own fishing\(^10\) business after his father was diagnosed with cancer. Jim’s family had been fishing and catching shrimp along the Louisiana coasts for over three generations.\(^11\) Before, the BP Oil Spill, Jim was able to accumulate a yearly salary of approximately $35,000, but once the State of Louisiana\(^12\) prohibited him and other shrimpers from fishing in the waters because of the oil, Jim’s income plummeted to less $700 a month for both May and June of 2010. Jim joined the crew\(^13\) of clean-up\(^14\) workers BP hired to clean\(^15\) the

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\(^12\) *In Hurton Portland Cement Co. v. Detroit*, 362 U. S. 440 (1960), The United States Supreme Court upheld a local air pollution ordinance which regulated emissions from vessels on navigable waters. The Supreme Court also noted that the local ordinance was designed to free from pollution the very air that people breathe clearly and such legislation was within the realm of the state’s police power, [cited in LIABILITY FOR VESSEL SPILLS, supra., p. 367].

shoreline, but the income he received was barely\textsuperscript{16} enough to cover his family’s basic living expenses—not including the mortgage on his shrimp boat.\textsuperscript{17}

In July 2010, Jim defaulted on the boat mortgage. He later used some of his savings to pay his monthly expenses, and forfeited his eldest son’s chance of going to college that fall. The monies he received from BP were less than what he expected. Considering that his business was primarily in cash revenues,\textsuperscript{18} it was difficult for him to prove to the BP claims representatives that he earned much more than what he could prove on his tax returns and his other receipts. Kenneth Feinberg and his team gave Jim and difficult time in assessing his claim for damages.\textsuperscript{19} Jim’s shrimp boat was later repossessed. His wife got a waitressing job in Jefferson Parish to help the family. Disappointing his children and destroying his family’s fishing heritage made Jim suicidal and dependant on various psychiatric\textsuperscript{20} medications. Many area shrimpers had considered Hurricane Katrina to be the end of their business, but they were able to recover. When the oil spill happened and BP was experiencing severe problems with cutting off the blowout valve, the fear among these fishermen was staggering.\textsuperscript{21}

About 20 feet south of where Jim was, stood Margaret, a co-owner of a 20-unit hotel in Venice, Louisiana, was sitting on the sand, letting the wind blow through her partially gray hair. Next to her was Margaret’s husband, Robert, of thirty years. During the week of the explosion,


\textsuperscript{15} See \textit{Gulf Coast Oil Spill: Health Effects, Congressional Testimony}, Aubrey Keith Miller, M.D., MPH Senior Medical advisor, National Institute of Environmental Health Services, National Institutes of Health, U. S. Department of Health and Human Services, (June 17, 2010), [hereinafter Health Effects], (stating that workers involved in cleanup have reported the highest levels of exposure and the most acute symptoms, when compared to subjects exposed in different ways).

\textsuperscript{16} See John LeLand, supra.


\textsuperscript{18} See Fay Pappas, \textit{Gulf Coast Blowout: How the BP Oil Spill is Corroding Communities And What Attorney’s & Policymakers Must Do to Stop It}, 22 U. Fla. J. L. & Pub. Pol’y 229 (August 2011), (Student Note), [hereinafter CORRODING COMMUNITIES], (classifying these cash-based businesses as Renewable Resource Communities because these Gulf Coast communities have very little occupational variety outside of commercial fishing other than the businesses directly supported by the fishing industry; such as processing plants and local restaurants).

\textsuperscript{19} See Terry Carter, \textit{The Master of Disasters}, \textit{The ABA Journal}, January 2011, (stating that “[t]he BP oil spill looks to be Feinberg’s most problematic challenge to date; it is difficult to assay the future of the Gulf’s health, and thus the livelihoods of tens of hundreds of thousands, and resulting ripple effects elsewhere—especially the cash-only economy that predominates the small-scale commercial fishing industry).

\textsuperscript{20} See \textit{Gulf Coast Oil Spill}, supra., (arguing that clean-up workers reported higher levels of generalized anxiety disorder, post-traumatic stress disorder, and depressive symptoms).

\textsuperscript{21} See \textit{Corroding Communities}, p. 245, (discussing Dr. Arwen Podesta, a psychiatrist at Tulane University in New Orleans, who described the behavior of these Louisiana fisherman following Hurricane Katrina and the BP Oil Spill as “teetering on the edge of wellness” and “decompensating into severe depression and resurgence of PTSD from Katrina).
Robert and Margaret had been painting the rooms of the hotel in anticipation of the sport fishermen and college students on spring break who normally visit the gulf in the late spring. Instead of vacationers, Margaret and Robert welcomed hundreds of national and international journalists, as well as a host of reporters from cable news networks to cover the BP Oil Spill. They even leased a room or two to several BP executives who came to Louisiana to establish BP’s presence for public relations purposes.

What they expected to be a mediocre weekend actually tripled their accounts receivable. In fact, they received more during the first three weeks of the oil spill than the first six months of last year’s profit margin. Suddenly, the oil started to wash ashore in May 2010, and began invading Louisiana’s beaches and precious marshlands. The reporters were fearful of what diseases or illnesses they might contract being so close to the contaminated waters. BP’s claims adjusters were checking out and Margaret’s regular patrons were cancelling their vacation plans to Louisiana. Pretty soon, Margaret and Robert had exhausted their unprecedented profits. Desperate for money to take care of his wife, Robert joined one of the cleanup crews, hoping to accelerate the progress of getting the beaches clean and welcoming vacationers back to Louisiana.

Many residents described the smell of crude oil in the Gulf as overpowering. Some feared that the parish’s drinking water would also be compromised. In fact, Robert had been working for the cleanup crew for only three weeks, before he developed a respiratory infection in his lungs from inhaling the fumes from the crude oil washing ashore the Louisiana beaches. Soon, Margaret found herself abandoning their hotel to care for her ailing husband. Watching the man who was once invincible turn into someone who could not walk from the kitchen to the bedroom without becoming exhausted was heartbreaking. The couple had invested so much into their hotel that if something happened to her husband, Margaret would be bankrupt in less than five years. Margaret regularly came to the beach to pray because she feared that her entire

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22 See Muldoon, supra.
23 See Gulf Coast Senators Introduce Resolution Urging BP to Use Local Products and Services in Oil Spill Activities, [hereinafter GULF COAST SENATORS], Government Press Releases, (July 15, 2010), (stating that BP would be wise to use the fishermen, hoteliers, restaurateurs, and other local residents to assist in the taking the edge off the economic disaster this spill has caused to this region).
24 See HEALTH EFFECTS, supra., (quoting Dr. Miller’s testimony wherein he stated that “the oil nearest the source of a spill contains higher levels of some volatile and more toxics components, such as benzene, toluene, and xylene). 25 Id.
26 See CORRODING COMMUNITIES, p. 244, (indicating that Dr. Irwin Redlender, the President and Center Director of the Children’s Health Fund, conducted a survey of 1200 Gulf Coast residents in Louisiana and Mississippi, and
financial life was coming to an end and she wanted to remember why she and her husband chose Venice, Louisiana to start their business—the beautiful sunsets and the Gulf of Mexico’s hypnotizing waters.

