

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

PATRICK JOSEPH TURNER, ET AL.	*	CIVIL ACTION
VERSUS	*	NO. 05-4206 CONSOLIDATED CASE
MURPHY OIL USA, INC.	*	SECTION "L" (2)

THIS DOCUMENT RELATES TO ALL CASES

ORDER AND REASONS

Before the Court are the Motion of Plaintiffs to Exclude Defendant’s Reference to, or Introduction of, Evidence Concerning the Fault of the United States Army Corps of Engineers (the “Corps”) (Rec. Doc. No. 322) and the Motion in Limine to Exclude Any and All Reference or Introduction of Evidence By Defendant Concerning the Fault of the United States Army Corps of Engineers of the *Bouvier* plaintiffs (Rec. Doc. No. 344). These motions came on for hearing with oral argument on May 16, 2006. For the following reasons, the motions are DENIED.

I. Factual and Procedural Background

This consolidated class action arises from events that occurred at Defendant Murphy Oil USA, Inc.’s (“Murphy’s”) St. Bernard Parish, Louisiana refinery following Hurricane Katrina in August and September 2005. At some point after Hurricane Katrina made landfall, a 250,000-barrel above-ground storage tank containing crude oil floated, slipped off its moorings, and allegedly discharged approximately 25,110 barrels of oil into the surrounding area. Plaintiffs in this case are homeowners and businesses in the area surrounding the refinery, and they allege

personal injuries and property damage, among other damages, as a result of the spill.

On January 30, 2006, the Court certified a group of Plaintiffs' claims for class action treatment. Since that date, additional individual cases have been filed on behalf of Plaintiffs who have either opted out of the class or who resided outside the class boundary. These cases have been consolidated with the class action for discovery purposes.

In its Answer to the Administrative Master Complaint, Defendant alleges as its Thirteenth Affirmative Defense that the accident at issue was caused by "the fault of private and public entities other than Murphy, over whom Murphy had no control, authority or supervision." Murphy states a similar defense in its Answer to the Complaint of the *Bouvier* plaintiffs. *See* Rec. Doc. No. 254 at 6. In the spring of 2006 at various pretrial conferences, counsel for Defendant affirmed that at trial Murphy will allege the defense of comparative negligence, and will argue that the Corps and other governmental entities responsible for flood protection were at least partially at fault for the oil spill.

On May 2, 2006, the Plaintiffs' Steering Committee filed the instant motion in response to Murphy's intended defense. The *Bouvier* plaintiffs have filed a similar motion. In their motions, Plaintiffs seek to exclude all evidence relating to the Corps and other flood control agencies as irrelevant for trial purposes. Defendant opposes both motions.

II. Plaintiffs' Motions in Limine

In their motions, Plaintiffs¹ argue that the Court should exclude any reference to the fault of the Corps or other flood control entities at trial. Plaintiffs make three arguments in support of

¹ Because the *Bouvier* plaintiffs have adopted in full the motion of the Plaintiffs' Steering Committee, the Court shall address the movants collectively as "Plaintiffs."

this position. First, Plaintiffs argue that the Court is vested with the discretion to impose the comparative fault scheme under Louisiana law, and, as such, the Court should use its discretion to deny the application of comparative fault to the Corps in this case. Second, Plaintiffs contend that sound policy reasons support the exclusion of the Corps' potential fault. Third, Plaintiffs argue that inclusion of the Corps' fault in this case will cause procedural chaos and problems with case management, particularly given that numerous cases are pending before another United States District Judge in this district against the Corps on similar grounds.

Defendant counters that Plaintiffs' motions are procedurally unsound in that the Plaintiffs ask the Court to make determinations about the scope of the Corps' liability in a evidentiary vacuum. Defendant argues that any exclusion of evidence of the Corps' fault would be prejudicial to Murphy's ability to present a defense. Moreover, Defendant argues that Louisiana law does not allow for a discretionary application of comparative fault, but that the comparative fault scheme is mandatory.

