IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2021
Summary Calendar

GOLNAY BARGE COMPANY, INC.,
and
APEX R.E. & T., INC.,
d/b/a APEX TOWING COMPANY,

Plaintiffs,

VERSUS

M/T SHINOUSSA,
and
FIDELIS SHIPPING CORPORATION,

Defendants,

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IN THE MATTER OF:
THE COMPLAINT OF GOLNAY BARGE COMPANY, INC.,
and
APEX R.E. & T., INC.,
d/b/a APEX TOWING COMPANY,
As Owners and/or Owners Pro Hac Vice of
the TUG CHANDY N,
Her Engines, Tackle, Appurtenances, etc.,
in a Cause of Exoneration from or
Limitation of Liability.

GOLNAY BARGE COMPANY, INC.,
and
APEX R.E. & T., INC.,
d/b/a APEX TOWING COMPANY,

Appellees,

VERSUS

CHARLES L. WITT, et al.,

Claimants-Appellants.

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IN THE MATTER OF:
THE COMPLAINT AND PETITION OF
SHINOUSSA SHIPPING CORPORATION,
As Owner of the M/T SHINOUSSA,
Its Engines, Tackle, etc.,
in a Cause of Exoneration from or
Limitation of Liability.

M/T SHINOUSSA
and
FIDELIS SHIPPING CORPORATION,

Appellees,

VERSUS

CHARLES L. WITT, et al.,

Claimants-Appellants.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 90 2414 c/w 90 2476; 90-2488 & 91-180)

August 19, 1993

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

I.

This claim arises out of an oil spill resulting from the collision on July 28, 1990, of a ship and a tank barge in the Houston Ship Channel, causing a spill of catalytic feed stock oil. The district court granted summary judgment against the claimants,

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

who are wholesale/retail seafood dealers, bait dealers, marinas, and employees of such businesses.

II.

In Louisiana ex. rel. Guste v. M/V TESTBANK, 752 F.2d 1019 (5th Cir. 1985) (en banc), we adopted a "bright line" rule that physical damage to a proprietary interest is a prerequisite to recovery in maritime oil spill cases. The claimants suggest that we adopt exceptions to this rule or modify it. Because TESTBANK is the law of the circuit, we may not modify it and must apply the rule as controlling. Accordingly, we affirm the judgment of the district court as to its application of TESTBANK.

Next, the claimants argue that they should be able to recover under the Oil Pollution Act of 1990. This act applies only to oil pollution "incidents" occurring after August 18, 1990, its date of enactment. Oil Pollution Act of 1990, Pub. L. 101-380, § 1020, 104 Stat. 484, 506 (1990). The Act defines "incident" as "any occurrence or series of occurrences having the same origin, involving one or more vessels . . . resulting in the discharge or substantial threat of discharge of oil." 33 U.S.C.A. § 2701(14) (West Supp. 1993).

Claimants suggest a tortured reading of the statute's definition of "incident." They contend that the daily spread of the oil throughout the bay constitutes a series of occurrences. We disagree. The "incident" in this case was the collision of the two vessels that resulted in the discharge of the oil. There was only

one occurrence)) a collision. The spread of oil throughout the bay does not constitute a series of occurrences within the meaning of the statute. Even if did, the spread of oil neither involved one or more vessels, nor resulted in any "discharge" within the meaning of the statute, thus removing the spread of oil entirely from the definition of "incident." Because the "incident" occurred prior to the effective date of the act, the Oil Pollution Act has no application to this case.

AFFIRMED.