

**Alabama Department of Public Health (ADPH)  
Emergency Preparedness Advisory Council  
Healthcare Sector Conference Call Minutes**

Date and Time of Call: Tuesday, July 27, 2010 - 0930 to 1030

Call Number: **1-888-776-3766**

Call Room Number: **3251726 press the star (\*) key before and after the room number**

*Please note this is a call-in number and call procedure, the call will not be answered by an operator, but by an automated attendant.*

1. Welcome, Identification of committee members in alphabetical order, Review of Agenda  
(Sallie Shipman)

1. Paul Abel, Emergency Preparedness Manager/Safety Officer, DCH System
2. Steve Anderson, Baptist World Mission
3. Zoe Baker, Black Belt Medical Reserve Corps
4. Stanley Batchelor, Human Services Branch Director, AEMA
5. Beth Beck, Springhill Medical Center
6. Sharon Bradford, Surveillance Nurse Coordinator, ADPH, Area 3
7. Ann Brantley, HVA Nurse Coordinator, Asst. CEP Healthcare Sector Liaison, ADPH, CEP
8. Rebecca Cameron, Case Manager, Pickens County Medical Center
9. Dr. John Campbell, State EMS Medical Director, ADPH
10. Lisa Castaldo, The Governor's Office of Faith-Based and Community Initiative
11. Linda Cater, Department of Post Secondary Education
12. Valerie Cochran, Asst. State Nursing Director, ADPH
13. Amy Coody, Alabama HAN Director, ADPH, CEP
14. Charlie Crawford, ESAR-VHP/MRC Coordinator, ADPH, CEP
15. Jonathan Daniel, St. Vincent's East
16. Tommy Dockery, EP Coordinator, ADPH, Area 3
17. Carter English, Indigent Drug Program Pharmacist, ADMH & Mental Retardation
18. Dr. John G. Fisher, Director, Alabama Poison Center
19. Dr. Tom Geary, Medical Director for Bureau of Health Provider Standards & ADPH Leader PI Healthcare Committee, ADPH
20. Tina Givens, UAB
21. Dr. Wesley Granger, Associate Professor and Program Director, UAB, Respiratory Therapy Program
22. Kathy Headley, Safety Director, Medical West, an affiliate of the UAB Health System
23. Heather Hogue, Director of Emergency Preparedness and Response, Jefferson County Department of Health
24. Karen Holland, Director of Quality and Regulatory Compliance, Jackson Hospital & Clinic
25. Danne Howard, Vice President, Government Relations, Alabama Hospital Association
26. Angelia Huntley, Infection Control Coordinator, Hospital Educator, and Employee Health Nurse, HealthSouth Rehabilitation Hospital Of Montgomery
27. Seratia Johnson, Quality Improvement, ADPH, Division of Epidemiology
28. Donna Keith, Safety Manager, St. Vincent's Birmingham
29. Acquanetta Knight, Director of Policy and Planning, State of AL Department of Mental Health and Mental Retardation
30. Monica Knight, Director of Disease Control, Mobile County Health Department
31. Joe Lynch, Alabama Fire College
32. Stephan Mambazo, Emergency Preparedness Social Worker, ADPH, OPSS
33. Ceceilia Mills, Guidance and Counseling, Alabama State Dept. of Education
34. Tom Mock, Education Specialist and Preventative Support Services, Alabama State Dept. of Education
35. Andy Mullins, Director, ADPH, CEP
36. Valeria Patton, HSEEP/CRA Coordinator, ADPH
37. Teresa Porter, Surveillance Nurse Coordinator, ADPH, Area 9
38. Benjamin P. Rackley, Director, Black Belt Medical Reserve Corps
39. Raffias Redmon, EP Environmentalist, Mobile County Health Department

40. Jane Reeves, CEP Nurse Manager, CEP Healthcare Sector Liaison, ADPH, CEP
41. Logan Robinson, NAMRC Coordinator, North Alabama MRC
42. Sallie Shipman, HVA Nurse Coordinator, Asst. CEP Healthcare Sector Liaison, ADPH, CEP
43. David Shultz, EP Administrator, Mobile County Health Department
44. Charles Thomas, State Pharmacy Director, ADPH
45. Joyce Thomas, Education Specialist/ Emergency Preparedness, Huntsville Hospital Emergency Department
46. Tom Tucker, COO, Alabama Primary Health Care Association, Inc.
47. John Wible, General Counsel, Alabama Department of Public Health
48. Mary Hooks, Black Belt Medical Reserve Corps

2. Review and approval of minutes from April 27, 2010 Healthcare Sector Meeting (Sallie Shipman) – Correction in attendees noted and corrected. Content of the minutes was approved by the committee.

