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7-30-2010

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Recommended Citation

Roger Williams University School of Law, "Newsroom: Mike Daly '02 on U.S. Maritime Law" (2010). *Life of the Law School (1993-)*. 62.

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Newsroom

Mike Daly '02 on U.S. Maritime Law

Michael Daly, RWU Law '02, an attorney with Pierce Atwood and head of the ABA's admiralty and maritime law committee, talks to the National Law Journal about the state of U.S. Maritime Law.

The National Law Journal's Karen Sloan wrote this article titled, "[Gulf Coast spill casts doubt upon centuries-old legal principles.](#)"

July 30, 2010: Martin Davies is a man in demand. In the three months since the Deepwater Horizon disaster sent oil gushing into the Gulf of Mexico, the director of Tulane University Law School's Maritime Law Center has been fielding questions from congressional aides, reporters and investors seeking insight into U.S. maritime law -- a complicated, sometimes arcane set of statutes that often bears little resemblance to domestic law.

"Maritime law is obscure to people on the outside," Davies said. "It's largely ignored by lawmakers until there is a disaster of some sort, then everyone gets involved."

The Deepwater Horizon spill has thrust maritime law into the spotlight in a way few disasters have, prompting a gusher of proposed legislation that could significantly alter the practice.



The U.S. maritime bar, which practitioners estimate includes about 4,000 attorneys, is keeping close tabs on proposals. However, developing a consensus within the practice about the legislation is difficult with so many bills and so many interests at play, said **Pierce Atwood attorney Michael Daly [RWU Law '02], who heads the American Bar Association's admiralty and maritime law committee.** "Right now, it's a little bit like herding cats," he said.

Some maritime lawyers, particularly the small group who represent injured seaman or survivors of those who have been killed, welcome many of the proposed changes as long overdue. They argue that existing

maritime laws are outdated, inconsistent and unfair. Attorneys who represent corporate interests reply that lawmakers are moving too fast and could unwittingly drive up the cost of doing business at sea.

"We've been having these fights and issues for decades," said Charlie Papavizas, a partner in the Washington office of Winston & Strawn. "There are some serious changes under consideration and there is a general desire among politicians to do something. We'll likely get some changes before the midterm elections -- some good, some bad."

LEGACY OF THE EXXON VALDEZ

Federal lawmakers have introduced more than 80 spill-related bills, according to the Pew Environmental Group, a nonprofit organization that lobbies for conservation. At least seven involve either raising or abolishing the existing \$75 million liability cap for owners of offshore facilities responsible for oil spills, as set under the Oil Pollution Act of 1990, according to a paper written by Winston & Strawn partner Bryant Gardner slated for publication in Benedict's Maritime Bulletin. At least four bills would increase the availability of damages for people injured or killed at sea.

The sinking of the Deepwater Horizon has highlighted some of the quirks in existing maritime law covering liability. The maritime industry benefits from greater protection against liability under laws passed long ago to encourage participation in the shipping industry -- a lifeline for the nation in its earliest days. "This oil spill has brought into focus the limitations of liability that pretty much permeates though the whole of maritime law," Davies said. "To politicians, it looks unsavory, but if you take it away altogether, then you upset a centuries-old commercial balance."

A number of politicians have set their sights on the Death on the High Seas Act and the Jones Act, passed in 1920 partially in response to the sinking of the Titanic eight years earlier. Both laws restrict damages that injured seamen or the survivors of those killed at sea may collect from vessel owners. For example, most of the workers killed on the Deepwater Horizon fall under the Jones Act. Their survivors may collect economic damages such as loss of support, but not punitive damages or loss of society damages that can significantly drive up the compensation amount. A similar rule applies under the Death on the High Seas Act, which limits damages for others killed at sea including cruise ship passengers.

"The law is basically saying that the relationship [between the victim and their survivors] itself is worth nothing," said Thomas Galligan Jr., president of Colby-Sawyer College in New London, N.H. He is a maritime law expert who has testified during multiple congressional hearings since the Gulf spill. "That seems to be inconsistent with the modern views of life and relationships."

Expanding the damages available to those injured or killed at sea would bring maritime law in line with tort law throughout the nation and should have been done years ago, said Houston attorney Matthew Shaffer. He represents three of the injured Deepwater Horizon workers and the family of one who was killed.

Several bills have been introduced to expand availability of damages, including the Securing Protections for the Injured from Limitation on Liability Act -- the SPILL Act -- which the House of Representatives approved on July 1. The cruise industry has lobbied against the move, arguing that it would lead to costly litigation.

\$26.7 MILLION LIABILITY

The SPILL Act would abolish the Limitation of Liability Act -- an 1851 law that limits maritime damage claims to the value of the vessel involved at the end of the voyage. Transocean Ltd., the owner of the Deepwater Horizon rig, in May claimed that its liability to the injured and killed workers is limited to \$26.7 million -- the outstanding value of its contracts with BP PLC -- because the sunken rig is worth virtually nothing. Transocean's claim sparked public outrage.

Attorneys who represent maritime plaintiffs contend that the Limitation of Liability Act has long outlived its usefulness as a tool to encourage domestic shipping because insurance now limits risk. Other maritime attorneys argue that stripping away traditional liability protections will drive up insurance premiums and therefore the price of goods shipped by sea -- making the U.S. shipping industry less competitive with its counterparts from other nations that almost universally enjoy limited liability.

"How things are insured, who covers what and how much they charge is based upon this well-established framework," Davies said. "This will produce a change in the insurance landscape, and I don't think politicians are thinking about that. The U.S. shipping industry is small enough as it is. This is not going to help them."

Opponents of liability limits see the insurance argument as a smokescreen, arguing that the proposed changes won't drive up costs much. Vessel owners can only limit their liability if they can prove that they had no previous knowledge of the problems that led to a damage claim, said James Beard, a maritime attorney in Seattle who represents seaman injured or killed on the job.

"Limitation of liability should be beached and burned," Beard said. "It has no place in modern society and getting rid of it will not impact insurance premiums."

Attorneys don't know for sure what Congress will do with the multitude of maritime law bills that have been introduced since the spill, but they know the desire among politicians to take action is strong.

"It takes a tragedy to get Congress interested in maritime law," said Robert Jarvis, who teaches maritime law at Nova Southeastern University Shepard Broad Law Center. "When there isn't a tragedy, you get real indifference."

For full story, click [here](#).

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