
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

IN THE MATTER OF THE COMPLAINT §
OF AET INC. LIMITED AS OWNER, §
AND AET SHIPMANAGEMENT §
(SINGAPORE) PTE. LTD AS MANAGER, § CIVIL ACTION NO. 1:10-CV-51
OF THE M/V EAGLE OTOME, FOR §
EXONERATION FROM OR LIMITATION §
OF LIABILITY §

ORDER

The M/V Eagle Otome (“Eagle Otome”) is an oil tanker owned by AET Inc. Ltd. The M/V Gull Arrow (“Gull Arrow”) is a vessel owned by Gearbulk Shipowning, Ltd. The M/V Dixie Vengeance (“Dixie Vengeance”) is a tugboat operating in the Sabine-Neches Waterway at Port Arthur, Texas. At approximately 9:36 a.m. on January 23, 2010, a collision occurred between the Eagle Otome, the Gull Arrow, and barges pushed by the Dixie Vengeance. The force of the collision pierced the Eagle Otome’s hull, causing approximately 460,000 gallons of crude oil to spill into the Sabine-Neches Waterway.

Shortly thereafter, AET Inc. Ltd. (the “Shipowner”) filed the instant action seeking to exonerate or limit its liability for any damages caused by the collision and resulting oil spill. In accordance with the rules governing such actions (*see* Supplemental Rule F(4) of the Federal Rules of Civil Procedure), the Court approved a notice directing any persons or entities claiming an injury related to the incident in question to file a claim at the Jack Brooks Federal Courthouse in Beaumont, Texas. This notice was distributed to roughly 5,000 residents of the community surrounding the Sabine-Neches Waterway.

In the following months, approximately 2,464 claims were filed by claimants represented by attorneys, and approximately 13,477 claims were filed by claimants who were not represented

by counsel. **Unfortunately, many claimants mistakenly thought that they would be entitled to compensation by merely filing a claim. See Juan A. Lozano, *Texas Tanker Collision Causing Legal Confusion*, BUSINESS INSIDER, May 12, 2010, <http://www.businessinsider.com/texas-tanker-collision-causing-legal-confusion-2010-5>. Under the law, this is not correct. Claimants must present evidence and make a showing that, among other things, any injury they suffered was proximately caused by the collision and/or resulting oil spill. Moreover, many claimants mistakenly believed that various law firms identified on documents included with the community notice had been appointed to represent their interests in this lawsuit. See *id.* This also is not correct. No attorneys have agreed or been assigned to represent any claimants in this case except those attorneys whom the claimants have, themselves, retained.**

The Court entered a stay in the case to allow the district clerk's office the opportunity to docket each claim accurately. The district clerk's office has completed this task, and the Court must now effectively manage this case. There is a need to handle large, mass-tort cases such as this differently. The unique and complex nature of a toxic tort case such as this, with thousands of claimants, many of whom are unrepresented by counsel, and many of whom may have mistakenly believed that they are entitled to compensation by merely filing a claim, serves as a reason to require claimants to provide documentation establishing a *prima facie* basis for their alleged damages.

These types of orders, known as *Lone Pine* orders, have been approved by the United States Court of Appeals for the Fifth Circuit and "are designed to handle the complex issues and potential burdens on defendants and the court in mass tort litigation." See *Acuna v. Brown & Root Inc.*, 200 F.3d 335, 340 (5th Cir. 2000). Imposition of a *Lone Pine* order will simplify the case,

streamline costs to both the claimants and the Shipowner, conserve judicial resources, and aid the Court in preparing a plan for trial of this case. Therefore, to expedite discovery, conserve judicial resources, and facilitate the administration of this case, the Court enters the following Case Management Order *sua sponte*:

IT IS ORDERED THAT:

On or before June 24, 2011, each claimant who is claiming a personal injury sustained as a result of exposure to petroleum and/or petroleum-based products which spilled from the Eagle Otome into the Sabine-Neches waterway, either to himself or herself, or to a minor or decedent, must serve on the Shipowner a sworn affidavit from **a licensed physician or other qualified expert**, or both, as may be necessary, which sets forth the following:

- (a) For each claimant, a list of all specific injuries, illnesses, or conditions that the claimant suffered as a result of the alleged exposure to petroleum or petroleum-based products;
- (b) The date(s) on which each such injury, illness, or condition was first suffered by the claimant and the date(s) on which a physician or other health care professional examined or treated the claimant for the injury, illness, or condition allegedly caused by exposure to petroleum and/or petroleum-based products;
- (c) An explanation of the manner of exposure (*i.e.*, ingestion, inhalation, dermal contact, *etc.*), the dates of exposure, and the duration of exposure;
- (d) The name and address of each physician or other medical care provider who treated the claimant, a summary of the treatment provided, and any diagnosis;

- (e) An opinion, based on a reasonable degree of medical or scientific probability, that any injury, illness, or condition suffered by the claimant was caused by the exposure to petroleum and/or petroleum-based products spilled from the Eagle Otome;
- (f) The scientific and medical bases for any expert's opinion, including a list of all medical examinations, tests, or treatments conducted of each claimant and all other data or information relied upon or considered by the expert in forming the opinion, including, but not limited to, citations to medical records and to the medical/scientific literature supporting any claim that the claimant's injury, illness, or condition was, within a reasonable degree of medical probability, caused by an exposure to petroleum or petroleum-based products.