3. Old Business (Subcommittee Co-chair or designee)

Discussion Items:

**A. Subcommittee Updates-**

**Healthcare Coordination/Operational Planning – Sallie Shipman, HVA Nurse Coordinator, ADPH CEP:**

The Criteria for Mechanical Ventilator Triage Following Proclamation of Mass-Casualty Respiratory Emergency was approved by the State Committee of Public Health (SCPH) on April 8, 2010. The final approved version is available at:

<http://www.adph.org/CEP/assets/VENTTRIAGE.pdf>

The Alabama Emergency Management Agency (AEMA) will incorporate the approved protocol into the Alabama Emergency Operations Plan (EOP). The incorporation process has been delayed to December 2010. The next step will be the promotion of the protocol through the Alabama Hospital Association (AlaHA). The ventilator triage conferences are available on-demand at:

<http://www.adph.org/ALPHTN/index.asp?id=3949> .

The improvement process for the [County](#) and [Area](#) Emergency Support Function (ESF) 8 All-Hazard Assessments is complete. The date for the next submission is August 31, 2010. The data derived from the assessments is extremely important to ADPH emergency preparedness planning efforts.

The [Alabama Healthcare Disaster Planning Guide](#) is a companion document to the assessment tool and is in the process of being updated.

**Training and Exercise Planning –Valeria Patton, ADPH Center for Emergency Preparedness (CEP)**

Closed point of dispensing (POD) Informational Sessions – there were eight seminars conducted in [Alabama's Hospital Planning Regions](#). CDC had suggested that Alabama focus on the Closed POD concept. Closed PODs will allow large corporations/business entities to vaccinate their employees and employee families. This will lessen the

impact on ADPH-staffed open PODs. This series will be continued in the next budget period.

### **New Training & Exercise Opportunities**

Closed POD training will be conducted for business entities that expressed an interest in operating as a Closed POD. Some issues regarding Alabama's dispensing law will have to be worked out prior to planning the training sessions.

Healthcare Operational Planning – a tabletop exercise will be conducted to develop standards and operational protocols that can be implemented during disaster conditions in cooperation with all aspects of healthcare including the business aspects and continuity of operations planning.

### **Pharmacy Issues – Charlie Thomas, State Pharmacy Director, ADPH**

Alternate means of product delivery continues to be an issue in this subcommittee. The modeling software developed for [Strategic National Stockpile](#) (SNS) programs by the CDC is called Real Opt. Real Opt is designed to assist states in developing an alternate means of medication delivery to Regional Distribution Sites (RDSs) and PODs. Jim Barrett of Montgomery Emergency Management Agency (EMA) is the Receiving, Staging, and Storage (RSS) Manager for ADPH during SNS activation. Mr. Barrett has discussed Real Opt with CDC SNS Consultant Deb Loveys, and plans to look further into Real Opt.

Planning is underway to incorporate testing call in system for mass dispensing. Medications will have labels that will route the caller to either Auburn (AU) or Samford drug information centers, or the Alabama Poison Control Center (APC). Countermeasure Response Administration (CRA) system is the data submitted to CDC during an event. CRA has components for submission of adverse events resulting from pharmaceutical distribution during an event; discussion over how all support agencies will report this data is ongoing. An exercise to test this system is planned for the coming grant cycle.

### **Faith Based/Community and Other Volunteers Sector – Charlie Crawford, Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP)/Medical Reserve Corps (MRC) Coordinator, ADPH CEP**

In support to the Mental Health response to the oil spill, the ADPH volunteer database supplied to the ADPH Social Work division a list of mental health volunteers that are registered in the system from the Alabama Gulf Coast and surrounding counties of Alabama. The Alabama Department of Mental Health and ADPH are

looking at the utilization of volunteers as part of the coordinated response.

[PROJECT HELP MRC](#) (based in Birmingham) has had its unit director and a few members assisting in the cleanup crew relief stations.

ADPH is currently conducting an in-depth analysis of its volunteer database from a functionality perspective. In the end, access by MRC unit leaders, local ADPH coordinators, and other key administrative users will enable the system to function as a statewide volunteer management tool.

