

WEATHERING THE STORM



BOB DUDLEY on leading BP's fight to do the right thing in the Gulf

Few corporate leaders have had to manage a crisis as significant as the one that confronted BP on April 20 2010 in the Gulf of Mexico. Bob Dudley, at the time BP's managing director in charge of the Group's activities in the Americas and Asia, switched on the TV in a hotel room in India and learned about the explosion and fire aboard the Deepwater Horizon oil rig, an accident that killed 11 workers. Dudley was soon asked to lead the company's Gulf Coast Restoration Organization, which was set up to manage BP's response to what became one of the worst maritime oil spills in history.

In October 2010, Dudley became Group Chief Executive. Since then, he has led BP's efforts to restore the Gulf and defend the company's rights in litigation related to the accident and spill. He has also overseen measures to further enhance safety, based on the lessons learned from the accident and its aftermath.

In an interview with Brunswick's ELLEN MOSKOWITZ and STEPHEN POWER, Dudley explains how BP has responded to the crisis and the issues the company continues to face.

What were some of the factors that BP had to consider in responding to the accident?

From the outset, we believed it was important to work with government officials and others to address the needs of people who had been affected. This was quite personal for me, by the way, because I spent my childhood summers on that coast. In the aftermath, BP’s credit situation was difficult. Despite our considerable resources and valuable assets, the financial challenge we faced cannot be overstated.

Nonetheless, we stepped up, waived the \$75 million statutory liability cap under the Oil Pollution Act of 1990, and publicly committed to pay all legitimate claims, even establishing a \$20 billion trust to assure the American public that funds would be available for economic and environmental restoration – something that has never been done before. Finally, we said we would work to embed the lessons learned into the fabric of our organization and share those lessons with our industry colleagues and government regulators.

What has happened since the accident?

We have kept our word to the people of the Gulf Coast region. We have spent upwards of \$26 billion, which includes more than \$14 billion on the response and cleanup, and more than \$12 billion on claims paid to individuals, businesses and government entities. That is the wealth of many nations. In addition, the company has already spent approximately \$1 billion to support the Natural Resource Damage Assessment (NRDA). This includes more than \$500 million paid directly to the Trustees to conduct the scientific studies that underpin the final assessment of environmental injuries and restoration. On top of that, BP has voluntarily committed up to \$1 billion through an unprecedented agreement that has allowed early restoration projects to begin, even while the NRDA assessment continues.

Our commitment has gone beyond mere dollars. It has also included an enormous human component. Tens of thousands of individuals, including our employees as well as outside contractors, have worked tirelessly to help the region recover.

But we are still managing the fallout from the accident. To some extent, the current issues stem from the very first decisions we made at the outset of the crisis: to step up, do the right thing and address the needs of people who had been affected.

What measures have you taken internally?

We made a commitment to cooperate with all official investigations, but we also immediately launched our own. Its findings, posted on our website less than

five months after the explosion, concluded that it was a complex accident involving multiple causes and multiple parties. That conclusion has been substantially supported by all subsequent official investigations. We have also been giving presentations across the globe – in more than 25 countries so far – sharing what we have learned from the accident with government regulators, industry experts and academics.

On safety, which is and has always been of paramount importance to BP, we have made a number of enhancements. For example, the company introduced a stronger, company-wide safety and operational risk organization, staffed by safety experts who set standards and have broad powers to approve appointments to safety-critical roles and stop work if necessary. In addition, BP has enhanced its internal standards and practices for drilling, and has built the state-of-the-art Houston Monitoring Center, which provides additional monitoring support and resources to rig crews who have primary responsibility for monitoring BP assets in the Gulf of Mexico.

What has the impact been on the company?