A motion in limine is "any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984). Although the Federal Rules of Evidence do not provide explicitly for motions in limine, the power to exclude evidence pursuant to a motion in limine has long been accepted as part of the district court's "inherent authority to manage the course of trials." *Id.* at 41 n.4. Commentators have noted the federal court system's "hostility to the motion in limine[.]" Charles Alan Wright & Kenneth W. Graham, Jr., *Fed. Prac. & Proc. Evid.*2d § 5037.10 (2005). As the U.S. Supreme Court has stated, when considering a motion in limine, a "reviewing court is handicapped in any effort to rule on subtle evidentiary questions outside a

factual context.” *Luce*, 469 U.S. at 41.

With that in mind, the Court turns to the Plaintiffs’ first argument. Plaintiffs contend that evidence relating to the Corps’ fault in providing inadequate hurricane protection is irrelevant to the issue of whether Murphy is at fault for the oil spill. This assertion calls upon the Court to make the legal determination that the Corps has no fault and owes no duty to the Plaintiffs or Defendant in this case.²

In a tort action, the determination of whether a duty is owed to a particular plaintiff is a question of law. *Pinsonneault v. Merchants & Farmers Bank & Trust Co.*, No. 2001-2217 (La. 4/3/02), 816 So.2d 270, 276. However, the Court can only determine whether a duty is owed “in light of the unique facts and circumstances presented.” *Posecai v. Wal-Mart Stores, Inc.*, No. 1999-1222 (La. 11/30/99), 752 So.2d 762, 766. *Accord Pinsonneault*, 816 So.2d at 276-78 (in determining the defendant had no duty of heightened protection to the plaintiff, examining detailed facts and evidence presented at trial on the issue).

² In their brief, Plaintiffs argue that the Court has discretion to impose the comparative fault scheme under Louisiana law. This argument somewhat misstates the Louisiana case law. The Court has a role in determining as a matter of law that the duty of a defendant does not encompass the risk of harm to a particular plaintiff, such that the defendant is not subject to liability for negligence. *Precht v. Case Corp.*, No. 1999-1296 (La. App. 3d Cir. 2/16/00), 756 So.2d 488, 499 (“Before there can be an allocation of fault as required by Article 2323, a duty-risk analysis must be performed to determine whether a party who is alleged to be at fault can be held liable”).

However, if the party alleged to be at fault is in any way at fault, the Court has no discretion to impose Louisiana’s comparative fault scheme. The plain language of Article 2323 of the Louisiana Civil Code establishes that the comparative fault scheme applies “in any action for damages” “regardless of whether the person is a party to the action or a nonparty, and regardless of the person’s insolvency, ability to pay, [or] immunity by statute[.]” Thus, Plaintiffs appear to request that the Court find as a matter of law that no duty exists to the Plaintiffs or Defendant on behalf of the Corps, and as such, the Corps may be excluded from the case and the Louisiana comparative fault scheme.

This case is approximately halfway through discovery. Every day, new documents are produced, new depositions are taken, and new data is gathered for expert reports. That process is integral to resolution of the Plaintiffs' claims and to the development of Murphy's defense. Plaintiffs are correct that the determination of the existence of a duty on behalf of the Corps is a legal one for the Court's decision. However, the Court simply cannot make the conclusive ruling that the Corps is not liable as a matter of law at this time, without any evidence in the record of this matter other than the preliminary evidence presented at class certification. Generally, in the Louisiana cases in which a trial court is asked to determine whether the defendant owes a duty to a plaintiff, that decision is made post-trial, or at least after the court has received some evidence on the relevant issues. *See Pinsonneault*, 816 So.2d at 274 (trial court determining duty owed after trial); *Dumas v. Louisiana Dep't of Culture, Rec. & Tourism*, No. 2002-0563 (La. 10/15/02), 828 So.2d 530, 532 (trial court ruling on duties owed after an evidentiary hearing); *Posecai*, 752 So.2d at 765 (trial court determining duty owed after trial); *Faucheaux v. Terrebone Consol. Gov't*, 615 So.2d 289, 291-92 (La. 1993) (same). The Court believes the issue is premature.

