



*The Deepwater Horizon Survivors' Fairness Act: Attempts to Amend Limitation of Liability and Death on High Seas Act Continue*

On June 8, 2011, the Senate Committee on Commerce, Science, and Transportation approved a bill titled "Deepwater Horizon Survivors' Fairness Act" (S. 183), which would expand the remedies available to those rig workers who were injured and the families of those killed in the BP *Deepwater Horizon* explosion of April, 2010. The proposed Act would amend various federal maritime statutes, including the Shipowners' Liability Act of 1851, the Death on the High Seas Act, and the Jones Act.

Senator John D. Rockefeller IV, Democrat from West Virginia, introduced the bill in January, 2011. The bill that passed through the Senate Committee on June 8, 2011 removed previous language that was unpopular with vessel owners/operators as it would have allowed those claiming death and disability to sue in state court rather than in the current consolidated federal action pending in Louisiana that has gathered most of the cases that resulted from the spill into one federal action. In its present form, the Act would still allow broader compensation to the victims and their families for a variety of claims of personal injury and wrongful death.

The current bill is a narrower version of a bill from 2010 that passed the House but was stalled in the Senate. Last year's bill was much broader in scope and would have allowed the families of all workers killed in any incident offshore to sue for non-pecuniary damages, which include pain and suffering and loss of care, compassion, and comfort. The change would have also applied to passengers of ships on the high seas and cruise lines.

The present bill is more limited in scope and would apply specifically and exclusively to the victims of the *Deepwater Horizon* explosion. Furthermore, it is limited to the actual *Deepwater Horizon* explosion, not the ensuing oil spill. The limited scope of the bill proposed at present is similar to a bill passed by Congress in 2000, which expanded recoverable damages available under the Death on the High Seas Act (DOHSA) to include non-pecuniary damages. Traditionally the DOHSA only allows for recovery of pecuniary damages. The 2000 amendment to the DOHSA was a reaction to the 1996 TWA plane flight that exploded off the coast of Long Island and retroactively applied to that incident. It provided a limited exception, extending recovery of non-pecuniary damages to those who are



killed in commercial aviation accidents. The proposed Deepwater Horizon Survivors' Fairness Act is similar in its extent and application. It would amend the relevant acts as follows:

### The Shipowners' Liability Act of 1851

Currently, the Shipowners' Liability Act of 1851 normally limits a vessel owner's liability to the post-casualty value of the vessel, plus pending freight. The Deepwater Horizon Survivors' Fairness Act would specifically exempt from this limitation a claim for personal injury or wrongful death arising from the blowout and sinking of the *Deepwater Horizon*. This would allow victims of the explosion to recover more than the value of the vessel and its freight.

### The Death on the High Seas Act

The Death on the High Seas Act normally permits only a civil action in admiralty where a death results from a wrongful act or negligence and allows fair compensation for pecuniary losses only. The Deepwater Horizon Survivors' Fairness Act would create a civil action in law **or** in admiralty against the person or vessel responsible for a death that resulted from the *Deepwater Horizon* incident. This remedy would be available to the families of those who died in the explosion. Furthermore, it would expand their recovery to include not only compensation for pecuniary losses, but for non-pecuniary losses. In addition, it would include compensation for the decedent's pain and suffering.

### The Jones Act

The Jones Act governs recoveries for wrongful death and survival actions against the employer of a seaman. The Deepwater Horizon Survivors' Fairness Act would expand the damages recoverable under the Jones Act for the seaman that died in the Deepwater incident to include fair compensation for non-pecuniary losses, which would comprise the loss of care, comfort, companionship, and society, and pain and suffering.



Conclusion

The future of the Senate Bill 183, the Deepwater Horizon Survivors' Fairness Act, is uncertain at present. It still requires a majority vote in the Senate and a trip through the House before it becomes law.

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