

The Times-Picayune

Lawyers flock to seminar on Gulf of Mexico oil spill issues

By [Rebecca Mowbray, The Times-Picayune](#)
May 25, 2010

Attorneys working on the litigation dealing with [the Deepwater Horizon rig explosion and oil plume](#) can expect to deal with novel questions of punitive damages, economic injuries, and the interaction of the [Oil Pollution Act of 1990](#) on the existing body of state, federal and maritime law, participants in the [Gulf Coast Oil Symposium](#) said Tuesday.

The symposium, organized by the New Orleans Bar Association at the Sheraton New Orleans hotel, is a measure of just how engrossing the legal issues facing plaintiff and defense attorneys alike are expected to be. "We've never done a seminar in response to a specific event," said Loretta Larsen, executive director of the bar association.

Attorneys who represented plaintiffs in the litigation over the [Exxon Valdez](#) tanker grounding in 1989 offered their words of wisdom.

Minneapolis attorney Karen Hanson Riebel said that time is the enemy. By the time the litigation settled, 20 percent of her 32,000 class members had died. After nearly two decades of litigation, class members received an average of \$15,000 each for their losses.

Riebel said that fishing catch records from the state will be extremely important for establishing people's economic damages. She and her legal team also used population loss, fishery closures and impact on the market and seafood prices.

Richard Lockridge, a principal of the firm where Riebel works, recounted what he described as the "disgraceful" path of court rulings that knocked down the punitive damages from the original 1994 jury verdict of \$5 billion to \$507.5 million in 2008.

In its 2008 decision, the U.S. Supreme Court said that for maritime cases, there must be a one-to-one ratio of punitive damages to compensatory damages. But Lockridge said that the opinion also noted that reckless steps to enhance profits could make an argument for greater punitive damages, and he believes that the nation's high court might support punitive damages of three times the compensatory award in the Deepwater Horizon case, because early investigations show multiple corporate mistakes. The 3-to-1 ratio is what most states with caps on punitive damages allow.

"A careful reading of that case suggests that if the facts are more egregious than in the Valdez, the ratio might go as high as 3:1," Lockridge said.

Clues to corporate strategy

Lockridge also outlined what he expected to be the corporate strategy of BP, the company that leased the rig from owner Transocean Ltd.

In the Exxon Valdez litigation, Exxon kept emphasizing what a good company it was, how states supported offshore oil drilling, and how the nation, as a policy, wants cheap oil and gas. The company also emphasized

how much it paid in fines, in the clean-up, and how sorry it was. The company also noted that it had pleaded guilty to several misdemeanors. He believes BP will use the same playbook.

Exxon Valdez panelists said their litigation was complex, but predicted that the situation with the Deepwater Horizon will be even tougher. It's an unmeasurable amount of oil affecting more people across at least four states, with the federal and state courts in each of those states potentially involved, and multiple defendants.

Meanwhile, Thomas Galligan, a maritime attorney who is president of Colby-Sawyer College in New Hampshire and who will be testifying before Congress on Thursday, noted that the Deepwater Horizon rig explosion highlights some gaps and inconsistencies in the laws that are likely to apply to the many people affected by the disaster.

In maritime law, the [Jones Act](#) and [Death on the High Seas Act](#) don't deal with "loss of society," or compensation for economic loss to survivors. But the branch of the Death on the High Seas Act that deals with aviation does allow for loss of society.

Meanwhile, the Oil Pollution Act of 1990 sets out a framework for dealing with economic losses and indirect economic losses, but it doesn't deal with personal injury or wrongful death.

"There's an inconsistency there," Galligan said. "We ought to look at the whole panoply of laws."

Multiple grounds on which to collect

Walter Leger, a Louisiana maritime attorney who is representing several governmental bodies in the litigation, said that under the Oil Pollution Act of 1990, the law passed after the Exxon Valdez to create a special environmental law to deal with oil spills, the state and individual parishes have multiple grounds on which to collect.

They should be compensated the cost of their efforts to prevent, mitigate or minimize the discharge of oil. They are also entitled to compensation for loss of revenues, damage to real and personal property, increased cost of public services.

The state of Louisiana will probably be in the situation of having to seek redress under OPA rather than the [Louisiana Oil Spill Prevention and Response Act](#), because OPA is a stronger law than what the state has on the books. That means that the state faces the risk that any suits it filed will get removed to federal court. But Mississippi and Alabama have stronger state laws dealing with water pollution, so they have a real choice about how to pursue their grievances.

Midday, lunch speaker James Carville stirred up the crowd.

"I say to the administration, don't forget criminal law. If someone needs to go to jail, so be it," Carville stormed from a podium next to a map of the Gulf of Mexico. "If they broke the law, go to Angola. They're waiting on you."

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