Walking past Margaret was a young woman in her twenties who was sobbing uncontrollably. She was wearing a faded men’s college sweatshirt and a pair of pajama pants. Standing in the spring sunshine, anyone could see the dazzling diamond engagement ring on her left hand. This young woman sadness did not stem from a crumbling business or an irreparable career, instead, Jenny, the woman mourning the loss of her fiancé who was killed aboard the Deepwater Horizon in April 2010. They were scheduled to be married two months after the explosion. But now, all Jenny had to remember her fiancé was a bunch of pictures, a few of his college sport shirts and a host of memories that she wakes up to every morning.

Jim, Margaret and Jenny represent three categories of people whose lives were forever changed by the BP Oil Spill. Five months after the spill, BP capped its massive gusher at the bottom of the Gulf, but the Louisiana coastline was still saturated from the hundreds of thousands of gallons of crude oil from the oil rig that was positioned approximately 41 miles off the Louisiana coast. Marine animals were either contaminated or killed by the brown-colored sludge that ascended 5,000 miles from the floor of the Gulf of Mexico. Men and women have seen their life savings evaporate. Children had to withdraw from college and return home to help their parents and grandparents pay their mortgages/rent and utilities. Some have even taken their lives due to the enormous amount of stress and anxiety from this horrible accident. The stories of these three people were not included for dramatic effect, but it was done in an effort to give a full appreciation of the realities of what the BP Oil Spill had done to the lives of Louisiana’s residents, its wildlife and its coastline.

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27 See Jay Reeves, America Moves On From Spill: Coast Feels Abandoned, [hereinafter AMERICA MOVES ON], AP General Financial/Business News, (Oct. 9, 2010).
28 See Randolph Heaster and Roseann Moring, With Its Response to Spill, BP is Leaking Public’s Favor Along with Oil, June 10, 2010, KANSAS CITY STAR.
29 Id., (declaring that there is nothing more unsettling about the worst man-made disaster in U. S. history than the nation’s short attention span and their desire to hear something different or to talk about the next big thing).
30 See Krissah Thompson, The Long Road Back, WASHINGTON POST, August 19, 2010,[hereinafter THE LONG ROAD BACK], (writing that David Kotok, chief investment officer for Cumberland Advisors, says that BP will pay out at
Now, in the aftermath of the BP Oil Spill, it is incumbent on the State of Louisiana to protect its citizenry by incorporating policies to insure that its residents would not have to experience a hardship like this ever again.\textsuperscript{31} Simply because the oil was not floating on the surface of the water does not mean that the threat is over or that the harm was minimal.\textsuperscript{32} Over the last two years since the BP Oil Spill, many Louisiana residents entered into a heightened panic during the hurricane seasons because of the possibility that oil sediments from the spill could be moved onto Louisiana’s wetlands and beaches.\textsuperscript{33}

For this reason, policies that would promote a culture of corporate responsibility would be instrumental to guard the public against high levels of mental stress, unemployment, and loss of life that spread profusely in southeast Louisiana in the years since the BP explosion. Louisiana lawmakers must promote policies and legislation that will not only provide additional avenues of recovery for those injured by corporate carelessness, but that will also broadcast to other companies (both present and future) that corporate responsibility\textsuperscript{34} will forever be at the forefront of all commercial activity within Louisiana’s borders. Whatever policies, statutes, regulations or bills are introduced to shield Louisiana from any future threats, it must include a human rights due diligence component. After all, what happened on April 20, 2010, was definitely a human rights violation because BP overlook,\textsuperscript{35} disregarded, and/or neglected to consider the impact that its business decisions would have on the the economy, the wildlife, the coastline and the mental stability of Gulf Coast residents—especially the residents of the State of Louisiana.\textsuperscript{36} Many of the Gulf coast communities have their livelihoods inextricably linked to the environment. Communities in southwest Louisiana face serious challenges with overcoming the

\textsuperscript{31} Melinda Deslatte, Lawmakers Rant Futilely about Oil Spill, Associates Press Alert, June 20, 2010.
\textsuperscript{32} See AMERICA MOVE ON, supra.
\textsuperscript{33} See Amy Wold, Isaac’s Impact on BP Oil Unknown, THE ADVOCATE, September 1, 2012, (discussing the apprehension many state administrators felt regarding the possibly of Hurricane Isaac stirring up the more than one million barrels of oil buried in the sediments of the Gulf of Mexico with its 100 mile-per-hours winds).
\textsuperscript{34} See Langlois v. Allied Chemical Corp., 249 So. 2d 133 (La. 1971), (indicating that the storage of dangerous and highly poisonous gas by the defendant corporation was an activity which, even when conducted with the greatest of care and prudence could still cause damage to others in the neighborhood based upon the possible consequence that gas could escape and cause harm).
\textsuperscript{35} See THE LONG ROAD BACK, supra. (David Kotok continues by stating that the human and psychological factors involved in this event are impossible to measure because now BP becomes the face of the perpetrator of the trauma even though there were other companies who contributed to the explosion).
\textsuperscript{36} David Segal, Should the Money Go Where the Oil Didn’t, New York Times, October 24, 2010.
effects of the oil spill due to the persistent language and cultural barriers between the Cajun descendants and Vietnamese refugees who have settled in the area.\(^\text{37}\)

This Article attempts to introduce an idea for Louisiana legislators to consider as a proactive measure\(^\text{38}\) in protecting Louisiana citizens from the negligent and reckless behavior of corporations that have decided to engage in commercial activity within the state. This Article suggests that Louisiana should expand the scope of its absolute\(^\text{39}\) liability statute (Article 667 of the Louisiana Civil Code) to address some of the problems our citizens have experienced while enduring the BP Oil Spill debacle in the spring of 2010.

The theory underlying the doctrine of absolute liability is that while abnormally dangerous activities may not be illegal and may even have beneficial results, these activities should pay their own way. Thus, even though an individual [or a juridical person] who is engaged in an activity such as blasting or flying an airplane cannot without utmost care and skill prevent some accidents, he should[,] nevertheless, be responsible to those that are injured as a result of his activities. Absolute liability then, is the price to be paid for the privilege of engaging in abnormally hazardous activities.\(^\text{40}\)

This Article will address the need for such a drastic response by the state legislature by reviewing cases around the country where corporations have been held civilly liable for the consequences that resulted from their negligent acts. This Article will also discuss why expanding the state’s absolute liability statute is appropriate—both socially and fiscally.