A volunteer symposium planning meeting is scheduled for Friday July 30<sup>th</sup>. The content and structure of the next symposia will be discussed. Presentations from the previous volunteer symposia are available at: <http://www.adph.org/CEP/index.asp?id=4055#ept>

The [Governor's Office of Faith-Based Initiatives](#) volunteer registry is the official registration site for volunteers to assist with the oil spill for Alabama. This site is available to help coordinate the registration of volunteers including out of state volunteers.

**Alabama:** <http://www.servealabama.gov/> – or call 2-1-1 or 1-888-421-1266.

#### 4. New Business (Sallie Shipman)

Discussion Items:

##### A. [Gulf of Mexico Oil Spill Response](#) and Planning

- **Andy Mullins, Director of CEP, ADPH**

ADPH and Mobile County Health Department have been responding to the oil spill since the beginning. Staff has been placed in Mobile and Baldwin Counties to address the public health needs for the residents in the area. The department has been jointly involved in the Unified Command with partner state agencies. Public health concerns include, but are not limited to, beach conditions, shellfish, finfish, dispersants, and direct oil exposure health effects. ADPH will be working with CDC to collect data in regard to the long term effects from exposure to the oil. ADPH is taking a proactive position with all matters directed toward protecting the health of the public.

Over flights have seen very little oil since Tropical Storm Bonnie. Experts have noted that the natural increase in wave action from the storm could have been a natural dispersant.

The Unified Command reported that officials hope to have the first relief well completed by this week.

Once the beach advisories are lifted, there will be signage advising precaution of potential oil in the water and what they

should do if they are exposed. The Coast Guard estimates that there will continue to be small patches of oil for months and may be years before tar balls return to a baseline level.

- **Stanley Batchelor, Human Services Branch Director, Alabama Department of Emergency Management (AEMA)**

The [Alabama Department of Environmental Management](#) (ADEM) is the lead agency with the oil spill response. AEMA has been coordinating efforts for the response. AEMA has worked with the Governor's Office to distribute 25 million in grants in Mobile and Baldwin Counties municipalities for response and mitigation projects related to the oil spill. They are presently working to award a second 25 million in grants.

The response has involved 10 different state agencies and since the response there have been a total of 409 employees working in Baldwin and Mobile Counties. In addition, the Alabama National Guard has 344 members working in the region to help manage the response. The [211](#) system has been utilized to coordinate volunteer efforts. Information specific to the oil spill is available at the following:

AEMA - <http://ema.alabama.gov/>

Federal - <http://www.restorethegulf.gov/>

ADEM -

<http://www.adem.alabama.gov/newsEvents/pressreleases/2010/OilSpill.cnt>

- **Danne Howard, Vice President, Government Relations, Alabama Hospital Association (AlaHA)**

[AlaHA](#) has been cooperatively working with ADPH, local hospitals, and ADMH to address the healthcare needs of the region. There have been efforts in conjunction with Dr. Richard Powers to address the mental health needs of the patients presenting to the emergency departments in the area. Also, there have been cooperative efforts with ADPH with surveillance of those medically affected by the oil. In addition to the oil related illnesses presenting to hospital emergency departments, there have been some heat related issues for the clean-up workers as well.

- **Acquanetta Knight, Director of Policy & Planning, Alabama Department of Mental Health and Mental Retardation (ADMH)**

There has been cooperative planning within the senior management of the ADMH and ADPH to develop public messaging for the oil spill response.

Tips for survival were developed by Dr. Richard Powers for local residents. The materials are available on the Alabama

Department of Mental Health website, [www.mh.alabama.gov](http://www.mh.alabama.gov).

Staff are working to help affected individuals in the area on a rotating basis in Baldwin County and has been communicating with officials and community.

ADMH has presented a proposal to BP in conjunction with the [Substance Abuse and Mental Health Services Administration](#) (SAMHSA) for behavioral health services. SAMHSA is developing oil spill specific post disaster counseling to be presented in Baldwin and Mobile Counties. The SAMHSA Disaster Technical Assistance Center has developed oil spill tip sheets that provide practical advice and resources on how to deal with the effects the Gulf Coast oil spill and the possible consequences for physical and mental health. The tip sheets are available in English, Cambodian, Haitian/Creole, Lao, Spanish and Vietnamese.

