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Federal Court Invalidates One-Sided Vessel Charter Agreement

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Following the April 20, 2010 Deepwater Horizon drilling rig explosion and resulting oil spill, British Petroleum (BP) offered fishermen, shrimpers and oystermen (collectively fishermen) in Louisiana payment to voluntarily participate in oil spill clean-up and mitigation efforts. BP, however, required that the volunteer fishermen sign a Master Vessel Charter Agreement (the Agreement) before it allowed the fishermen to provide the emergency clean-up services. The Agreement contained several provisions that compromised the fishermen's existing and future rights and potential legal claims against BP and its affiliated entities.

Fisherman George Barisich sought emergency relief from a federal court to stop BP from forcing volunteer fishermen to enter into an agreement that limited their claims against BP. After an emergency hearing, the U.S. District Court for the Eastern District of Louisiana ruled that the language of certain provisions of the Agreement was overbroad, after which BP agreed to enter into a stipulated judgment that deleted those provisions from the Agreement, making them null and void.¹ The court also enjoined BP from seeking to enforce any such agreements already executed.

Background

On May 2, 2010, Barisich filed an Emergency Motion for Temporary Restraining Order (Motion for TRO) with the U.S. District Court for the Eastern District of Louisiana seeking a judgment (1) enjoining BP from requiring that he and others sign the Agreement before assisting in clean-up efforts, and (2) declaring the Agreement unconscionable and that any such Agreements already executed be null and void, and/or enjoining BP from seeking to enforce any such Agreements already signed.²

The controversial Agreement, drafted by BP, required the fishermen to provide clean-up efforts using their own boats. Article 13(A) of the Agreement mandated that BP be added as an "additional assured" on the volunteers' insurance policies,³ effectively transferring financial responsibility for any damage to the volunteers' vessel or for other injuries, such as to crew members, to the volunteers' insurance carrier. Article 13(F) of the Agreement provided that the vessel owner "defend, indemnify and hold [BP] harmless from all claims ... related to, any loss or damage to any property or any injury to or death of any person" arising from the vessel owner's performance under the contract, providing the claim arose from any willful misconduct, gross negligence or negligence by the vessel owner or its crew.⁴ Additionally, Article 13(I)(1) stated that if a vessel owner had a claim against BP, the vessel owner would provide BP with written notice within thirty days of learning of the claim,⁵ presumably relieving BP of any liability as to the number and kind of claims filed outside of or after one month's time from a vessel owner's knowledge of such a claim.

Furthermore, Article 22, regarding Publicity Releases and Marketing, essentially prohibited vessel owners and their employees from making any "news releases, marketing presentation, or any other public statements" without BP's prior written approval. BP retained sole discretion over grants of approval.⁶ In effect, this article impeded the fishermen's free speech rights. Similarly, an attached Agreement Regarding Propriety and Confidential Information required the vessel owner to "keep confidential and not disclose to others ... all Data developed, discovered, found or learned by it or disclosed to it."⁷

Resolution

Barisich and BP agreed to a Consent Judgment (Judgment) which amended the terms of the Agreement to: (a) delete Article 13(I)(1) in its entirety; (b) delete Article 13(F) in its entirety; (c) delete Paragraph 5 in its entirety; (d) delete Article 22 in its entirety; and (e) to modify Article 13(A) by deleting it in its entirety except for the beginning of the first sentence (which requires the vessel owner to maintain any insurance policies it was carrying prior to entering into the Agreement).⁸ The deleted provisions became null and void, and the court enjoined BP from enforcing the Agreement against any volunteers who had agreed to the deleted or modified provisions in identical or substantially similar documents. Additionally, the Judgment required BP to inform those volunteers who had agreed to the deleted or modified provisions that the language had been deleted or modified and declared null and void. Likewise, the Judgment enjoined BP from requiring any volunteer to sign an Agreement containing the deleted or modified, null and void language.⁹

Conclusion

Though oil spill litigation will continue, the court's decision bodes well for Gulf Coast fishermen. The judgment mandated that BP abide by the amended Agreement, regardless of the state in which the document is entered and regardless of the domicile or residence of the volunteer who signs it.¹⁰ In other words, the Judgment applies the same protections to any U.S. citizen, not just those fishermen in Louisiana.¹¹ The court also clarified that Barisich reserved all rights to challenge the remaining provisions within the Agreement (or any other BP document requiring signature) on any basis available under law, while similarly reserving all rights and defenses to BP.¹² Such explicit reservation of rights foreshadows that litigation awaits.

Endnotes

1. Barisich v. BP, P.L.C., No. 10-1316 (E.D. La. May 4, 2010). On June 22, 2010, this case was transferred and consolidated with other cases in Section "J" of this court awaiting a decision of the Judicial Panel on Multidistrict Litigation.
2. Complaint at 8, Barisich v. BP, No. 10-1316 (E.D. La. May 2, 2010).
3. Master Vessel Charter Agreement, attached to Complaint as Exhibit A, at 5.
4. *Id.* at 6.
5. *Id.*
6. *Id.* at 8.
7. *Id.* at Exhibit C.
8. Consent Decree at 1-2, Barisich v. BP, No. 10-1316 (E.D. La. May 4, 2010).
9. *Id.* at 2-3.
10. *Id.* at 2.
11. The Court, however, specified that the Judgment does not apply to those commercial enterprises that own or operate multiple vessels that were in the business of oilfield support or oilfield clean-up or mitigation prior to Apr. 20, 2010. Nor does the Judgment apply to vessels contracted for purposes other than mitigation or clean-up of oil from the Deepwater Horizon explosion, or to any contracts entered into before Apr. 20, 2010. *Id.* at 3.
12. *Id.*

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