A. HUMAN RIGHTS DUE DILIGENCE—WHY IS IT NOT FIRST AND FOREMOST IN THE CORPORATE MAKEUP OF OUR SOCIETY?


\(^{39}\) See W. PROSSER, LAW OF TORTS, 974-75, p. 505-516, (defining absolute liability based on the presumption that certain activity is extra-hazardous; therefore, the participant in this hazardous activity is saddled with the burden of being liable for any damage he causes).

Louisiana is no stranger to natural and technological disasters.\textsuperscript{41} Even before Hurricanes Katrina and Rita, Louisiana citizens have undergone a long history in the realm of natural catastrophes. Hence, there is an overwhelming need to incorporate a mechanism in Louisiana law to protect our citizens who are most vulnerable to corporate oversight and neglect. For instance, consider the following cases that illustrate how corporations have caused disastrous consequences from its abuse of power.

In \textit{Pine v. Davis},\textsuperscript{42} the plaintiffs, Attorney General for Rhode Island, and the Department of Environmental Management, filed a complaint, seeking a temporary and permanent injunction against the defendants from storing used tires on their property.\textsuperscript{43} Included within its complaint was a Motion for Declaratory Judgment, stating that the plaintiffs’ use of government money from an oil spill prevention fund to remove over seven million scrap tires from the defendants’ property\textsuperscript{44} was consistent with the statutory purpose of the fund.\textsuperscript{45}

The defendants were expected to have the tires removed from the property through a series of contracts—one being with a local corporation.\textsuperscript{46} The corporation’s removal was contingent on the availability of funds for payment of the tire removal. According to the facts, the plaintiffs were concerned that the number of tires being stored on the property would greatly threaten the environment because the tires could cause a massive fire due to its potential for producing petroleum and petroleum by-products.\textsuperscript{47}

With each tire having the potential of releasing approximately one quart of oil, plaintiffs believed that if a fire were to occur at the site, more than a million gallons of oil could be release into the air, the land and the state’s main source for drinking water.\textsuperscript{48} In addition, the plaintiffs argued that hazards from such a fire on human health would be unconscionable. Plaintiffs’ experts indicated that the toxins in the air and the heavy soot from a massive tire fire on the defendants’ property could result in residents having a burning sensation in their lungs, irritated

\textsuperscript{41}See generally J. Steven Picou, \textit{When The Solution Becomes the Problem: The Impacts of Adversarial Litigation on Survivors of the Exxon Valdez Oil Spill}, 7 U. ST. THOMAS L. J. 68 (2009), (labeling technological disasters as toxic leaks, power-plant meltdowns and oil spills of the world because these types of disasters are associated with willful and wanton negligence).


\textsuperscript{43} Id.

\textsuperscript{44} Id.

\textsuperscript{45} Id.

\textsuperscript{46} Id.

\textsuperscript{47} Id.

\textsuperscript{48} Id.
eyes, brain damage and blood poisoning. The superior court agreed with the plaintiffs that the expenditures from this fund for the purpose of removing these tires was a proactive measure by the state to undermine the threat of a human catastrophe; thus, being consistent with the overall purpose of the statute. (Emphasis added).

In *Davis v. Insurance Co. of North America*, a temporary worker for Independent Tank Cleaning Services (Independent) was severely injured while cleaning a tanker that was delivered to Independent by Schneider National Bulk Carriers, Inc., (Schneider). Naturally, both Independent and Schneider claimed no accountability for the plaintiff’s injuries. Specifically, both defendants alleged that either the plaintiff caused his own injuries (victim fault) through the use of a leaf blower to extract fumes from the tanker. On the other hand, the plaintiff argued Schneider was at fault for failing to take reasonable measure to protect him from the risk of harm. The plaintiff’s workers compensation carrier intervened in the lawsuit, seeking reimbursement from one or both of the defendants.

Ultimately, both defendants were released from liability when the district court granted the motions for summary judgment filed by Schneider and Independent. The plaintiff attempted to hold Schneider accountable under Louisiana’s absolute liability statute, which is found in Article 667 of the Louisiana Civil Code. Plaintiff alleged that since Schneider was engaged in ultra-hazardous activity, it should be held accountable for any and all injuries he sustained. The First Circuit disagreed finding that the activity the plaintiff was involved in at the time of his injuries was not ultrahazardous—even though the storage of toxic gases was listed as an example of ultra-hazardous activity. The First Circuit then weighed the facts of the Davis case with the

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49 See *Davis v. Insurance Co. of North America*, 94-0698 (La. App. 1 Cir. 3/3/95), 652 So. 2d 531.
50 Id. at 534.
51 Id at 535.
52 Under the Louisiana statute establishing limitations on use of property, strict liability is limited to ultra-hazardous activities of pile driving and blasting with explosives, and otherwise liability requires a showing of knowledge and negligence. See LSA-C. C. Art. 667; see also *TS & C Investments, LLC v. BEUSA Energy*, Inc., 637 F. Supp. 2d 370, 380 (W. D. La. 2009).
53 According to the statute and prior jurisprudence, ultra-hazardous activity have been held to include activity such as: pile driving, storage of toxic gas, blasting with explosives, crop dusting with airplanes and other similar activity in which the activity can cause injury to others, even when conducted with the greatest of care. See *Kent v. Gulf States Utilities Company*, 418 So. 2d 493, 498 (La. 1982).
54 See *Davis v. Insur. Co. of North America*, supra.
55 For an activity to be labeled “ultra-hazardous” is must be one that can cause injury to others, even when conducted with the greatest prudence and care. See *Updike v. Browning-Ferris*, Inc., 808 F. Supp. 538 (W. D. La. 1992).
elements enunciated in the *Perkins v. F.I.E. Corporation*,\(^{56}\) to determine if absolute liability to any of these defendants was appropriate.

In *Perkins*, the United States Fifth Circuit articulated three\(^{57}\) factors that had to be satisfied before absolute liability could be imposed against a defendant in a tort action. First, the activity must relate to the land or some other immovable. Secondly, the injury-causing activity that the defendant was engaged in was a direct cause of the plaintiff’s harm. Finally, the activity must not require substandard conduct to cause injury. In other words, the plaintiff responsibility is to establish for the court that the defendant was using its immovable property in such a negligent manner that he was severely injured through no fault of his own.\(^{58}\) The Fifth Circuit concluded that neither defendant was engaged in ultra-hazardous activity because the process cleaning these tanks was done on a routine basis and had been performed in the past by a professional cleaning company.

