

## Pre-Trial Evidentiary Rulings a Key to Reversal

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On March 24, 2021, the Louisiana Supreme Court in the case *Marty Melerine and Oyster Fisheries, Inc. v. Tom's Marine and Salvage, LLC, et al* reversed a \$6,000,000 jury verdict against a tugboat company and its insurer for alleged damages to oyster beds crushed during a vessel grounding. This ruling is significant because it confirms that an oyster fisherman's claim for damage to his leasehold interest is subject to the same evidentiary standards and burden of proof applicable to any property damage claim.

### A. Background

On April 9, 2016, a tugboat owned and operated by Tom's Marine & Salvage, LLC ("Tom's Marine") and a barge were traveling through coastal waters of Louisiana to get the boat repaired. An oyster fisherman stopped the tug to warn it of shallow water and oyster beds. The captain changed course but ran aground on an oyster bed. Extended efforts to dislodge the vessel were unsuccessful. At high tide the next day, the vessel was freed.

The holder of an oyster lease, Marty Melerine ("Melerine"), and an adjoining oyster lease holder, Oyster Fisheries, Inc. ("OFI"), sued Tom's Marine and its insurer for damages caused by the grounding. Prior to trial, defendants moved to exclude 1) any evidence based on formulas generated by the Oyster Lease Damage Evaluation Board (OLDEB), a legislative created entity charged with establishing a uniform system of compensation for damage to oyster beds by oil and gas activity; and 2) the testimony of Dr. Edwin Cake, Jr., an oyster biologist. The trial court denied defendants' motions and allowed Dr. Cake to testify as an expert and express opinions based on OLDEB formulas.

Following a two-week trial, a jury awarded \$4,937,532.77 to Melerine and \$1,150,169.70 to OFI. The judgment was affirmed by the court of appeal. Defendants applied to the Louisiana Supreme Court for review, which was granted.

### B. Discussion

On review, defendants argued the trial court erred by admitting evidence of OLDEB formulas and allowing Dr. Cake to testify to opinions beyond his expertise and not supported by reliable methodology. The Supreme Court noted that no pre-project biological survey was performed so, as a matter of law, OLDEB guidelines and methods were not applicable. The Court further held that Dr. Cake's qualification as an oyster biologist was well-established, but he rendered opinions rooted in the sciences of sedimentology and hydrology which are beyond his area of expertise.

### C. Conclusion

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The Supreme Court found the trial court erred in denying the motions to exclude the OLDEB evidence and Dr. Cake's opinions on damages caused by sediment disburged by the tugboat. The court reversed the judgment of the court of appeal and the trial court judgment denying defendants' motions to exclude evidence of OLDEB and to exclude opinions of Dr. Cake. The Court also vacated the judgment entered on the jury verdict and remanded the case to the trial court for a new trial.

**D. Why is this important?**

- Well directed motions to exclude evidence, if granted, can be powerful at trial.
- Well directed motions to exclude evidence may provide a solid basis for appeal if they are denied.
- An oyster fisherman's claim for damage to his/her leasehold interest is subject to the same evidentiary standards and burden of proof as other property damage claims.