

## MDL Court Rules on Availability of Punitive Damages in Gulf Oil Spill Litigation

September 6, 2011 by [Sean Wajert](#)

The MDL court overseeing the claims arising from the 2010 Gulf of Mexico oil spill has ruled that plaintiffs can seek punitive damages against allegedly responsible parties in economic loss and property damage suits. [In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010](#), No. 2:10-md-02179 (E.D. La., 8/26/11).

Readers may recall that [this MDL](#) consists of hundreds of consolidated cases, with thousands of claimants, arising from the April 20, 2010 explosion, fire, and sinking of the Deepwater Horizon mobile offshore drilling unit, which resulted in the release of millions of gallons of oil into the Gulf of Mexico before it was finally capped approximately three months later. In order to efficiently manage this complex MDL, the court consolidated and organized the various types of claims (e.g., personal injury, environmental, property, and economic damages) into several "pleading bundles." One such pleading bundle includes all claims for private or non-governmental economic loss and property damages. There are in excess of 100,000 individual claims encompassed within this bundle.

The court recently ruled on several pending motions to dismiss the claims by this sub-group of plaintiffs, but let's focus on the punitive damages claims. The court's analysis began with the Oil Pollution Act of 1990: the OPA is silent as to the availability of punitive damages. So the issue became whether plaintiffs who could assert general maritime claims pre-OPA enactment could still plausibly allege punitive damages under general maritime. The court concluded they could.

First, punitive damages have long been available at common law, and the common-law tradition of punitive damages extends to maritime claims. The court reasoned that Congress had not occupied the entire field of oil spill liability in light of the OPA provision preserving admiralty and maritime law, "except as otherwise provided." OPA does not mention punitive damages; thus, while punitive damages are not available under OPA, the court did not read OPA's silence as meaning that punitive damages are precluded under general maritime law. The MDL court observed that Congress knows how to proscribe punitive damages when it intends to, as it did in the commercial aviation exception under the Death on the High Seas Act, 46 U.S.C. § 30307(b) ("punitive damages are not recoverable").

Second, the court saw nothing to indicate that allowing a claim for punitive damages in this context would frustrate the OPA liability scheme. All claims against the allegedly Responsible Party must comply with OPA's procedure, regardless of whether there is also cause of action against the Responsible Party under general maritime law. However, the behavior that would give rise to punitive damages under general maritime law—gross negligence—would also break OPA's limit of liability. See 33 U.S.C. § 2704(a). Thus, the imposition of punitive damages under general maritime law would not, according to the court, circumvent OPA's limitation of liability.

Finally on this issue, the court noted that some courts had held that the Trans-Alaska Pipeline Authorization Act (“TAPAA”), which provided “the liability regime governing certain types of Alaskan oil spills, imposing strict liability but also capping recovery,” did not restrict the availability of punitive damages. OPA, like TAPAA, creates a liability regime governing oil spills, imposes strict liability on the Responsible Parties, includes liability limits, and is silent on the issue of punitive damages.

Thus, the court concluded, the OPA does not displace general maritime law claims for those plaintiffs who would have been able to bring such claims prior to OPA’s enactment.