In *TS & C Investments v. BEUSA Energy, Inc.*,\(^{59}\) the plaintiffs, representing themselves and the other residents in Iberville Parish, filed a punitive class action lawsuit complaint against the defendants, alleging damages for loss of business, loss of economic opportunity, nuisance, and mental anguish resulting from an oil well blowout that closed Interstate 10.\(^{60}\) The plaintiffs’ cause of action against the defendant rested totally on economic damages that did not involve any physical or property damages, which is necessary under Article 667 of the Louisiana Civil Code. Using the *Erie*\(^{61}\) doctrine regarding a plaintiff’s claim for purely economic damages under Article 667, the federal district court noted that Louisiana jurisprudence has concluded that party may not recover for economic loss not associated with physical damage or proprietary damages.\(^{62}\)

Ideally, examples of corporate mismanagement and abuse are endless. With more and more corporations trying to obtain optimum wealth and a monopoly status against its competitors, it is not surprising that the general public is regularly overlooked. The argument

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\(^{56}\) See *Perkins v. F.I.E. Corp.*, 762 F. 2d 1250, 1266 (5th Cir. 1985); see also

\(^{57}\) Id. at pp. 1266-1268.


\(^{59}\) See 637 F. Supp. 2d 370 (W. D. La. 2009).

\(^{60}\) Id.

\(^{61}\) See *Erie R.R. Co. v. Tompkins*, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938), (holding that a federal court interpreting a state law must look to the final decisions of that state’s highest court to determine the merits of the plaintiff’s complaint); see *TS & C Investments*, 637 F. Supp. 2d at 374.

\(^{62}\) See *TS&C Investments*, supra.
was that the United States, with its enormous amount of activity with its armed forces, space exploration, Atomic Energy Commission, crime-fighting activities and endless construction projects, should be immune from absolute liability\textsuperscript{63} from the burden of dealing with absolute liability\textsuperscript{64} claims. However, to shield the federal government from this risk would emasculate the purpose of the Federal Tort Claims Act, and force the public at large to bear this horrendous burden.\textsuperscript{65}

David Kotok, the Chief Investment Officer for Cumberland Advisors stated that BP, following the April 2010 disaster, had to do something more than just fix the damage from the oil spill, it had to do something positive, something huge, and BP would have to do it for a rather long time before the public is willing to forgive.\textsuperscript{66} Therefore, inserting an human-rights-due-diligence component into this state’s corporate statutes and business culture is essential.

Professor John Ruggie, a business professor at the Harvard University Kennedy School of Business and the United Nations Special Representative on Business and Human Rights (SRSG), coined the term human rights due diligence to describe what companies should do to meet their responsibility, to respect human rights, and to demonstrate to others that they do.\textsuperscript{67}

The overwhelming interest of most domestic corporations is to increase its profit margin and to decrease its tax liability. Simply canvassing recent national newspapers and cable news station can tell you how most Americans feel about today’s corporate climate. From the Wall Street debacle to the near congressional deadlock that took place during the debt-ceiling debate in the summer of 2011; the public’s distrust\textsuperscript{68} of government is ever-growing\textsuperscript{69} and could jeopardize this nation’s economic recovery unless corporations make basic human rights a priority.\textsuperscript{70}

\textsuperscript{63} The discretionary function exception was the basis for denying liability to the federal government for the Texas City Disaster in the United States case of Dalehite v. United States, 346 U. S. 15 (1953). 2 F. HARPER & F. JAMES, THE LAW OR TORTS, 856-57 (1956)
\textsuperscript{65} See Dalehite v. United States, supra.
\textsuperscript{66} See THE LONG ROAD BACK, supra.
\textsuperscript{68} See Krissah Thompson, BP has Long Road Back to Consumer Confidence, WASHINGTON POST, August 18, 2010.
\textsuperscript{69} See Matthew Cardinale, US: Gulf Spill Galvanizes Activist Community, June 30, 2010, INTER PRESS SERVICE.
\textsuperscript{70} Id.
If these corporate citizens fail to prioritize human rights into its agenda, then perhaps corporate criminal liability may become an option for deterrence. Some scholars caution against an over use of the penal code to punish corporate offenders because prosecuting corporations has the potential of causing: (1) employees to lose a source of income; (2) shareholders and consumers to carry the burden of huge fines in the form of lower dividends and higher prices; (3) basic business practices to be confused with criminal activity; and (4) individual actors (corporate CEOs) to be shielded from personal responsibility or walking away from criminal prosecution under the cloak of corporate impunity.

If the Department of Justice were to consider BP’s history of committing felony violations relative to its safety procedures, storage, extraction and manufacturing of its oil products, then a criminal indictment for the Gulf Oil Spill would seem inevitable. After all, the purpose of imposing criminal penalties against corporate giants like BP is for the protection of the environment (including wildlife) and to insure the purity of the nation’s waters. For this reason, Congress passed the Clean Water Act, the Endangered Species Act, Marine Mammal Protection Act, and the Oil Pollution Act.

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71 See Faisal A. Shuja, Federal Criminal Issues Presented by the British Petroleum Oil Spill, 9 LOY. MAR. L. J. 115 (2011), [hereinafter FEDERAL CRIMINAL ISSUES], (stating that the Department of Justice will bring criminal charges against BP for endangering the marine ecosystem of the Gulf of Mexico).
72 See Don Stuart, Punishing Corporate Criminals With Restraint, 6 CRIM. L. F. 219 (1995), (indicating that “most state corporate criminal liability is based on legislative enactment of the relevant provisions of the American Law Institute’s Model Penal Code, which provides for corporate liability respecting three forms of wrongful conduct: (1) regulatory offenses; (2) failures to perform specific duties imposed by law; and (3) penal law violations).
74 See Edwin H. Sutherland, White Collar Crime (1949).
75 See Morrison, Absolute Liability Under the Federal Torts Claims Act, supra., p. 60, (stating that engaging in an abnormally dangerous activity is not actually wrongful until an injury results, which ultimately makes the activity sufficiently wrongful and the actor understandably liable).
76 See Joe Nocera, BP Ignored the Omens of Disasters, New York Times, June 20, 2010; B1.
77 See John Collins Rudolf, Like Their Brand, BP Station Owners Face Long Road to Recovery, August 11, 2010, NEW YORK TIMES, B1.
79 See FEDERAL CRIMINAL ISSUES, pp. 117-118
84 S. Rep. No. 94, 101st Cong. 2d Sess. 4 (1990) (Committee on Environment and Public Works), reprinted in 1990 U.S. C.C.A.N. 722, 723, (declaring that the two-fold mission of the OPA was to: (1) coordinate existing state and federal law addressing the problem of oil pollution; and (2) establish a comprehensive liability scheme that “internalized” the costs of clean-up and compensation within the oil industry).
B. LOUISIANA’S PROPOSED RESPONSE TO THE OIL SPILL

Regardless of whether these corporations decide to change their agenda or not, the State of Louisiana must set in motion progressive and bold ideas that would protect its citizenry, and close off any potential opportunities for other commercial juggernauts, like BP, to come upon its shores and contaminate our wildlife and our unique way of life. With this in mind, this Author proposes that our state legislators consider amending Article 667 of the Louisiana Civil Code to include oil drilling as a third category of ultra-hazardous activity that could expose a landowner, lessee, lessor or corporation to damages. In fact, deepwater drilling provides a timely case study of how to structure liability for an economic activity that can cause catastrophic loss. Consequently, the activity of deepwater drilling can exceed the injurer’s financial resources; thus, without imposing some form of liability, the tort liability systems can be diluted from creating incentives for safety and it may limit compensation for the injured.

