



BP MACANDO OIL SPILL LITIGATION ADDRESSES OFFSHORE MARITIME ISSUES

Court Upholds Transocean's Indemnity for Pollution

On April 20, 2010, a well blowout occurred at the Macondo Well site approximately 50 miles off the coast of Louisiana; and an explosion and fire ensued aboard the semi-submersible drilling vessel *Deepwater Horizon*. The vessel was owned and operated by Transocean and chartered to British Petroleum ("BP"). The explosion and fire resulted in fatalities, personal injuries, and the total loss of the *Deepwater Horizon*.

Hundreds of lawsuits have been filed throughout the country seeking to hold various parties liable for the damages sustained as a result of the disaster. The majority of the lawsuits were transferred and consolidated into Multi-District Litigation ("MDL") before the E.D. La. Jones Walker maintained a prominent role in the massively complex litigation, representing Weatherford International, Inc., a BP contractor involved in the Macondo project. As a result of Jones Walker's efforts and legal actions, Weatherford was completely exonerated by the MDL Court in January 2012, pursuant to a Motion for Summary Judgment filed by the Jones Walker litigation team, which was staffed out of Jones Walker's Lafayette, New Orleans, and Houston offices.

Within the MDL, Transocean, as the owner of the *Deepwater Horizon*, sought to enforce its indemnity rights under its drilling contract with BP. The Court held that BP is required to indemnify Transocean for compensatory damages asserted by third parties against Transocean related to pollution that originated below the surface of the water, even if the claim was the result of Transocean's strict liability, negligence, or gross negligence. *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*, 2012 WL 246455 (E.D. La. Jan. 26, 2012). However, the Court declared that BP does not owe Transocean indemnity to the extent Transocean is held liable for punitive damages or to the extent Transocean is held liable for civil penalties under the Clean Water Act. Additionally, BP's duty to defend does not include the expenses Transocean incurred or will incur in proving its right to indemnity. Finally, BP is not obligated to fund Transocean's defense against third party claims at this time.

This ruling is significant for several reasons. Transocean had argued strenuously that the parties to the drilling contract were sophisticated parties that carefully allocated the risk of pollution; and therefore, the pollution indemnities should be enforced. Transocean contended that BP, as the operator of the Macondo well site, was the party in the best position to protect against pollution, and as such, had agreed to accept the risk of pollution via indemnity obligations owed to Transocean. Moreover, Transocean asserted that, if BP's indemnity obligations were voided due to allegations or proof of Transocean's gross negligence, then the insurance for drilling contractors would be impossible to afford. Contrary to Transocean's position, BP argued vehemently that public policy prohibited indemnity for gross negligence.

By enforcing the indemnity obligations of the drilling contract, the Court afforded some certainty to sophisticated entities involved in deep water drilling (as well as shallow water drilling). By affirmatively stating that Transocean was entitled to indemnity for compensatory damages even if Transocean is found to be grossly negligent, the Court gave strong credence to the parties' ability to allocate risk as they see fit and limited the scope of Transocean's liability for pollution, for which Transocean did not have extensive insurance coverage.



Court Holds that Punitive Damages Are Not Available under the Jones Act

In addition to the above ruling on the Transocean indemnity claims, the MDL Court also rendered several other important rulings on various legal issues arising out of the Macondo oil spill. As part of the MDL, the Court established certain “pleading bundles” for the purposes of filing “master complaints” so that similarly situated plaintiffs could join in one master-styled complaint. One such pleading bundle is the “B3 Bundle,” which includes claims for punitive damages by certain individuals who may qualify as seamen under the Jones Act.

After several parties moved to dismiss the claims by the B3 Bundle Plaintiffs, the Court noted that the Jones Act prevents a seaman from recovering non-pecuniary damages, regardless of whether the claims are brought against an employer or a non-employer. *In re Oil Spill by the Oil Rig “ Horizon” in the Gulf of Mexico*, 2011 WL 4575696 (E.D. La. Oct. 4, 2011). Since punitive damages are non-pecuniary in nature, the Court held that the Jones Act precludes a seaman from recovering punitive damages against both employers and non-employers. However, the Court did hold that non-seaman may recover punitive damages under the General Maritime Law.

This ruling by the Court should aid marine companies in Jones Act litigation since allegations of gross negligence and claims for punitive damages are common in Jones Act cases. Limiting an employer or non-employer’s liability to compensatory damages should promote more reasonable settlements in Jones Act suits. Moreover, as punitive damages may not be insured, employers and non-employers in the marine industry should be able to fully insure against future Jones Act claims.

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