We have come very far, and made great progress. The accident no longer poses a threat to the company’s future, and we have made BP a safer, stronger and better company. The accident caused us to look afresh at everything we do in BP – not only safety, but also how we create value in a way that is sustainable →



BOB DUDLEY

Bob Dudley started his career in 1979 at Amoco, which was acquired by BP in 1998. He has held a variety of senior posts at both companies, including President and CEO of Russian joint venture TNK-BP from 2003 to 2008. Following the Deepwater Horizon explosion in April 2010 he was chosen to lead BP’s Gulf Coast Restoration Organization, which handled the company’s response to the accident. He became Group CEO in October of the same year. Dudley, who was raised in Mississippi, trained as a chemical engineer and has Masters’ degrees in Management and Business.

BP is one of the world’s oldest and largest integrated oil and gas companies, with 85,000 employees, operations in more than 80 countries and sales of \$379 billion in 2013.

over many decades. It has also led us to simplify the company's structure.

Around the globe, we are following a very simple principle: play to our strengths and don't try to do everything. So we have been divesting non-strategic assets – we have reached our \$38 billion target a year ahead of schedule. This has significantly increased the quality of the upstream portfolio while reducing its age and complexity – and the risks that come with that. Our vision for BP is to continue to grow as a safe, focused oil and gas company, with a high performing, cash generating downstream, and most of our capital investment going into a pipeline of high quality upstream projects. Fundamentally, it is about making BP a safer and a stronger company – but also a sustainable one.

You said BP has been sharing lessons learned from the accident with regulators globally. How has this affected their perceptions of the company?

Many governments are recognizing the steps we have taken, both in responding to the spill and in reinforcing safety. The Brazilian government, for example, actually cited the steps we have taken to reinforce safety following the Deepwater Horizon accident in awarding us several exploration licenses.

What about the litigation? Where does that stand?

From the outset, we tried to settle claims on reasonable terms. We began paying claims immediately after the accident and we settled with our partners and several contractors. Then, in November 2012, we reached agreement with the US Justice Department to resolve all federal criminal charges and all claims by the Securities and Exchange Commission against the company that stemmed from the accident, oil spill, and response. We also reached an agreement to resolve the majority of legitimate economic loss and property damage claims. A lot of our legal efforts over the past year have been focused on that agreement, to make sure that it is implemented in a way that we believe is true to its language and fulfills its original, intended and lawful function: the compensation of claimants who sustained actual losses connected to the Deepwater Horizon accident.

At the same time, we have continued to defend ourselves in the federal civil trial in New Orleans that will determine, among other things, the cause of the accident, the appropriate allocation of fault among the various defendants, and the number of barrels of oil spilled. All of the evidence has been submitted in the first two phases of that trial, and we await a

decision from the District Court, which could come at any time now or after the penalty phase of the trial.

Finally, we were pleased to have reached an administrative agreement with the US Environmental Protection Agency lifting the suspension that was imposed on BP in November 2012. As a result of this agreement, we are once again eligible to enter into new contracts with the US government, including new deepwater leases in the Gulf of Mexico.

BP also appears to be in a highly publicized battle with the Claims Administrator. What is this dispute about?

We believe the misinterpretation of the agreement we reached in 2012 to settle economic loss and property damage claims has resulted in huge awards being made to claimants with fictitious losses or losses unrelated to the spill. More than half a billion dollars has been awarded for alleged losses with no apparent relation to the spill. As we have argued in court, this is contrary to the language of the settlement and violates established principles of class action law. We are fighting in court, not only because we have a duty to our shareholders, but also because it is simply the right and principled thing to do. I don't believe any company would agree to a settlement that pays businesses for fictitious losses or losses it didn't cause. And BP certainly didn't. I believe the ultimate resolution of this legal fight – whichever way it goes – could have enormous implications for the US justice system and the role that trial lawyers play in it.

Can you give some examples of how the company believes the misinterpretations are affecting claims?

Some examples from our legal briefs include: a wireless phone store that was closed for nearly all of 2010 as a result of a fire that predated the oil spill; a lawyer located around 200 miles from the Gulf, who lost his license four months before the spill; a wheat farm, more than 200 miles away, that elected not to plant and harvest crops in 2010. All got awards from the claims program. These are not just one-off, false positives – there are lots of these examples, resulting from the systematic misinterpretation of the agreement. This is not what we agreed to and not what any company would ever agree to.