Louisiana Civil Code Article 667 provide the following:

Although a proprietor may do with his estate whatever he pleases, still he cannot make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him. However, if the work he makes on his estate deprives his neighbor of enjoyment or causes damage to him, he is answerable for damages only upon a showing that he knew or, in the exercise of reasonable care, should have known that his works would cause damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitur in an appropriate case. Nonetheless, the proprietor is answerable for damages without regard to his knowledge or his exercise of reasonable care, if the damage is caused by an ultra-hazardous activity. An ultra-hazardous activity as used in this Article is strictly limited to pile driving or blasting with explosives.

It is obvious that the legislature intended to hold the tortuous neighbor accountable for his fellow neighbor’s injuries under both negligence (i.e. fault) or under absolute liability, which does not require a finding of fault. It is unfortunate that the language in Article 667 limits the

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86 See Marva Jo Wyatt, Financing the Clean-Up: Cargo Owner Liability for Vessel Spills, 7 U. S. F. MAR. L. J. 353 (Spring 1995), [hereinafter LIABILITY FOR VESSEL SPILLS], (stating that without a threat of liability, there exist no real incentive for the oil industry to prevent spills).
87 See TWO-TIER LIABILITY, supra., p. 1719.
88 Davis, Tort Liability of Governmental Units, 40 MINN. L. REV. 751, 791, (stating that res ipsa loquitur presumes that without negligence there would not have been an injury).
90 See LIABILITY FOR VESSEL SPILLS, supra., p. 371, (citing that “the goal of absolute liability is compensation as opposed to punishment).
description of absolute liability to pile driving and blasting with explosives. Oil drilling and/or oil exploration in general is a combination of both qualifying activities. This Author suggests that this fact presents a unique opportunity for the Louisiana legislature to reconsider amending the list of ultra-hazardous activities.

Article 2315 of the Louisiana Civil Code is indeed the fountainhead of our state’s tort law. Every theory of tort liability from intentional torts to strict liability can be found within this article and the several articles that the legislators have written based on the premise of Article 2315. However, as to products liability and absolute liability, the legislature has nestled these principles under Title 9 section 2800 of the Louisiana Revised Statutes and Civil Code Article 667 respectively. This Author’s proposal to amend Article 667 to address the issues that arose during the BP Oil Spill came as a result of reviewing the language in this article and seeing the similarities between the two activities that qualify as ultra-hazardous, which are pile driving and blasting with explosives.

In fact, several civilian scholars have noted that if ultra-hazardous activities were to include any land-related activity, then the floodgates of litigation would be opened and every conceivable incident that resulted in a landowner being harmed from his neighbor’s use of his property would be an absolute liability situation. For example in Kent v. Gulf States Utilities Company, the family of a deceased 18-year old employee of a Baton Rouge contracting company, filed a wrongful death action against the decedent’s employer and the electrical utility company that serviced the power line, which electrocuted the decedent. The decedent’s employer settled with the family prior to trial, and the jury found the defendant/electric company liable for $3 million and it held the decedent’s

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91 Id.
93 In Langlois v. Allied Chemical Corporation, 249 So. 2d 133, the Louisiana Supreme Court held that a fireman was entitled to receive damages from the defendant corporation after he suffered personal injuries from the inhalation of gas that escaped from the defendant chemical corporation. The Langlois court noted that the defendant corporation’s activities in the storage and transportation of a gas known as antimony pentachloride, which emanated from a ruptured pipe on the defendant corporation’s premises.
94 See John C. Anjier, Butler v. Baber: Absolute Liability for Environmental Hazards, 49 L.A. L. REV. 1139 (May 1989), (offering a host of scenarios in which a land-owner can hold another landowner accountable for harm caused by the other neighbor’s use of his property. “For example, a business would be liable for any of its discharges into the water or air that caused harm, even if they were reasonable under the circumstances and the business had obtained the required necessary permits and authority”).
96 See La. Civil Code Article 2315.5.
97 Id at 563.
employer liable for a percentage of the harm caused in failing to properly supervise the decedent prior to the accident. The appellate court affirmed the finding of liability for the contracting company, but it reversed on the finding of liability for the electrical utility company.\textsuperscript{98} The appellate court opined that the decedent’s use of a highly dangerous method of placing grooves in the newly poured concrete street surface was indicative of his negligence. The decedent’s action made him contributory negligent, and barred any recovery he could claim from the utility company.

Being that \textit{Kent} was decided before the 1996 amendments to Article 667 of the Civil Code, the Louisiana Supreme Court considered the argument that transmitting electricity\textsuperscript{99} for public consumption was another category of absolute liability just like pile-driving, storage of toxic gas, crop dusting and blasting with explosives. The court began its analysis with the nationally-known premise that absolute liability is not contingent on substandard conduct on the part of the actor. The Louisiana Supreme Court made it perfectly clear that absolute liability does require evidence of damages and causation. In other words, was the plaintiff injured from the defendant’s decision to engage in the ultra-hazardous activity? And was the plaintiff’s injuries a cause-in-fact of those injuries?\textsuperscript{100}

The court ruled that without a showing that the decedent’s electrocution resulted from the utility company’s activity of transmitting electricity through the high-powered lines directly above the area where he was working, then liability would not attached to the utility company because causation could not be satisfied. In addition, the court could not find any precedence for imposing absolute liability on the activity of transmitting electricity for public consumption.\textsuperscript{101}

On the other hand, the amount of damage suffered by our citizens along the Louisiana coastline from the oil spill mandates that our state take bold, and perhaps unorthodox, measures to protect our residents and announce to corporate visitors that Louisiana will do whatever is necessary to protect human rights.

