

## Gulf Oil Spill MDL Court Issues Trial CMO

September 22, 2011 by [Sean Wajert](#)

The court managing the Gulf oil spill MDL recently entered an important case management order defining the structure and scope of the upcoming trial on the Deepwater Horizon oil spill. That Trial of Liability, Limitation, Exoneration, and Fault Allocation is scheduled to commence, as previously ordered in CMO No. 1 and CMO No. 2, on February 27, 2012. See In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, MDL No. 2179 (E.D. La., [Order 9/14/11](#)).

Readers know we have been [keeping an eye](#) on this [significant litigation](#) since the MDL was [created](#). CMO No. 3 notes that the trial will address all allocation of fault issues that are to be tried to the bench without a jury, including the negligence, gross negligence, or other bases of liability of, and the proportion of liability allocatable to, the various defendants, third parties, and non-parties with respect to the issues, including limitation of liability.

The trial will be conducted in three phases.

Phase One [the Incident Phase] of the trial will address issues arising out of the conduct of various parties, third parties, and non-parties allegedly relevant to the loss of well control at the Macondo Well, the ensuing fire and explosion on the Deepwater Horizon vessel, the sinking of the Deepwater Horizon on April 22, 2010, and the initiation of the release of oil from the Macondo Well or Deepwater Horizon.

Phase Two of the trial will address Source Control and Quantification of Discharge issues. Source Control issues consist of issues pertaining to the conduct of various parties, third parties, and non-parties regarding stopping the release of hydrocarbons stemming from the Incident from April 22, 2010 through approximately September 19, 2010. Quantification of Discharge issues refer to issues pertaining to the amount of oil actually released into the Gulf of Mexico as a result of the Incident from the time when these releases began until the Macondo Well was capped on approximately July 15, 2010 and then permanently cemented shut on approximately September 19, 2010.

Phase Three [Containment Phase] of the trial will address issues pertaining to the efforts by various parties, third parties, and non-parties aimed at containing oil discharged as a result of the Incident by, for example, controlled burning, application of dispersants, use of booms, skimming, etc. Phase Three of the trial will also address issues pertaining to the migration paths and end locations of oil released as a result of the Incident as carried by wind, currents, and other natural forces.

CMO No. 3 also addresses the sequence of proof for Phase One: first plaintiffs, then Transocean, then the other defendants. At the end of each Phase of the trial and after consideration of the parties' submissions, the Court may decide to issue partial Findings of Fact and conclusions of Law for that Phase if it deems the record adequately developed. The

Court said it anticipates that discovery and other pretrial proceedings for Phase Two of the trial and possibly for Phase Three of the trial will likely need to be conducted concurrently with pretrial proceedings for and the conduct of Phase One of the trial.