As a part of their first argument, Plaintiffs argue that the Corps cannot be responsible for the oil spill because Hurricane Katrina and the oil spill are two distinct events. *See Jarreau v. Hirshey*, 650 So.2d 1189, 1194 (La. App. 1st Cir. 1994) (finding no solidary liability between defendants from two accidents which did not occur close in time).³ Plaintiffs argue that evidence

³ In *Jarreau*, the plaintiff had been the victim of two car accidents several weeks apart that were totally unrelated. 650 So.2d at 1191. The plaintiff's doctors could not identify which injuries were attributable to which accident. *Id.* at 1194-95. The Louisiana First Circuit found enough evidence to apportion damages, but found that the defendants were not solidarily liable because the accidents were separate. *Id.*

of the Corps' liability for flood-related damage will be unduly confusing and highly prejudicial, given the inflamed passions of the people of South Louisiana regarding the Corps' weaknesses during Hurricane Katrina. Plaintiffs argue that they are entitled to a hearing on their oil-related damages, and that Murphy should not be allowed to confuse the issue by introducing evidence of the Corps' liability for the flood.

Defendant, however, argues that the Corps' responsibility to maintain proper flood control measures extended not just to the homeowners in St. Bernard Parish, but also to businesses like Murphy. Murphy argues that it had no duty to provide its own flood protection, and that it relied upon the Corps to protect its property from hurricanes much like the Plaintiffs did. Furthermore, even if the Corps' actions or inactions did not cause the oil spill, they may have played some part in the dispersal of the oil to properties outside the immediate proximity of the facility. Defendant argues that the two events are not separate and distinct: its position is that but for the hurricane, the oil spill would not have happened. While both Plaintiffs' and Defendant's positions are provocative, the Court declines to rule on this issue without further development of the factual background of the case via discovery.

Plaintiffs' second argument is a further development of their first argument. Plaintiffs argue that, in evaluating whether the Corps owed a duty to Plaintiffs and Defendant, the Court must evaluate a number of policy concerns. *Posecai*, 752 So.2d at 766. Among these concerns are the fairness of imposing liability, the economic impact on the defendant and similarly situated parties, the need for an incentive to prevent future harm, the nature of the defendant's activity, the potential for an unmanageable flow of litigation, the historical development of precedent, and the direction in which society and its institutions are evolving. *Id.* Plaintiffs

argue that all of these factors militate heavily in favor of excluding the Corps from comparative fault in this case. Again, while Plaintiffs' argument may ultimately be persuasive, the Court cannot make this determination at this early stage without receiving further evidence and allowing discovery to proceed.

Finally, Plaintiffs argue that allowing Murphy to pursue its defense involving the Corps will create problems for case management. Plaintiffs contend that they will be forced to defend themselves unfairly against an "empty chair" since no representative of the Corps or the other flood control agencies is present in this case. Moreover, Plaintiffs point to the ongoing consolidated litigation against the Corps related to Hurricane Katrina, presently pending before another section of this Court, and argue that Murphy should find recourse there rather than through this lawsuit.

The Court believes that the possibility of evaluating the comparative fault of the Corps at trial will not pose major problems in case management. Plaintiffs and Defendant will have further opportunities for pre-trial narrowing of the issues presented to the jury and will be able to refine the questions presented to the jury. Also, as Murphy points out, Murphy could not pursue its defense via a third party claim or separate lawsuit against the Corps because under Louisiana law Murphy would have no right of contribution from another tortfeasor if Murphy is found to be totally at fault. *Dumas*, 828 So.2d at 537 ("each non-intentional tortfeasor [is] liable only for his own share of the fault").

In summary, while the Court understands and finds compelling the arguments of both parties, Plaintiffs' motions in limine are premature. Once discovery is completed, the parties may revisit the issue.

III. Conclusion

Accordingly, the Motion of Plaintiffs to Exclude Defendant's Reference to, or Introduction of, Evidence Concerning the Fault of the United States Army Corps of Engineers (Rec. Doc. No. 322) and the Motion in Limine to Exclude Any and All Reference or Introduction of Evidence By Defendant Concerning the Fault of the United States Army Corps of Engineers of the *Bouvier* plaintiffs (Rec. Doc. No. 344) are hereby DENIED.

New Orleans, Louisiana, this 22nd day of May, 2006.


United States District Judge