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Setting Standards for Sustainability

CLT ENVIROLAW MONTHLY LEGAL INSIGHTS

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What business can learn from the BP Gulf of Mexico spill

The recent New Orleans court decision on whether BP was negligent for the Deepwater Horizon blowout that killed 11 workers and led to 4.2 millions of barrels of oil spilling into the Gulf of Mexico in September 2014 holds some interesting lessons for business.

The court found that not only was BP not just negligent but grossly negligent. The judge apportioned 67% of the blame for the disaster to BP. The bigger bar of 'gross negligence' will have a much higher financial impact on BP as the cost of the penalty under the Clean Water Act will rise from $1,100 a barrel to $4,300 a barrel for gross negligence of wilful misconduct.

The price of being found 'reckless' could mean that BP faces up to £11billion in further fines. They firm has already paid out $43 bn as a result of tahe accident under previous law suits.

The company has also seen a drop in its share price.

We realize that not all companies are in such a high-risk sector, but there are some basic principles that all companies can learn from the BP oil spill disaster. They are:

1. Ensure that proper health and safety systems are in place. This means not only having a health and safety policy, but ensuring that it is implemented and monitored. It also means that any sub-contractors standards should be rigorously assessed in sectors where health and safety accidents could expose a company.
2. Understand the limitations of environmental insurance. Although insurance can be obtained for a number of issues, it is not always available for environmental incidents. Directors will also not be covered for negligence or criminal fines.
3. Ensure that robust environmental management systems are in place. This also covers understanding what laws apply to a company ensuring compliance and developing systems to demonstrate compliance.
4. Note that penalties under environmental laws are increasing.
5. Transparency - reporting on environmental issues is growing. The failure of BP to properly report on its environmental risk in its sustainability report has had a legal and financial impact.
6. Ensure that there are contingency funds for when things go wrong.
7. Meet stringent health and safety and environmental standards even where local laws do not meet the same level.
8. Understand that reputation, legal and operational risks are interlinked.

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