

Marine

News

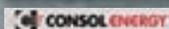
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The Leadership Edition

Industry Leaders Offer Insights on the Current Market and Future Challenges



BOM
Monterray's
Powerful
Punch



EPA's
Vessel
Discharge
Permits



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MarineNews delivers again its “CEO Six Pack,” an annual ritual whereby we query leaders from diverse sectors of the marine and related industries to gauge the issues that will drive the industry for the year to come.

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Class Action Lawsuits



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Class action lawsuits are regularly brought in the maritime community. These lawsuits are usually brought by one or a few named plaintiffs against one or more named defendants. The named plaintiffs typically claim that the conduct of, or product made by, the defendants caused them, and an identifiable group (or class) of people or companies like them, harm.

The plaintiffs will seek, on behalf of themselves, as representatives of the class, a court order, called an injunction, to make the defendants stop what they're doing. They will also ask the court, following a trial or settlement, to award them and the entire class of people and/or companies they represent money damages.

A few recent examples in the maritime community are described below.

On January 20, 2009, the U.S. District Court for the Southern District of Florida granted in part and denied in part a motion to dismiss a lawsuit, seeking class action status against ExxonMobil, Chevron, ConocoPhillips, and other oil companies. Erick Kelecseny, John Egizi, and Todd Jessup allege the oil companies negligently failed to warn them and all other Florida boat owners that the gasoline they purchase at the pump is blended with ethanol which, they claim, may destroy fiberglass tanks and damage boats even if they do not have fiberglass tanks. The plaintiffs seek damages for all affected Florida boat owners and to force the oil companies to place a warning label on all pumps at all gas stations in Florida, notifying the boating public that usage of gasoline blended with ethanol may be hazardous to their boats. The case is set to be tried next summer.

On April 12, 2006, the U.S. District Court for the Eastern District of Louisiana ruled, in a lawsuit filed by

Ingram Barge Company under the Vessel Owners Limitation of Liability Act, after claimants sought to proceed as representatives of a class following Hurricane Katrina-related flooding in New Orleans, that "a class action may not be instituted in a [Vessel Owners Limitation of Liability Act] proceeding." The Court also held that Rule 23 of the Federal Rules of Civil Procedure, which governs class action lawsuits, and Supplemental Rule F, which governs Limitation of Liability actions, are incompatible in that the entire thrust of Rule F is that each claimant must appear individually.

On October 3, 2005, Sylvester Dziennik, Mieczyslaw Kiersztyn, and Ferdynand Kobierowski, Polish citizens who worked as seafarers aboard U.S. flag vessels, filed a lawsuit in which they sought to proceed as representatives of a class, to recover unpaid wages, overtime wages, and statutory penalties under employment contracts and federal maritime law. They asked a federal judge in the Eastern District of New York to certify a class of 209 seafaring employees, 113 of whom are Polish citizens and 96 of whom are Filipino citizens, who work (or previously worked) on vessels owned by Sealift, Inc., Fortune Maritime, Inc., Sagamore Shipping, Inc., and Victory Maritime, Inc. On May 29, 2007, the judge allowed the seafarers to proceed with their lawsuit as a class action.

Following the July 23, 2008, Mississippi River oil spill involving the towboat, the M/V Mel Oliver, its tank barge tow, and a ship, a class action lawsuit was filed in the U.S. District Court for the Eastern District of Louisiana, seeking compensation for all personal injury and property damages class members have sustained. Among other claims, the plaintiffs alleged that after the spill, prevailing winds exposed them and others similarly situated to toxic

gases that were spread from the collision site to the French Quarter and Uptown neighborhoods of New Orleans, and that heavy oil has caused serious environmental damage to the river and threatened sensitive wetlands. They sued Laurin Maritime, the Houston firm that operates the Liberian-flagged tanker M/V Tintomara; the ship's owner, Gibraltar-based Whitefin Shipping Co. Limited; American Commercial Lines Inc., owner of the barge; DRD Towing, the owner of the towboat; and the New Orleans-Baton Rouge Steamship Pilots Association, one of whose members was aboard the ship at the time of the collision. Following the lead of the court in the Ingram Barge case, the judge ruled the claimants could not proceed as representatives of a class in a Limitation of Liability Action context.