When this Author initially proposed amending Article 667 to include oil drilling activities as a third example of ultra-hazardous activities, there were some who sprinkled a healthy dose of skepticism over the idea, calling it unnecessary since our tort statutes were more than sufficient

\textsuperscript{98} Id at 570.
\textsuperscript{99} Electrical companies are not insurers of the safety of the public. See 29 C. J. S. Electricity § 38, pp. 1057-1058; see also \textit{Bosley v. Central Vermont Public Service Corp.}, 127 Vt. 581, 255 A. 2d 671 (1969).
\textsuperscript{100} See \textit{Kent v. Gulf States}, 418 So. 2d at 498.
\textsuperscript{101} See 82 A. L. R. 3d 218 (1978).
to address any harms that our citizens may have endured. Some even found that a property article like Article 667 would not add much assistance to those persons harmed by the BP Oil Spill. They continued by stating that our jurists were capable of finding an appropriate remedy for those Louisiana citizens injured by BP’s recklessness. This Author respectfully disagreed then, and disagrees now. This Author acknowledges the overwhelming skill and analytical talent of Louisiana jurists, but there is a continuing threat that our courts will not consider Louisiana property\textsuperscript{102} laws to address this type of issue. Instead, the courts will begin to settle upon alternative theories of liability to address the plaintiff’s injuries.\textsuperscript{103} Hence, it is necessary that the legislature intervene to provide consistency in the law as well as to aggressively recompense the plaintiff for his harm.

First of all, the 2010 BP Oil Spill was the single most costly man-made disaster in this country’s history.\textsuperscript{104} Thousands of miles of Louisiana beaches were damaged by crude oil that washed onto its borders.\textsuperscript{105} Hundreds of families lost their businesses. Symptoms of depression among these families escalated to such an extent that suicides and/or suicidal ideations became the \textit{soup of the day}. National and international news stations were positioned all over the Plaquemine Parish, Louisiana and kept a running tab on the amount of oil spewing from the damaged blowout valve. Millions of viewers were mesmerized and on the edge of their seats for over five months since the explosion. BP pointed the finger of accountability at TransOcean\textsuperscript{106} and TransOcean turned the focus to Haliburton.\textsuperscript{107} Haliburton and TransOcean then graciously returned the favor back to BP, stating that BP was solely responsible for the explosion which

\footnotesize{\textsuperscript{102}See Malone, \textit{Work of Appellate Courts-1969-1970: Torts}, 31 L.A. L. REV. 231, 239 (1971), (stating that Art. 667, being a rule of property, not of tort, did not lend itself well to the purpose of deciding which harms and annoyances should be accepted by society without recourse, and which enterprises should be made to bear liability for their activities without qualification).}

\footnotesize{\textsuperscript{103}See Morrison, \textit{Absolute Liability Under the Federal Tort Claims Act}, supra., p. 66.}

\footnotesize{\textsuperscript{104}Jad Mouawad and John Schwartz, \textit{Rising Cleanup Costs and Numerous Lawsuits Rattle BP’s Investors}, NEW YORK TIMES, June 2, 2010, A17.}

\footnotesize{\textsuperscript{105}See \textit{Two-Tier Liability}, p. 1744, (stating that the oil spill has led to a substantial drop in tourism. Even though BP had dedicated a substantial amount of its financial resources towards rejuvenating Gulf Coast vacationers to return to Gulf Coast beaches, the fact remains that consumer confidence is not compensable under current law).}

\footnotesize{\textsuperscript{106}See Campbell Robertson & Matthew L. Wald, \textit{The Tangled Question of Liability}, May 6, 2010, NEW YORK TIMES, A20; and John M. Broder, \textit{Ruling Favors Owner of Rig In Gulf Spill}, January 27, 2012, NEW YORK TIMES, B4.}

\footnotesize{\textsuperscript{107}See Barry Meir & Clifford Krauss, \textit{Spill Inquiry Again Puts Haliburton Into Spotlight}, October 29, 2010, NEW YORK TIMES, A20.}
caused the death of eleven oil workers and the spillage of over four million gallons of crude oil into the Gulf of Mexico.108

Louisiana Governor Bobby Jindal and Billy Nungesser,109 President of Plaquemine Parish made so many guest appearances on these cable news stations that you would have thought that they were given their own specific shows on these stations. Both of them seemed to take turns ridiculing BP and its Chief Executive Officer, Tony Hayward, for BP’s late response and his apathetic behavior towards the Louisiana citizens who were suffering through this disaster. They also planted a few political jabs to the Obama Administration for permitting BP to exhibit such disrespect to Louisiana citizens and for the federal government’s own delayed response to the BP Oil Spill debacle. Without a doubt, this Author believes that the BP Oil Spill deserves the unyielding attention of our state legislature. However, to suggest that Louisiana’s current tort law is more than sufficient to address the wrongs committed by this multi-billion dollar foreign company, or any others similar to it, is appalling and contemptible.

Secondly, anyone who casually understands the oil-drilling process will comprehend the similarities between pile-driving and blasting with explosives. Thus, absolute liability111 is a reasonable avenue of recovery for any injured plaintiff who has been temporarily or permanently harmed by the drilling operations of an oil company. The Louisiana legislature112 must make its response swift, direct and unavoidable. Further, absolute liability does not hinge upon the negligent behavior of the actor, but that harm was caused to his neighbor113 in the first place. Considering the amount of mental, physical and economic harm experienced by those Louisiana

108 Id.
109 See AMERICA MOVES ON, supra, (stating that Nungesser was the face of the oil spill during the summer of 2010 with news reports of him meeting with President Obama and Louisiana governor Bobby Jindal, but soon the American had spill amnesia and Google searches that were high during the summer quickly faded when BP finally capped the gusher).
110 GULF COAST SENATORS, supra, (criticizing the Obama administration for its new and more restrictive drilling moratorium following the explosion upon the Deepwater Horizon in April 2010).
111 See Lombard v. Sewerage & Water Board of New Orleans, 284 So. 2d 905 (1973), (stating that [a]ny activity, which causes damage to a neighbor’s property, obliges the actor to repair the damage, even though his actions are prudent by usual standards. It is not the manner in which the activity is carried on which is significant; it is the fact that the activity causes damage to a neighbor, which is relevant).
112 See CORRODING COMMUNITIES, p. 251, (asserting that some states have encouraged attorneys to participate (pro bono) in community-driven mediation programs to between the economically-injured residents and the harm-causing companies so that litigation would be thwarted and the attorneys could receive annual pro bono hours as compensation).
113 The doctrine of sic utere tuum ut alienum non laedas requires an owner to use his property in such a manner as not to injure another. See Mossy Motors, Inc., v. Sewerage & Water Board of New Orleans, 753 So. 2d 269, 274(Ct. App. 1999), (citing LSA-C. C. Art. 667 and Haworth v. L’Hoste, 95-0714 (La. App. 4 Cir. 11/30/95), 664 So. 2d 1335, writ denied 96-0408 (La. 3/29/96), 670 So. 2d 1235).
citizens who have lost loved ones or have lost their family’s businesses, it is more than appropriate for oil drilling giants, like BP, to pay for any and all harm resulting from their negligent conduct.\textsuperscript{114} This Article is also geared towards addressing those oil-drilling corporations that have less than sufficient resources to cover the most extreme outcomes. Otherwise, the federal or state governments would become the general insurers for those firms least capable of handling these low-probabilities, high-loss situations.\textsuperscript{115}