But you have gone beyond challenging the interpretation of the settlement agreement. One could argue that you have essentially said that you have little confidence in the claims program you helped create as part of the settlement. Why?

Eighteen months after the claims program started,

half of its senior leadership has resigned or been fired because of allegations of serious – and, in some cases, potentially criminal – misconduct. The independent investigation the District Court ordered to look into this continues to find problems and make recommendations – almost two years after the claims program first got up and running – to ensure that it operates efficiently and is free of conflicts and corruption. BP has spent more than \$750 million on the administration of a facility that should operate effectively, and we are doing what we can to assure the integrity of the program. We cannot sit idly by and allow dysfunction and problems in the claims program to continue.

How are you getting your message across?

One thing we have been doing is publishing advertisements in major US newspapers giving examples of how we believe the settlement agreement has been abused.

What are you trying to achieve with this strategy?

We have been running the ads to inform our stakeholders about the serious concerns that we have been raising for months now about the way in which the settlement agreement is being implemented. We hope that doing this will help people understand why the litigation over the settlement continues and the extent to which we believe that the company's commitment to the Gulf is being exploited. Our opponents have said in the media that we are backing away from our commitments, but, in fact, it is quite the opposite. Our commitment is real, and we want our stakeholders to know that.

Where do things stand in the courts on this issue of interpretation of the settlement?

We got a favorable ruling in the courts regarding the calculation of business economic loss (BEL) claims. It took 10 months of litigation, but in December 2013 the District Court reversed its prior rulings and found that the claims program must ensure, as we always maintained, that claimants' reported revenues and expenses are correctly matched when determining awards. This was a big victory for the company and will help to significantly restore the implementation of the agreement to its intended function.

Unfortunately, we have so far not been as successful on the other interpretive issue that has made its way through the courts. The US Court of Appeals for the Fifth Circuit denied the company's request for a permanent injunction preventing payments to BEL

claimants whose alleged injuries are not traceable to the accident and spill. We disagree with this decision and have advised the Fifth Circuit that we will seek rehearing by the full court. We continue to believe that this is a misinterpretation of the agreement and that neither the agreement nor the law allows for the systematic payment of claimants whose losses were not caused by the spill. We are obviously disappointed with the current state of play on this, but we also believe that our efforts to ensure that our commitment is not distorted and taken advantage of have yielded positive results, leading to the matching correction.

Does BP wish it had made different choices, given some of the things that have occurred since the accident?

In his latest book, Ken Feinberg, the expert who helped run the claims process shortly after the spill, wrote that most companies choose to delay accepting responsibility when faced with large potential liabilities, and that BP could have chosen to litigate from the outset, imposing long delays before claimants saw payment for their losses. BP did not do that. We did what we believed was right – which was to compensate those individuals and businesses in the Gulf that were legitimately affected by this accident. Unfortunately, there are some who are trying to take advantage of that. And judging from my conversations with business leaders around the world, our experience may well serve as a cautionary tale for other companies.

No other company in history has committed itself to a region in the aftermath of an accident the way BP has to the Gulf Coast since the spill. BP has said consistently, since the very beginning, that it would do the right thing. We meant what we said, and we are keeping our word. The bottom line is this: we are working very, very hard to meet the company's commitment to economic and environmental restoration efforts in the Gulf, while defending our interests in court.

Our intention has always been to compensate those genuinely affected by the accident. We will continue to fight to do the right thing – the right way. ♦

.....
This interview was completed on March 14 2014

ELLEN MOSKOWITZ is a Partner in Brunswick's New York office. A lawyer, she focuses on critical communications assignments involving litigation, corporate reputation and crisis. She has been working on BP matters since July 2010.

STEPHEN POWER is a Brunswick Director in its Washington, DC office. Formerly a journalist, he advises on public affairs and crisis communications with a focus on the energy sector.