Subjects include:

- \* Tips for Talking to Children and Youth about the Oil Spill Disaster: A Guide for Parents and Educators

- \* Tips for Talking to Children and Youth about the Oil Spill Disaster: Interventions at Home for Preschoolers to Adolescents

- \* Tips for Coping with the Oil Spill Disaster: Managing Your Stress

- \* Tips for Dealing with Grief Due to the Oil Spill Disaster

- \* Tips for Oil Spill Disaster Response Workers: Possible Signs of Alcohol and Substance Abuse

- \* Tips for Oil Spill Disaster Response Workers: Managing and Preventing Stress for Managers and Workers

Tip sheets can be found at the Web site below:

<http://samhsa.gov/Disaster/traumaticevents.aspx>

Since the oil spill there have been increases in domestic violence, drug abuse and other mental health issues. The economic issues will continue to pose problems for the area. There have been many issues of need in relation to the economy, including increase of need for children starting back to school (e.g. school supplies, clothing).

John Wible suggested that ADMH compile lessons learned from the response to help with future disasters and Acquannetta stated she will consult with Dr. Powers.

Cecilia Mills, Guidance and Counseling, Alabama State Dept. of Education stated that her department would like to collaborate with ADMH and offer the services of school counselors. Cecilia stated that the response could possibly

expand to include school counselors in other counties as well.

ADMH will make contact with her to develop training in the Gulf as children return to school. This will include the collaboration of the Department of Education, ADPH and ADMH. Later, and in partnership with ADPH, ADMH may bring nationally recognized speakers to the state to address child and adolescent concerns.

Monica Knight discussed the importance of have mental health material in various languages (e.g. Vietnamese) to address the numerous different ethnic groups in the community. SAMHSA has posted at their website resources in Vietnamese and related dialects. As a last resort, interpreters are also budgeted in the BP proposal for behavioral health services.

- **Tom Tucker, Chief Operating Officer (COO), [Alabama Primary Health Care Association, Inc.](#)**

There are community health center sites in the region working with ADPH to collect surveillance data in relation to the oil spill exposures along with cooperative efforts to meet the increased needs of the community. There have been notable mental health needs presenting to the community health centers in the area. Another issue has been the increased demand for community health services in relation to the economic impact from the oil spill.

- **John Wible, General Counsel, ADPH**

See "Deepwater Horizon - The BP Oil Spill Legal Issues"  
By: John R. Wible and Christopher Scott, July 27, 2010, located after the final page of the minutes.

- **John Fisher, Director, Alabama Poison Center**

Poison Centers are aggregating calls from citizens about the oil spill, and reporting them to ADPH Division of Epidemiology within 24 hours. In the initial response, BP set up a claim center outside of the region resulting in a disconnect. When this was recognized and addressed by the Poison Centers in the region, BP agreed to utilize the National Poison Center data base to collect exposure data. There have been physicians suggesting there has been an increase in asthma related symptoms in pediatric patients.

As of today, the Poison Centers have received 325 calls in Alabama and 1,400 calls nationally. This allows for the collection of data regarding the health effects from the oil spill.

- **Teresa Porter, Area 9 EP Coordinator, Baldwin County Local Response; Monica Knight, Director Bureau of Disease Control and David Shultz, Area 11 EP Administrator, Mobile County**

### **Health Department (MCHD), Mobile County Local Response**

ADPH Area 9 (Baldwin County) and MCHD (Mobile County, ADPH Area 11) have been working with the ADPH state office to provide direct and indirect coverage of the Unified Command.

Both areas have been working with the healthcare providers in Baldwin and Mobile Counties (Hospital ER's, Urgent Care Clinics and Community Health Clinics) to improve the current surveillance system related to the Oil Event. The ADPH Division of Epidemiology assisted with this process with focused visits to health care providers. The medical surveillance response in the two counties started on May 15, 2010 allowing baseline data to be recorded prior to the oil being seen on the shore.

Also, the areas have posted swimming advisories at public access areas which have been affected by oil and have worked with private condo owners to provide signage for their locations.

Discussions with the local lead school nurses on issues regarding collaborative efforts for meeting the needs of the local students (e.g., what type of information needs to be provided to students and teachers/counselors) have occurred in both areas.

Representatives from both areas have attended community meetings that have been held with state and federal partners for the general public. During these meetings, concerns and questions of concerned citizens were addressed.

In addition, Area 9 has also had discussions with local the mental health director of how the area staff could provide assistance with issues along with improvement of surveillance activities.