Theoretically, legislative bodies are the preferred institution to initiate reform of any area of the law...[m]oreover, legislatures can accomplish comprehensive reform through a single statutory enactment; unfortunately, modern legislatures have developed powerful inertial forces that render them impotent to make comprehensive changes in the law that will adversely affect vested interests.\textsuperscript{116}

This Author, along with the countless other Louisiana residents who have been intimately or remotely affected by the spill cannot be satisfied with a simple injunction or any kind of recovery that emanates from the current language found in Article 667 of the Louisiana Civil Code. An amendment of this article is necessary and imperative. Actually, since absolute liability is a hybrid of both strict liability and negligence concepts, it would be totally unreasonable for any civilian scholar or legislator to oppose the idea of encapsulating oil drilling as a third category of ultra-hazardous activity\textsuperscript{117} in Louisiana. Ultra-hazardous activity have been uniquely classified as those activities that are capable of causing injuries to others, even when conducted with the greatest degree of prudence and care.\textsuperscript{119} The other factors that are engraved into our understanding of ultra-hazardous activity is that it is extremely lucrative and can have catastrophic results.\textsuperscript{120}

\textsuperscript{114} See GULF COAST SENATORS, supra., (declaring resources from the fishing, tourism, shipping, and energy exploration industries account for over $200 billion in economic activity each year).

\textsuperscript{115} See TWO-TIER LIABILITY, supra, p. 1721.


\textsuperscript{117} This Author recognizes that several courts across the country have rejected, over the years, the idea of expanding absolute liability to certain activities notwithstanding the dangers. See Bosley v. Central Vermont Public Service Corporation, 127 Vt. 581, 255 A.2d 671 (1969), (declaring that Supreme Court of Vermont would not invoke the doctrine of absolute liability against a public service corporation due to electrical burns a young boy received when he came in contact with that corporation’s electrical wires).

\textsuperscript{118} See Street v. Equitable Petroleum Corp. and Energy Corp. of America, 532 So. 2d 887 (La. App. 5 Cir. 1988), (applying the Butler v. Baber principle, which states that “667/2315” liability may be imposed without proof that an activity (storage/spillage of oil) is ultra-hazardous).


\textsuperscript{120} Id.
For example, *Mossy Motors, Inc. v. Sewerage & Water Board of New Orleans*, a New Orleans car dealership filed suit against the Sewerage & Water Board of New Orleans (SWB), its contractor and its engineer for structural damage and business-related interruption. The dealer sustained structural damage as a result of the demolition and replacement of an underground concrete structure that was adjacent to the dealership. SWB and its agents conducted deep well pumping or dewatering at this particular site, which not only caused the water table in the area to be lowered, but it also caused settlement or subsidence of the ground that compromised the structural integrity of the dealership’s buildings. To add validity to its argument, the plaintiff presented evidence which reflected that SWB could have used less dangerous measures to remove the contaminated soil near the plaintiff’s business. However, the method of removal selected by the defendant agency was imprudent, impracticable and dilatory.

The similarities between the dewatering process in *Mossy Motors* and the oil drilling operations performed by BP at its Deepwater Horizon site in April 2010 are incredibly obvious. SWB was negligent (i.e. strictly liable) or at fault because it selected a process of sediment removal that it knew or should have known would damage to nearby structures. Prior to its amendment in 1996, Article 667 would still hold the SWB accountable for the damage caused by the dewatering process because the degree of care used by the landowner would not exonerate them from civil liability.

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121 See *Mossy Motors, Inc. v. Sewerage & Water Board of New Orleans*, 753 So. 2d 269 (La. App. 4 Cir. 5/12/99).
122 Id. at 273.
123 Id.
124 Dewatering is a process involving the pumping out of underground water from a construction site. See *Mossy Motors*, 753 So. 2d at 274.
125 Id.
126 Id.
127 Id.
128 Id.
129 See Prentice L. White, *When Theory Met Practice: Teaching Tort Law from a Practical Perspective*, 10 T.M. Cooley J. Prac. & Clinical L. 311, 339 (2008), (stating that “a claim under strict liability, in its purest form, occurs when the defendant’s negligence is presumed because of his legal relationship to the [negligent person or the defective thing] that first caused the unreasonable risk of harm).”
130 See *Mossy Motors*, 753 So. 2d at 276, (indicating that “the new definition by amendment defines ultrahazardous activity legislatively, but, under the pre-amendment law, it was an easy leap between pile-driving, explosives and dewatering).”
131 See Mack E. Barham, *The Viability of Comparative Negligence as a Defense to Strict Liability in Louisiana*, 44 La. L. Rev. 1171, 1172 (1984), (declaring that “[i]n traditional common law jurisdictions, strict liability has generally been imposed when the activity giving rise to liability falls into the broad categories of either ultrahazardous activity or some type of product liability”).
In *Yokum v. 615 Bourbon Street, LLC*¹³³ the Louisiana Supreme Court granted certiorari for the purpose of reversing¹³⁴ the appellate court’s ruling that a commercial owner and lessor is not liable under Civil Code Article 667 for excessive noise associated with loud music played in its establishment. The district court ruled that the commercial owner was entitled to summary judgment.¹³⁵ Plaintiffs complained that they had been subjected to loud and on-going live entertainment¹³⁶ conducted at the bar that the defendant leased to another commercial entity. Plaintiffs sent letters to the establishment, hoping to resolve the issue without court intervention, but with no success.

The appellate court found that the lessor was not legally responsible for the excessive loud music coming from the commercial establishment because the defendant had leased the property to a third party, and it was the third party who caused the harm.¹³⁷ More specifically, the appellate court found that the lease agreement between the defendant and his lessee mentioned that if the lessee used the property in any manner that would tend to injure, depreciate or otherwise be classified as unlawful, then said use would be a breached of the lease agreement and exonerate the lessor from liability. Therefore, the appellate court determined that the plaintiffs did not sufficiently establish a cause of action against the named defendant/lessor in this particular case.

