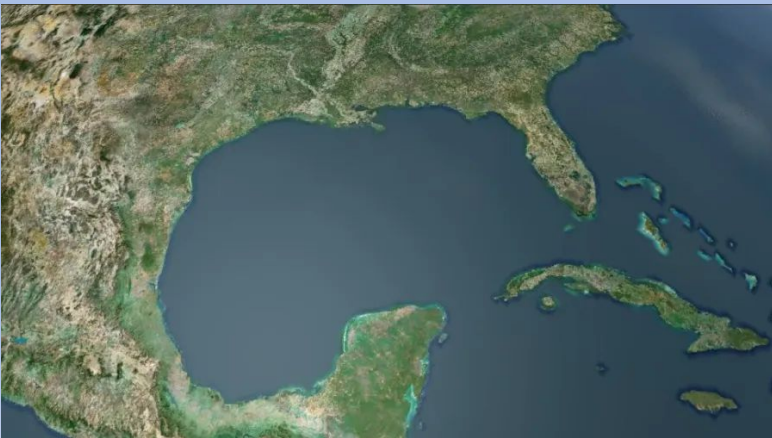


Risky Business: *Examining the Perils of Operations in the Gulf of Mexico*

**Admiralty Disruption
New Orleans, LA
March 3, 2023**



Moderator and Panelists



Matthew Moeller
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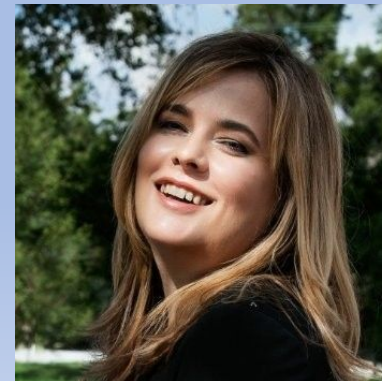
Jana Byron
Lockton



Michael Nicaud
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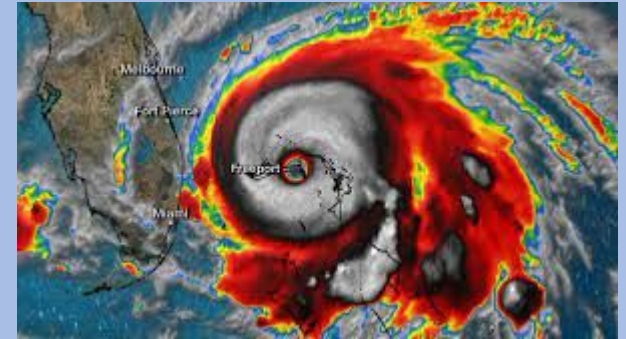
Phil Brickman
**Degan, Blanchard &
Nash**



Tara Kelly
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The Gulf of Mexico is a Dangerous Place with Significant Risks !

- **Severe Weather Risks** – Hurricanes, other intense storms and weather formations
- **Environmental Risks** – Fire, explosion, pollution
- **Personal Injury and Death Risk** – Cases involving Jones Act Seamen, marine contractors, and even passengers
- **Property Damage Risk** – Risk of damage or total loss to expensive, sophisticated equipment and machinery



Vessel Owner Risk Perspective



Significant Owner Risks



- Personal Injury – Jones Act claims, maritime personal injury claims and longshoremen claims

- Environmental – Pollution and onboard fire



- Mitigation Strategies – Contractual risk allocation, training, hiring, and incident response protocols



Broker and Underwriter Risk Perspective



Significant Broker and Underwriter Risks

- **Catastrophic Losses** – Hurricanes, explosions, and vessels sinkings or capsizing, which can include property damage and/or injury and death
- **Threats of a Pandemic or Cyber Attack** – Can new safeguards mitigate these emerging risks?
- **Insolvency** – Since 2020, 15 Florida property insurers have gone “belly up” as well as 8 in Louisiana



Risk Mitigation – P&I Clubs vs. Traditional Insurers and Issues with Policy Wording

- **P&I Clubs** – Have loss prevention programs that are readily accessible to members, lots of additional member resources
- **Traditional Insurers** – More uniform approach, typically have insureds that may not need significant limits and the additional services
- **Policy Wording and Resulting Coverage Issues** – *Atofina* issue regarding scope of additional insured status in connection with contractual indemnity



Risk Perspective for Oil and Gas Companies



- **Extreme Weather Events and the Resulting Actions**
– Thousands of platforms in the GOM, and while they can withstand significant wind and wave action, precautions often lead to shutting down and evacuating personnel. The down time and restarting of operations result in significant cost
- **Cyber attacks** – Can cause physical, environmental, and economic harm. Any disruptions to oil and gas production and transmission could affect supplies and markets