5. New Business, not identified on the agenda (Sallie Shipman).  
None noted on the call.
6. Review date and time of next call, **Tuesday, October 19, 2010** then to be held quarterly on the fourth Tuesday (Note: Due to a schedule conflict this call will be held on the third Tuesday) of the month from 9:30 a.m. until 10:30 a.m. (Sallie Shipman)
7. Other topics and announcements (All)  
None noted on the call.
8. Adjourn



**Deepwater Horizon - The BP Oil Spill**  
**Legal Issues**  
**By: John R. Wible and Christopher Scott**  
**July 27, 2010**

On April 20, the *Deepwater Horizon*, a drilling rig in the Gulf of Mexico, caught fire and sank two days later. The ripple effects of the oil rig explosion are still spreading as crude oil flowed into the Gulf of Mexico for 91 days. This is the largest oil spill in the history of the United States and will ultimately touch the lives of a countless number of people and businesses along the Gulf Coast. It is also expected that many maritime and environmental laws will be challenged by lawsuits associated with this disastrous event.

As a result of the 1989 *Exxon Valdez* catastrophe, the laws concerning liability of the responsible parties were largely reshaped. The Oil Pollution Act of 1990<sup>1</sup> improved the nation's ability to prevent and respond to oil spills, but also limited liability to companies such as BP to the cost of cleanup plus \$75 million for additional damages.

BP claims that they are already spending about \$6 million per day on efforts to contain the spill, and report that over \$200 million has been paid to individuals affected by the spill. Current estimates show that this spill will ultimately cost BP approximately \$20 billion.

Transocean (the Switzerland based contractor that owned the *Deepwater Horizon* drilling rig) has asked the federal court system<sup>2</sup> to limit its liability to less than \$27 million. Transocean's argument is based on an archaic maritime law, the Limitation of Liability Act of 1851, which allows the ship's owner to limit liability arising out of a marine casualty to the post casualty value of the vessel.

The *Deepwater Horizon* drilling platform, which is considered to be a vessel because it floats and may be navigated, was valued at more than \$500 million while operational, but currently rests on the floor of the Gulf of Mexico, 5,000 feet below the surface and has an estimated value of less than \$27 million. Interestingly, this Limitation of Liability Act of 1851 was used by the owner<sup>3</sup> of the *Titanic* to limit liability (estimated to be greater than \$22 million

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<sup>1</sup> 33 USC §2701, *et seq.*

<sup>2</sup> *In Re; Complaint of Triton, GMBH, Transocean Holdings, LLC, et al* - - - F. Supp. - - - , 2010 Westlaw 2487939 (U.S. D.Ct., S.D., Tx.), - - - F. Supp - - - 2010 Westlaw 2541825 (U.S. D.Ct., S.D., Tx.)

<sup>3</sup> The *Titanic*, registered as a British mail ship was really owned by the American railroad tycoon, John Pierpont (J.P.) Morgan. He had most of the controlling interest in the American railroads and was looking to expand his ownership to seize control of the Atlantic shipping trade. He succeeded in acquiring the White Star Line in 1902. Morgan had his very own private suite and promenade deck on the *Titanic*. He was supposed to join her for her maiden voyage but cancelled his passage, sparing him the fate of many of the other millionaires.

in wrongful death suits alone) to the vessel's post casualty valuation of \$95 thousand, which equaled the value of the surviving lifeboats and some related equipment.

While the Limitations of Liability Act of 1851 and Oil Pollution Act of 1990 are laws which are still current, the House of Representatives recently passed a bill which would repeal these laws eliminating the \$75 million cap and retroactively hold all potentially responsible parties fully accountable. While retroactive laws are generally found to be unconstitutional, it is possible that where a law repeals a previous law, then the repealed legislation may no longer apply to the situation, even if that situation arose before the law was repealed. The Act was brought about by the case of the *Exxon Valdez* spill off Alaska in 1989.

Reaction to the *Exxon Valdez* spill caused sweeping changes to maritime and environmental laws. However, although litigation which followed the *Exxon Valdez* spill resulted in an award of \$4.5 billion in punitive damages, several appeals over a span of 20 years ultimately reduced this amount to approximately \$500 million. The State of Alaska finally received payment from Exxon in 2009. What will be the results from the Gulf of Mexico oil spill?