On or before June 24, 2011, each claimant who is claiming a personal injury sustained as a result of the collision between the Eagle Otome, the Gull Arrow, and the barges pushed by the Dixie Vengeance, but not due to exposure to petroleum and/or petroleum-based products, must serve on the Shipowner a sworn affidavit from **a licensed physician or other qualified expert**, or both, as may be necessary, which sets forth the following:

- (a) For each claimant, a list of all specific injuries that the claimant suffered as a result of the collision;
- (b) The date(s) on which a physician or other health care professional examined or treated the claimant for the injury;
- (c) The name and address of each physician or other medical care provider who treated the claimant, a summary of the treatment provided, and any diagnosis;

- (d) An opinion, based on a reasonable degree of medical or scientific probability, that any injury, illness, or condition suffered by the claimant was caused by the collision; and
- (e) The scientific and medical bases for any expert's opinion, including a list of all medical examinations, tests, or treatments conducted of each claimant and all other data or information relied upon or considered by the expert in forming the opinion, including, but not limited to, citations to medical records.

On or before June 24, 2011, each claimant who is claiming damage to property sustained as a result of the collision between the Eagle Otome, the Gull Arrow, and the barges pushed by the Dixie Vengeance, including property damage due to contamination by petroleum and/or petroleum-based products, must serve on the Shipowner a sworn affidavit from **a qualified expert** which sets forth the following:

- (a) For each claimant, the property address, including tax block and lot number, for the property alleged to have been damaged or having declined in value;
- (b) The identity of the materials or substances that, in the opinion of the expert, caused each alleged property damage and the manner of causation;
- (c) A detailed description of the damages; and
- (d) The amount of the alleged loss in value of the property and/or the cost of cleanup and the method used to evaluate such alleged loss in value and/or cost of cleanup.

On or before June 24, 2011, each claimant who is claiming economic damages sustained due to the necessity of evacuating his or her residence as a result of the collision between the Eagle

Otome, the Gull Arrow, and the barges pushed by the Dixie Vengeance and resulting oil spill must serve on the Shipowner:

- (a) A sworn affidavit which sets forth his or her name, address at the time of evacuation, date of evacuation, date returned home, and a detailed summary of expenses incurred; and
- (b) Copies of all expenses necessarily incurred as a result of the evacuation.

On or before June 24, 2011, each claimant who is claiming damages for business interruption sustained as a result of the collision between the Eagle Otome, the Gull Arrow, and the barges pushed by the Dixie Vengeance and resulting oil spill, must serve on the Shipowner:

- (a) A sworn affidavit which sets forth the following:
 - (1) The name, address, and phone number of the business;
 - (2) The dates said business was closed and/or disrupted due to the spillage of petroleum and/or petroleum-based products; and
 - (3) An estimation of the lost profits and/or increased expenses due to the closure and/or disruption; and
- (b) Copies of any business records demonstrating lost profits and/or increased expenses during the relevant time period, including, but not limited to, invoices, balance sheets, accounting records, *etc.*

On or before June 24, 2011, each claimant who is asserting a claim for damages NOT of the types mentioned above, must serve on the Shipowner:

- (a) For each claimant, a sworn affidavit listing all specific damages that the claimant suffered as the result of the collision and resulting oil spill; and

- (b) For each claimant alleging a physical and/or mental injury or illness, an affidavit from **a licensed physician or other qualified expert**, or both, as may be necessary, which sets forth the following:
- (1) An opinion, based on a reasonable degree of medical or scientific probability, that said damages were proximately caused by the collision and/or resulting oil spill; and
 - (2) The scientific and medical bases for any expert's opinion, including all medical examinations, tests, or treatments of each claimant and all other data or information relied upon or considered by the expert in forming the opinion, including, but not limited to, medical records.

Claimants are ordered to mail the sworn affidavits and other required information to the Shipowner on or before June 24, 2011, at the following address: Stevens Baldo & Freeman, 550 Fannin, Suite 700, Beaumont, TX 77701. No affidavits or supporting information will be accepted at the Jack Brooks Federal Courthouse. Claimants must mail all submissions to the Shipowners at the above address. **Failure to comply with this order may result in the dismissal of the claim.** Claimants, however, should be aware that compliance with this order does not automatically make them eligible to receive compensation for their damages. Rather, claimants who comply with this order and establish a preliminary showing with expert evidence that their damages were proximately caused by the incident in question will merely be allowed to proceed further in this litigation.

By October 28, 2011, the Shipowner shall file any motion to challenge the sufficiency of any claimant's submission as required under this order and seek the dismissal of any claim for

which a *prima facie* case has not been demonstrated. The Shipowner shall serve copies of any such motion on the respective claimants by October 28, 2011.

The Court further orders that proceedings in this case shall remain stayed except to: (1) object to this order, (2) comply with this order, or (3) move to dismiss any claim subject to this order. Following the conclusion of the above proceedings, the Court will address motions concerning appointment of counsel and will schedule a status conference to discuss and develop a plan for the resolution of pending motions and the formation of a discovery plan.

SIGNED this the 21st day of March, 2011.

A handwritten signature in black ink, appearing to read "Keith F. Giblin", written over a horizontal line.

KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE