
Environmental Client Service Group and Toxic Tort Team

To: Our Clients and Friends

September 8, 2014

District Court Finds BP Reckless in 2010 Gulf of Mexico Oil Spill; Punitive Damages Not Available Under Fifth Circuit Precedent

The U.S. District Court for the Eastern District of Louisiana entered an order September 4, 2014, concluding BP Exploration & Production, Inc. (“BP”) acted with gross negligence in the 2010 Gulf of Mexico oil spill. The District Court concluded punitive damages were warranted but that such damages were not permitted under Fifth Circuit precedent on the basis that mere operational recklessness is insufficient to sustain an award of punitive damages. The District Court expressly concluded such damages would be permitted in the First and Ninth Circuits on the evidence presented.

While the BP case is an extraordinary event, the order is significant for all companies as a reminder of the disparities among jurisdictions concerning the propriety of punitive damages, and the general proposition that companies retaining significant decisional control of their contractors’ operations may be liable for the same. BP has expressed its intent to appeal the ruling, and the order appears to invite plaintiffs’ appeal on the punitive damages issue.

Comparative Fault

In the 153-page order following bifurcated trial proceedings, District Judge Carl Barbier concluded BP made “profit-driven decisions” during drilling that contributed to the spill, and he concluded “[t]hese instances of negligence, taken together, evince an extreme deviation from the standard of care and a conscious disregard of known risks.”

The District Court concluded BP’s comparative fault was 67%, because “BP had a hand in most of these failures”, despite the fact most of the work was carried out by contractors. This finding was based on facts indicating BP made many of the pertinent decisions concerning which equipment to use and its instructions to its contractors concerning the same.

Punitive Damages

General maritime law permits punitive damages for reckless, willful, and wanton conduct. In the Fifth Circuit, however, operational recklessness or willful disregard is generally insufficient; the Fifth Circuit generally requires conduct emanating from corporate policy or conduct ratified by a corporate official to sustain an award of punitive damages.

Judge Barbier concluded BP's reckless conduct would warrant punitive damages. However, Judge Barbier awarded no punitive damages, because he concluded the operators involved were not policy-making officials, and the reckless conduct did not emanate from corporate policy as required in the Fifth Circuit.

Significantly, the District Court surveyed other jurisdictions and concluded punitive damages would have been properly awarded under the First Circuit and Ninth Circuit's precedent, which permit punitive damages if the actor acted within a "managerial capacity". The First Circuit also requires some degree of corporate culpability. The District Court commented BP's conduct would satisfy both Circuits' punitive damages tests, indicating an invitation to appeal the decision to the Fifth Circuit.

The explosion and resulting oil spill occurred April 20, 2010, aboard the Modu Deepwater Horizon off the coast of Louisiana. BP was the primary leaseholder of the site, and it contracted with other companies to execute drilling activities. Approximately 3,000 lawsuits were filed in connection with the April 20, 2010 incident.

More Information

The full opinion in the matter *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, case no. 2:10-md-02179-CJB-SS, is available at <http://www.laed.uscourts.gov/OilSpill/Orders/9042014FindingsofFactandConclusionsofLaw.pdf>. The section discussing gross negligence begins at page 133 of the opinion.

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