Alabama Attorney General, Troy King announced plans to sue on July 23, 2010. His statement holds:

... today he will sue BP in an effort to recover revenue the state has lost because of the oil spill in the Gulf.

King said the spill "threatens the funding of our schools, our roads and bridges, our prisons, even Medicaid as tax revenues are impacted by it."

King said he has retained Balch & Bingham LLP to draft the lawsuit in the state's name. The governor's office has to sign all legal contracts, and King said he has not discussed the lawsuit with Gov. Bob Riley, who is in Europe on an industry hunting trip. Press Secretary Todd Stacy said the contract will be reviewed by the governor's legal office, but a lawsuit seemed "premature."

Economists still are calculating the spill's long-term financial impact on the state. "Once the calculations are complete, the bill will be sent to BP. It seems premature for the state to sue before we've even sent the bill," Stacy said.

...

King also accused BP of foot-dragging and accused the administrator of the \$20 billion Gulf oil spill compensation fund of "proselytizing for BP's interests in eliminating

as many claims as he can."

Ken Feinberg, who headed the Sept. 11 Victim Compensation Fund, is in charge of a \$20 billion pool of money to be set aside by BP to compensate those hurt by the massive oil spill. King said Feinberg "pretends to negotiate" with coastal attorneys general. "I am prepared to take legal action if necessary to stop Mr. Feinberg from causing further harm to an already traumatized populace unless the president does so first," King said.

Should a suit be filed in the name of the state, my office been told that all state agency claims should be pursued through the Attorney General so that there will not be separate legal actions in the name of the state. The Attorney General is still considering what legal theories might be pursued, but one would speculate that a torts action would be filed under the general tort action aside from the claims mentioned above.

Claims could directly related to the state could be time and resources expended in the cleanup for municipal, county and state entities for extra duty time of personnel, lost revenues from lost taxes, especially sales and lodging taxes; the oil and gas severance tax, expenditures for equipment and materials associated with cleanup such as boom and other protective measures. Causes of action might sound in common law negligence, nuisance, and misrepresentation, citing the above damages to the state. A claim might also lie for the actual damage to the state's coastline and estuaries irrespective of the cleanup. There could be a claim under the Federal Water Pollution Control Act<sup>4</sup>

There would also be a claim for substantial punitive damages.

Non-State of Alabama claims would be legion, ranging from those with property directly damaged such as beach-front property owners and owners of the estuaries to non-immediate damages such as lost wages by workers out of a job and lost profits from business lost as an indirect result of lost tourist trade, restaurants, hotels, all sorts of retail establishments and as well as the Casino owned by the Poarch Band of Creek Indians in Atmore, Alabama.

Other claims would be from individuals who have suffered physical harm by the oil or fumes from the oil or dispersants used, now banned by US EPA.

In prosecuting such a claim, it is interesting to note the previous worst spill case, the *Exxon Valdez* (Exxon). In *Exxon*, the Plaintiffs, besides bringing the common law state issue cases, also brought claims in federal court for strict liability under the Trans-Alaska Pipeline Authorization Act ("TAPAA"); in state court, the strict liability claim was brought

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<sup>4</sup> 33 USC 1251, *et seq.*

under the Alaska Environmental Conservation Act (the "Alaska Act"). Of course those statutes are not an issue in any Alabama case.

Typically, common law claims are based on state law. However, the Constitution of the United States establishes that federal jurisdiction extends to "all cases of admiralty and maritime law."<sup>5</sup> Once admiralty jurisdiction is established, the substantive law of admiralty is applied.

Early on in the Exxon Valdez litigation, both the federal and state courts were asked to decide whether maritime law applied to the case, whether it preempted state common law, and whether, under maritime law, certain types of claims were precluded. These questions were of critical importance: the answer would determine which groups of injured plaintiffs would be legally entitled to bring claims.