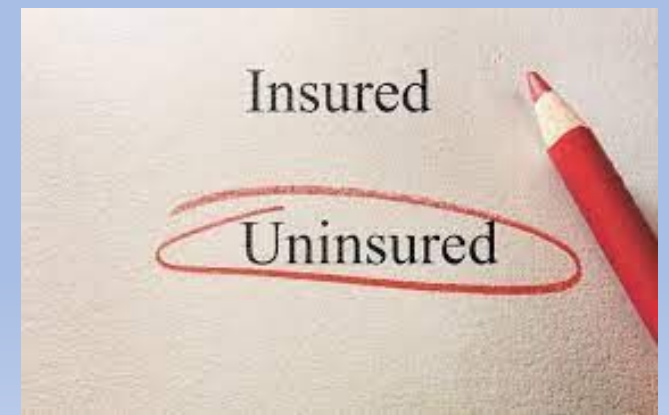


Outside Counsel Risk Perspective



I am From a Law Firm, and I am Here to Help!

- **Know your contracts** – are you dealing with a time charter agreement, master services agreement or contract, or another type of contract
- **Key provisions** – Proper indemnity; choice of law – knowing it could be invalidated; and waivers and additional insured provisions
- **Harmony with indemnity and insurance** – critically important to ensuring your client does not take on an insured risk



What Law Governs Activities in the Gulf?

- **The Outer Continental Shelf Lands Act (“OCSLA”)** – Defines the OCS as all submerged lands lying seaward of state coastal waters (3 miles offshore) which are under US jurisdiction
- (1) the controversy must arise on a situs covered by OCSLA; (2) federal maritime law must not apply of its own force; and (3) the state law must not be inconsistent with federal law. *Rodrigue v. Aetna Cas. & Surety Co.*, 395 U.S. 352, 359 (1969)
- “...Congressionally-mandated choice of law provision requiring that the substantive law of the adjacent state is to apply even in the presence of a choice of law provision in the contract to the contrary”

Contractual Risk Allocation and Mitigation

- **Federal maritime law allows for a pure knock for knock (i.e., indemnity for one's own negligence) while Texas and Louisiana have anti-indemnity statutes that do not allow for such**
- ***Marcel* coverage - when the principal pays the entire cost of its own insurance coverage by securing an endorsement naming it as an insured in the contract or policy, the purposes of the LOAIA are not frustrated, and the insurance coverage is valid and enforceable**
- **In Texas, the parties can circumvent this general prohibition by agreeing to mutual indemnity provisions which are covered by insurance. The indemnity obligations are limited to the lower amount of the insurance obtained by either party**



Is the Contract Maritime???



- *In re Larry Doiron, Inc.*, 879 F.3d 568, 576 (5th Cir. 2018)
- (1) Is the contract one to provide services to facilitate the drilling or production of oil and gas on navigable waters?; and (2) Does the contract provide or do the parties expect that a vessel will play a substantial role in the completion of the contract?
- If yes to both, Maritime law will be applied and an agreement for the defense and indemnity of one's own negligence is enforceable
- But, if the contract is not maritime, the *Meloy* exception could apply under Louisiana law

Litigation!



- **Scorched Earth or Pushovers for Resolution?**
- **What do insurers and/or P&I Clubs want to see from their litigators?**
- **Zealous advocacy without Wasting your clients' time and money and negatively impacting the matter**



What do Vessel Owners, Insurers and Oil Companies want from their outside lawyers?

- **Communication** – Client do not like surprises!
- **Thoroughness in Evaluation** – So that the client can make the most informed decision at every key juncture in the case
- **Resourcefulness** – Good working industry knowledge and contacts, familiarity with and even relationship with people at places like the coast guard and/or NTSB can be very helpful



Encapsulating all Risks



- **Transocean's Deepwater Titan** – Spans nearly three football fields, headed to the deepest parts of the Gulf of Mexico, can drill 8 miles below the seafloor and can accommodate 220 people
- **Emblematic of all risks** – personal injury, property damage, fire, environmental and cyber

This is Where we Leave You...

- **Gulf of Mexico is a risk intense environment, with numerous risks affecting numerous stakeholders**
- **Vessel owners, brokers and underwriters, oil companies and attorneys all have roles to play**
- **The qualitative is equally important as the quantitative**



Questions?



Thank You!