The Louisiana Supreme Court discussed at length that the language of the statute (La. Civil Code Art. 667), directs the restrictions and limitations on the right of use of immovable property that may deprive his neighbor of the liberty of using or enjoying their property.¹³⁸ However, the Louisiana Supreme Court needed to reconcile whether these owners/proprietors/lessors can be held accountable for any violations of use made on their property by their lessees (natural or juridical) when said violations derive from the permission of these owners.¹³⁹ In essence, the Louisiana Supreme Court correctly held that Article 667

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¹³² See *Lombard v. Sewerage & Water Board of New Orleans*, 284 So. 2d 905, 912 (La. 1973), (stating that under Article 667, the [Sewerage & Water Board] would be liable for damages to the plaintiff’s property caused by its construction activities, no matter how prudently they were done).
¹³³ See *Yokum v. 615 Bourbon Street, LLC.*, 2007-1785 (La. 2/26/08), 977 So. 2d 859.
¹³⁴ Id.
¹³⁵ Id.
¹³⁶ Id at 862.
¹³⁷ Id at 869.
¹³⁸ Id. at 872.
permitted an expansion of liability on the proprietor or owner in those situations where the owner indirectly contributed\(^{140}\) to his neighbors harm. Consequently, the Louisiana Supreme Court also opined that the term “work,” as used in the article, encompassed not only constructions made on the property, but also to harmful and injurious activities held on the property when the landowner knew or should have known of such injury or harm.\(^{141}\)

Likewise, this Author asserts that the same logic ought to be implemented here to expand the language of Article 667 to include oil drilling activities because said activity can be injurious\(^{142}\) to adjacent neighbors/landowners, and because to include this third category of prohibited activities would not do an injustice to the overall scope of the article. As mentioned earlier, oil drilling is a hybrid\(^{143}\) of both blasting with explosives and pile driving.\(^{144}\) The rational of this proposition might not be universal\(^{145}\) because the rule of absolute liability\(^{146}\) has been contingent upon the locality of the incident or on the population of the area where the incident occurred. While the activity of enjoying and using one’s commercial or residential property is both necessary and essential to our state’s economy, it is also dangerous to assume that such right should inherently be considered limitless. Oil drilling is an activity that is dangerous\(^{147}\) and potentially destructive to the men and women who work on these oil platforms.

Consequently, it is an activity that can harm the marine life that live or canvass around the oil drilling structures. For this reason, the activity should not be considered untouchable or beyond legislative redress. The proposed amendment is a simple, yet necessary, legislative

\(^{140}\) See Yokum, 977 So. 2d at 875.

\(^{141}\) Id.

\(^{142}\) See Chaney v. Travelers Insur. Co., 259 La. 1, 249 So. 2d 181, 186, (stating that “it is not the manner in which the activity is carried on which is significant; it is the fact that the activity causes damage to a neighbor which is relevant”).

\(^{143}\) See www.encapgroup.com/drilling, discussing how oil drilling works and how oil is extracted from the ocean floor.

\(^{144}\) Frank L. Maraist and Thomas C. Galligan, Jr., Burying Caesar: Civil Justice Reform and the Changing Face of Louisiana Tort Law, 71 TUL. L. REV. 339, 364, [hereinafter BURYING CAESAR], (criticizing the specific list of qualifying activities for absolute liability, commends the legislature for using language that would give it some flexibility to include new and unanticipated situations).

\(^{145}\) See Jeremiah Smith, Liability for Substantial Physical Damage to Land by Blasting—The Rule of the Future, 33 HARV. L. REV. 667 (Spring 1920).

\(^{146}\) See 3 SHEARMAN & REDFIELD ON NEGLIGENCE, 6 ed., § 688 a.

\(^{147}\) See TWO-TIER LIABILITY, p. 1743, (indicating that BP filed several lawsuits against other corporations in an effort to recoup some of the money that it has had to pay to those Gulf Coast residents who have been harmed in the oil spill. BP filed a tort claim against the manufacturer of the blowout preventer and it filed another suit against Halliburton for fraud and misconduct).
measure that should be a part of our state’s ongoing human rights due diligence process.

Undeniably, BP has to do more than mitigate the disastrous effects of the oil spill by offering support to Gulf Coast businesses. In fact, BP must fully compensate each and every resident who has a viable claim against it. Further, BP must extend its recovery efforts to the State of Louisiana in order to protect and shelter its wildlife and coastlines.

The ecological effects from the BP Oil Spill are still being examined and studied, but the mental and economic effects from this disaster are forever visible in the eyes of its citizens. It is in the eyes of the children who lost their parents on the Deep Water Horizon. It is in the eyes of the wives who are now widows and in the eyes of distraught family members who are still trying to cope with a loved one who committed suicide because they felt their financial security was unrecoverable. The duty to protect our citizens from harm not only lies on BP’s corporate doorstep, but it should also be found in the policies that are proposed, debated, and signed on the floor of our legislature.

It has been argued that some legislatures are incapable of adjusting to the changing tide of our present society. The argument is that the state legislatures are faced with complicated and complex issues with insufficient expertise. It has also been stated that the government bodies have an inherent inability to foresee or to respond to problems that may arise in the future. Such explanations should not be lodged against the Louisiana legislature since our state has become the nation’s spokesperson for disasters.

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148 See Langlois v. Allied Chemical Corp., 249 So. 2d at 1080, (declaring that the “trend has been toward an expansion of the classes of those who are entitled to recovery as well as an expansion of the classes from whom recovery can be had); see also Kennedy v. Phelps, 10 La. Ann. 227 (1855); City of New Orleans v. Lambert, 14 La. Ann. 247 (1859); and Craig v. Montelepre Realty Co., 252 La. 502, 211 So. 2d 627 (1968).

149 See generally, PROTECT, RESPECT AND REMEDY, supra.

150 See GULF COAST SENATORS, supra., (Senator Thad Cochran (R-Miss.) demanded that BP adhere to a ‘good neighbor’ policy, meaning that it should first look to utilize Gulf Coast residents and resources as it begins to heal these communities by using an extensive, multi-year ecological and economic recovery operation). It extensive

151 See Brent K. Marshall, et al., Technological Disasters, Litigation Stress, and the Use of Alternative Dispute Resolution Mechanisms, 26 LAW & POLICY 289, 291 (2004), (emphasizing the fact that technological disasters produces an enduring pattern of economic, cultural, social and psychological harm).

152 See Felicity Barringer, et al., Seeking Answers on Oil Spill as Questions Mount, NEW YORK TIMES, (June 26, 2010).

153 See Joe Nocera, BP Ignored the Omens of Disasters, New York Times, June 20, 2010; B1

154 See PROTECT, RESPECT AND REMEDY, p. 283 (articulating that the state’s duty to protect against third party abuse, including abuse from a corporate citizen or foreigner, is grounded in international human rights law; it is a standard of conduct, and while state are not held responsible for corporate-related human rights abuses per se, said states may be considered as having breached their obligations where they fail to take appropriate steps to prevent, investigate and even punish those abuses when they occur).

Trial courts should retain a reasonable amount of discretion when determining if an activity qualifies as ultra-hazardous, but it is the legislature that has been vested with the authority to expand Article 667 to include oil drilling because the activity has the potential\textsuperscript{156} of causing an enormous risk of harm which can be either temporal, or generational.\textsuperscript{157}

\textsuperscript{156} See generally, \textit{Updike v. Browning-Ferris, Inc.}, supra.

\textsuperscript{157} See generally, Maraist et al., \textit{BURYING CAESAR}, supra.