The short-hand version of the history of the Exxon Valdez is summarized in *Exxon Shipping Co. v Baker*:<sup>6</sup>

In 1989, petitioners' (collectively, Exxon) supertanker grounded on a reef off Alaska, spilling millions of gallons of crude oil into Prince William Sound. The accident occurred after the tanker's captain, Joseph Hazelwood—who had a history of alcohol abuse and whose blood still had a high alcohol level 11 hours after the spill—inexplicably exited the bridge, leaving a tricky course correction to unlicensed subordinates. Exxon spent some \$2.1 billion in cleanup efforts, pleaded guilty to criminal violations occasioning fines, settled a civil action by the United States and Alaska for at least \$900 million, and paid another \$303 million in voluntary payments to private parties. Other civil cases were consolidated into this one, brought against Exxon, Hazelwood, and others to recover economic losses suffered by respondents (hereinafter Baker), who depend on Prince William Sound for their livelihoods. At Phase I of the trial, the jury found Exxon and Hazelwood reckless (and thus potentially liable for punitive damages) under instructions providing that a corporation is responsible for the reckless acts of employees acting in a managerial capacity in the scope of their employment. In Phase II, the jury awarded \$287 million in compensatory damages to some of the plaintiffs; others had settled their compensatory claims for \$22.6 million. In Phase III, the jury awarded \$5,000 in punitive damages against Hazelwood and \$5 billion against Exxon. The Ninth Circuit upheld the Phase I jury instruction on corporate liability and ultimately remitted the punitive damages award against Exxon to \$2.5 billion.

In February 1991, nearly two years after the catastrophe, the federal court gave its answer to the admiralty jurisdiction question. In Order No. 38,<sup>7</sup> Judge Russell Holland<sup>8</sup> first ruled that the oil spill was a "maritime tort" since it satisfied the "locality" and

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<sup>5</sup> US Constitution, Article III, Section 2.

<sup>6</sup> 128 S. Ct. 2505, (US, 2008.)

<sup>7</sup> *Exxon Shipping Co v. Baker*, 296 F. Supp. 2d 1071

<sup>8</sup> US District, District of Alaska.

"maritime nexus" tests, which together are used to determine whether maritime jurisdiction is invoked. Judge Holland then ruled that maritime jurisdiction applied not only to injuries suffered at sea, but also to injuries that occurred on land, so long as they were proximately caused by a vessel at sea. Thus, for example, owners of a restaurant, a boatyard, and a marine supply company, whose businesses were damaged by the spill, were swept within the jurisdiction of maritime law.

The next step in Judge Holland's analysis was crucial. Applying what has become known as the *Robins Dry Dock*<sup>9</sup> rule, Judge Holland concluded that, in the absence of physical injury to person or property, a party may not recover for pecuniary or economic losses suffered as a result of a maritime tort. In other words, liability is limited to those physically touched by the oil. While the justification for this rule is usually couched in terms of public policy (the need to limit claims in order to prevent an endless chain of recoverable economic harm), the reality is grounded in commercial policy: the *Robins Dry Dock* rule limits the liability of the shipping industry in order to enhance business. Indeed, this judicial liability limitation is inconsistent with, and contradicted by, the legal standard applied to similar incidents occurring on land.

Finally, Judge Holland ruled that maritime law preempted all state common law. In other words, the Court held that an injured plaintiff was only permitted to seek redress under maritime law, and could not also pursue claims under state law. This was the key, for claims for negligence under state law permit an injured plaintiff to recover for all damages that are "proximately caused" by the wrongful act. Under a traditional proximate cause analysis, there is no prohibition against recovering for economic loss, even in the absence of physical injury.

The significance of this ruling cannot be overemphasized. Order No. 38 became the law of the case, and led to a number of rulings just before trial dismissing the claims of the following groups of plaintiffs: processors, cannery workers, tenderers, area businesses, and municipalities. Judge Holland also dismissed the claims of "unoiled" property owners for devaluation of their property, and the Alaska Natives' claims for injury to their subsistence culture. The case went up to the Ninth Circuit Court of Appeals three times.

Plaintiffs of all sorts, Native Alaskan Indian, fishermen, boat owners, property holders and many others began to *pro tanto* out of the case. Judge Holland's court ultimately issued punitive damages against Exxon for \$4.5 Billion. There were appeals and cross appeals to the Ninth Circuit and we remanded to Judge Holland with instruction to reduce the amount of punitive damages to \$2.5 Billion.

At present – yes, present, Exxon Valdez is still in litigation, there are at least 91 different actions involving the facts of the occurrence. Thus, unless the state and the myriad of other claimants accept what Mr. Feinberg, the master of the Victim Compensations Fund, is willing to give, if history is any indication, it will be three or four Governors or Attorneys General terms from now until there is a final settlement of Deepwater Horizon.

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<sup>9</sup> *Robbins Dry Dock and Repair Co. v. Flint*. 275 U.S. 303 (1927), opinion written by Mr. Justice Oliver Wendell Holmes