

THE GULF OIL SPILL:

The Trial of Liability, Limitation, Exoneration, and Fault Allocation

On April 20, 2010, during the final phases of drilling an exploratory well at Macondo located approximately 40 miles off the Southeast coast of Louisiana, the Deepwater Horizon drilling rig exploded in the Gulf of Mexico. The explosion and ensuing fire caused the platform to sink in 5,000 feet of water, killing 11 workers and injuring 17 others. Although an attempt was made to activate the blowout preventer (BOP), the BOP failed and approximately 200 million gallons of oil were released into the waters of the Gulf of Mexico before the well was capped on July 15, 2010. This was the largest marine oil spill in the history of the petroleum industry.

This event caused not only the loss of life, but also widespread economic losses to business, trade, tourism, and property. There was significant impact on the economy, as well as the ecology, wetlands, wildlife, coastlines, and natural resources of the Gulf Coast region.

The Deepwater Horizon oil spill prompted the filing of numerous lawsuits against multiple defendants. Major defendants include: BP, lessee of the rig and project developer of the Macondo well; Cameron, manufacturer of the blowout preventer; Transocean, who provided the Deepwater Horizon rig and its crew to BP; Halliburton, the contractor that installed and cemented production casing at the Macondo well; and Anadarko/MOEX, BP's drilling partners.

The Deepwater Horizon accident was the result of multiple causes that involved multiple parties. The final federal report issued by the Bureau of Ocean Energy Management, Regulation and Enforcement concluded that BP, Transocean, and Halliburton all share responsibility. However, these defendants, including Cameron, have filed cross-complaints against one another.

BP asserted that Transocean was completely responsible, suggesting that every safety system, device, and well procedure on the Deepwater Horizon failed. BP alleged that Cameron's design and manufacture of the BOP did not meet the standards of a reasonable manufacturer, and that its maintenance and modification did not meet the standard of a reasonable service provider. BP has asserted that Halliburton's improper conduct, errors, and omissions, including fraud and concealment, caused and/or contributed to the incident.

Halliburton recently filed an amended lawsuit against BP, claiming BP hid critical information about the Macondo well that led to the explosion. They alleged that BP compromised safety for profit, and then conspired in a cover up after the fact to avoid liability. Halliburton has also filed cross-claims against Cameron and other manufacturers of rig equipment, and made claims against responder organizations for contributory negligence.

Transocean has filed multiple cross-claims. Against BP, they seek contractual protections arising from indemnity clauses in the drilling contract executed between the companies, and claims to enforce provisions of its contract imposing full responsibility on BP for the fire, blow-out, or any other uncontrolled oil and gas flow. They asserted strict liability claims against the manufacturers of rig equipment, and breach of warranty claims against Halliburton and M-I Swaco, claiming those contractors failed to perform their duties. Transocean also seeks damages from BP and others for the total loss of the Deepwater Horizon as well as \$20 million in additional damages.

Limitation Trial

This litigation is being tried under the Limitation of Liability Act, 46 U.S.C. § et. seq. in federal maritime law and under federal supplementary admiralty rules. Numerous federal and state regulations, including the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § et. seq., and various common law principles, are also at issue.

On February 27, 2012, the trial of liability, limitation, exoneration, and fault will commence in the USDC Eastern District of Louisiana before Judge Carl Barbier. Significantly, the Limitation trial will address maritime claims for negligence and gross negligence, as well as cross-claims between the defendants and their respective liability.

Pursuant to CMO No. 3 it is to be conducted in at least 3 phases:

Phase 1: Incident

The "Incident" phase will address issues relevant to the loss of well control at the Macondo well, the fire and explosion on the Deepwater Horizon rig on April 20, 2010, the sinking of the rig on April 22, 2010, and the release of oil from the Macondo well or Deepwater Horizon during those time periods.

Phase 2: Source Control

The "Source Control" phase of the trial will address source control and quantification of discharge issues. "Source Control" issues shall consist of issues regarding stopping the release of hydrocarbons stemming from the incident from April 22, 2010 through approximately September 19, 2010. "Quantification of Discharge" issues shall consist of issues pertaining to the amount of oil actually released into the Gulf of Mexico as a result of the incident from the time when these releases began, until the Macondo Well was capped on approximately July 15, 2010 and then permanently cemented shut on approximately September 19, 2010.

Phase 3: Containment

The "Containment" phase of the trial will address issues pertaining to containing the oil discharged as a result of the incident by, for example, controlled burning, application of dispersants, use of booms, skimming, etc. Phase Three of the trial will also address issues pertaining to the migration paths and end locations of oil released as a result of the Incident as carried by wind, currents, and other natural forces and as affected by efforts to contain or direct this migration.

Primary Defense Issues

1. Violations of offshore safety regulations
2. Improper maintenance
3. Human errors
4. Poor risk management
5. Failure to respond to critical indicators
6. Inadequate well control response
7. Insufficient emergency plans
8. Faulty designs
9. Failed capping efforts
10. Adverse ecological, economic, and health effects

Defense Narratives

Deflection of Blame

1. What is true causation?
2. Who was actually responsible for safe operations at the site?
3. Who was responsible for monitoring the well?

Credit for Impact of Positive Decisions and Actions in Crisis

1. Defendant responsiveness and efforts to mitigate damage
2. Ultimate outcomes resulting from the defendant's real-time and post-spill decisions

Most Persuasive Tone of the Defense: Combative or Semi-Apologetic?

DOAR's Suggested Defense Trial Narratives

- Deflecting Blame:
What is True Causation?

- Credit for Impact of Positive
Decisions in Crisis?

- Most Persuasive Tone For Defense:
Combative vs Semi-Apologetic?



DOAR Litigation Consulting

As the only national trial consulting firm with a local New Orleans' office, DOAR Litigation Consulting is uniquely positioned as your key partner in the Deepwater Horizon litigation. Drawing upon our extensive experience successfully defending complex cases of similar scope and magnitude, our regional expertise and our extensive knowledge of the key Defense issues in this litigation, we have created a targeted website that demonstrates our comprehension of the issues and our capacity to assist litigators in preparation for a what is sure to be one of the most historic bench trials in modern jurisprudence, the Deepwater Horizon Limitation Trial. We invite you to click on the link below, where you will find:

1. Our view of the relevant issues that must be tackled now
2. Sample impactful graphics to support your trial strategy
3. The local issues that are likely to shape the trials' outcome
4. Services and strategies that could help give you a differentiated edge in achieving success

Click [here](#) to access our repository of relevant information.