H.R. 5503, Securing Protections for the Injured from Limitations on Liability (SPILL) Act of 2010

Summary of Bill as Passed

Sec. 1 – Short title:

"Securing Protections for the Injured from Limitations on Liability (SPILL) Act of 2010."

Sec. 2 – Amendments to Death on the High Seas Act (DOHSA):

The Death on the High Seas Act (dating from 1920) gives the personal representative of anyone killed by "wrongful act, neglect, or default occurring on the high seas" (defined generally in the Act as more than three nautical miles from shore) – whether or not aboard a vessel – a right of action for wrongful death. Recovery under DOHSA is currently restricted to only pecuniary loss to the surviving family – such as loss of the decedent's income, and funeral expenses. Since the Deepwater Horizon oil rig was stationed almost 50 miles off the coast of Louisiana, DOHSA would apply for the families of the 11 men killed – though not for anyone whose injury did not result in death. This limitation on pecuniary damages would mean for example, that if, as has been reported, one of the workers died single and childless, his family's damages could be limited to their funeral expenses.

Section 2 amends DOSHA to permit recovery for non-pecuniary loss (loss of care, comfort, and companionship) and pre-death pain and suffering, to allow trial by jury, and to permit State law to govern which surviving family members are eligible to recover.

Sec. 3 – Amendments to Jones Act:

The Jones Act (also dating from 1920), among other things, gives "seamen" (in the event of personal injury) or their surviving families (in the event of wrongful death) " a right of action against their employer for negligence, unseaworthiness, or failure to provide adequate medical care. The Jones Act applies to a seaman employed in a "vessel," in any navigable waterway in the course and scope of his or her employment. DOHSA and the Jones Act overlap in some respects, as the surviving family of a seamen who dies on the high seas could recover under either law. But for wrongful death not on the high seas, or in cases of injury not resulting in death, only the Jones Act is applicable. Since the Deepwater Horizon is considered a vessel, the Jones Act would appear to apply both to the families of the 11 men killed, as well as to the at least 17 men injured.

Although the Jones Act permits the full range of compensatory damages in case of personal injury (including non-pecuniary damages), in cases of wrongful death, it does not permit recovery of post-death non-pecuniary losses suffered by the family. Section 3 corrects this disparity by amending the Jones Act to add non-pecuniary loss to the list of damages recoverable in wrongful death actions and makes a related change that ensures that these protections apply to all offshore oil rig workers.

Sec. 4 – Repeal of Limitation of Liability Act (LOLA): The Limitation on Liability Act (dating from 1851) is the third federal law that could operate to arbitrarily limit the liability owed to dead and injured workers who were serving on the Deepwater Horizon. LOLA was conceived as a way of protecting owners of merchant sailing ships from uncertainty during extended periods when their ships were far away and out of their control, by limiting their liability to the value of the vessel and its cargo, unless the shipowner had "privity or knowledge" of the acts causing the injury, or if the vessel was unseaworthy. Transocean has sought to use LOLA to limit its liability to essentially the discounted salvage value of the rig, estimated at $27 million. Section 4 repeals this antiquated law, which has little relevance in our age of instant global communication.

<u>Sec. 5 – Amendments to the Bankruptcy Code</u>: Concerns have been raised regarding the potential for companies with widespread liability from offshore oil disasters to attempt to use a corporate bankruptcy filing to remove viable assets from the company, while leaving vast numbers of oil disaster victims with little recourse. Section 5 amends the Bankruptcy Code to prevent companies with massive liability on claims arising out of an Oil Pollution Act incident from selling significant assets to place them off limits to claimants.

<u>Sec. 6 – Effective Date</u>: Section 6 applies the changes in law to all claims arising on or after April 20, 2010, the date of Deepwater Horizon explosion. This is consistent with a number of statutory changes to liability law enacted in recent years, including liability of airlines and providing compensation for victims of the 9/11 attack, and permitting non-pecuniary damages under DOSHA for aviation accidents on the high seas. Relevant Supreme Court precedent, in cases such as *Usery v. Turner Elkhorn Mining Co.*,428 U.S. 1(1976), have upheld immediate application of civil law changes of this nature.