The U.S. Court of Appeals for the Second Circuit recently held that AnimalFeeds International Corp. had to arbitrate its maritime-related claims, but could do so on behalf of a class of others similarly situated. The company claims that Stolt-Nielsen SA, Stolt-Nielsen Transportation Group Ltd., Odfjell ASA, Odfjell Seachem AS, Odfjell USA, Inc., Jo Tankers BV, Jo Tankers, Inc., and Tokyo Marine Co. Ltd. engaged in a "global conspiracy to restrain competition in the world market for parcel tanker shipping services in violation of federal antitrust law."

AnimalFeeds seeks to represent a class of all "direct purchasers of parcel tanker transportation services globally for bulk liquid chemicals, edible oils, acids, and other specialty liquids from [Stolt-Nielsen] at any time during the period from August 1, 1998 to

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November 30, 2002.”

What Standards Must a Class Action Lawsuit Meet?

Before allowing a lawsuit to proceed as a class action, the court must first find the following: (1) the class is so numerous that joinder of all members is impractical; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. There are other tests courts can apply before allowing a case to proceed as a class action. Most commonly, however, courts will next determine whether the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

What is the Purpose of Class Action Lawsuits?

First, if a defendant's conduct has harmed a large group of people or companies, usually at least 40, but each individual person's or company's damages (or monetary injuries) are small, then there's not much incentive for any one victim and his or her lawyer to absorb the significant time and legal expenses involved in filing a lawsuit and obtaining compensation.

But, if one person or company goes to court, with one or a few lawyers, and is allowed to seek damages for the entire group of persons or companies affected, then a \$500 claim may be grouped together and multiplied by the 10,000 or so other persons or companies (for example). Now, what was a \$500 individual case is collectively

worth \$5 million. That's enough to make it worthwhile for a law firm to take the case on a contingent fee basis, to recover damages for their clients (the class representatives), all the members of the class, and for there also to be sufficient damages recovered to pay the substantial out-of-pocket costs of litigation (such as expert's fees, depositions, travel expenses) and pay the law firm for its time and the risks it took in taking and prosecuting the case.

Second, lawyers who are willing to take the huge risks of a class action lawsuit are sometimes referred to as private attorneys general. This is because the work they are doing often brings justice to victims of large scale corporate misconduct. This is the same type of justice that a state or federal government attorney, such as a state attorney general's consumer protection division, might otherwise deliver. But, state and federal government agencies simply do not have enough lawyers, time, and money to pursue all wrongful conduct.

Thus, private class action lawsuits can fill a gap. Without the class action device and the lawyers willing to take these cases on, relatively small monetary injuries caused to hundreds, thousands, or millions of victims would never be redressed and thus a lot of illegal conduct and resultant injuries would go unchecked.

Third, assume the damages caused to the victims were significant enough to make it cost-effective and worthwhile for any one of, perhaps thousands of victims to bring a lawsuit. In this scenario, the courts would have to contend with thousands of lawsuits simultaneously, something that would risk overtaxing our judicial system. In this way, state and federal judicial systems envisioned the class action as a means to streamline litigation.

Crowley Receives 10th ATB

Crowley took delivery of its newest Articulated Tug Barge (ATB), the tug Commitment and barge 650-6, in Pascagoula, Miss, on April 2. The 185,000 bbl ATB, the 10th in Crowley's fleet, has been chartered by a major energy company to transport petroleum products on the U.S. West Coast beginning in April. The Commitment/650-6 was jointly designed by Crowley's marine technical services group and VT Halter Marine. The tank barge was built at Halter's shipyard in Pascagoula, Miss., and the tug Commitment at its shipyard, in Moss Point, Miss. The Crowley ATB fleet is scheduled to grow to 17 by mid-2013. Included in the total are four 155,000 bbl units already deployed; ten 185,000 bbl units, six of which are in operation; and three yet-to-be-built 330,000 bbl units – the largest in the company's history. Crowley ATBs are the newest and most environmentally friendly vessels in the company's fleet. With a record of zero spills during their 1,000-plus voyages, the tank vessels are also designed to reduce immediate environmental effects such as emissions and wastewater.

The 650-6, like its sister vessels the 650-3, 650-4 and 650-5, has been certified by Lloyds Classification Society as complying with the requirements of the International Maritime Organization's (IMO's) Green Passport program.

