

MDL Judge in Deepwater Horizon Multidistrict Litigation Issues Major Ruling Construing the Oil Pollution Act of 1990 ("OPA")

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On August 26, 2011, Judge Carl Barbier of the U.S. District Court for the Eastern District of Louisiana, issued one of the most significant rulings construing certain provisions of the Oil Pollution Act of 1990, in the Deepwater Horizon multidistrict litigation.

As is now common knowledge, the Deepwater Horizon was a mobile offshore drilling unit (MODU) which caught fire and exploded on April 20, 2010, resulting in the deaths of 11 workers, the injury of many others, and the release of tens of millions of gallons of oil into the Gulf of Mexico, before the well, to which BP Exploration and several other entities had a lease for mineral rights, was finally capped some three months later.

The MDL includes thousands of claims by various commercial fisherman, fish processing and distribution entities, recreational businesses, commercial businesses, plant and dock workers, real property owners, tourism interests, and subsistence plaintiffs. The allegations include claims under OPA and various state laws, including claims for negligence, gross negligence, strict liability, and punitive damages, as well as claims under the Florida Pollutant Discharge Prevention and Control Act, Fla. Stat. §§ 376.011, et seq.

The ruling was the result of a motion to dismiss brought by most of the defendants, seeking dismissal of all non-OPA claims for purely economic loss, dismissal of OPA claimants who have not complied with the "presentment" requirement

of OPA¹ and dismissal of the punitive damage claims. In its 39 page ruling, the court made several significant determinations regarding the applicability of OPA and the interplay between OPA and state law.

First, the court ruled that the Deepwater Horizon MODU was unquestionably a vessel. This of course entitles the owners to seek exoneration from or limitation of liability under the Limitation of Liability Act of 1851, 46 U.S.C. §§ 30501 et seq.

Next, the court found, not surprisingly, that it possessed admiralty jurisdiction both under Article 3 Section 2 of the U.S. Constitution and the Admiralty Extension Act, which allows courts to assert admiralty jurisdiction in cases where a tort on navigable waters causes injury on land. Thus, the court determined that substantive maritime law applied to the disaster.² Citing the importance of uniformity and the fact that the conduct which is the subject of the oil spill did not occur within state borders, the court determined that OPA preempted all state law claims, specifically rejecting the argument that OPA's saving provisions somehow preserved the ability to assert common law or state negligence or statutory claims by the plaintiffs. As a consequence, the court dismissed the plaintiffs' claims for nuisance, trespass, and fraudulent concealment as well as the plaintiffs' claims under Florida state law, rendering moot additional arguments regarding the economic loss doctrines of various states.

¹ The presentment requirement provides that claims must first be presented to the Responsible Party before the claimant may commence an action in court, 33 U.S.C. § 2713.

² The court also confirmed a previous ruling that it also had jurisdiction under the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1349.

The court then determined, based in large part on the recent decision following the Exxon Valdez disaster of *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008), that OPA also displaced traditional maritime causes of action, but only with regard to claims against Responsible Parties for damages covered by OPA. As to non-Responsible Parties, the court reasoned that there was nothing in OPA to indicate that Congress intended such Parties to be immune from direct liability to persons who either suffered physical damage to a proprietary interest or qualified for the commercial fishermen exception. Therefore, general maritime claims that existed before OPA were permitted to be asserted against non-Responsible Parties under OPA.

Finally, and most significantly, the court determined that claims for punitive damages were in fact available for general maritime law claimants both against the Responsible Parties, so long as the OPA presentment procedure was satisfied, and non-Responsible Parties.

There were numerous other rulings regarding various categories of defendants which space does not permit this alert to address.

It is virtually certain this ruling will be appealed but it may be several months before the 5th Circuit considers these important issues.