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## **Rigs on Walkabout – Hurricane Breakaways!**

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## **RIGS ON WALKABOUT – HURRICANE BREAK AWAYS!**

Several years ago on a day following the passage of a now forgotten hurricane through the Gulf of Mexico, I received a telephone call from an offshore drilling contractor client advising that one of the company's jack-ups was missing and asking "should we be worried?" The quick answer was "yes," they should be worried and that to avoid all sort of possible liabilities they needed to take steps to find their missing rig as soon as possible.

The reasons why the rig owner needed to be worried are fairly obvious. A jack up drilling rig or a semi-submersible floating around uncontrolled in the Gulf of Mexico poses the obvious threat to other rigs and vessels, as well as the many platforms located in the Gulf, to say nothing of the risk the floating rig might pose to the many pipelines crisscrossing the Gulf. The rig owner faces liability for damage caused by its driftaway to other vessels and structures.

As long as a rig is floating, the chances of quickly finding it are pretty high given the level of activity on the water and in the air in the Gulf. A more difficult situation arises when the missing rig does not turn up floating around somewhere and presumably has sunk. While the loss of a drilling rig is more unusual, vessels of all kinds are lost to sinking all too frequently. Witness the fate of the *M/V El Faro* in the Bahamas in a hurricane. If a rig or other vessel sinks in deep water the risk of harm it would pose to other vessels would be minimal. However, most rigs and semi-submersibles operate in relatively shallow water, where a sunken rig can pose a substantial risk of harm to other vessels. This is particularly true of waters of the Gulf of Mexico off the Texas and Louisiana coasts, where the offshore oil industry shares the area with a huge number of traditional vessels coming in and out of the ports of Texas and Louisiana.

A case in point is the loss of *Ensco 74* on September 12, 2008, in Hurricane Ike and its

rediscovery by the Norwegian tanker *SKS Satilla* (“*Satilla*”) while carrying a full cargo of crude oil on March 7, 2009 in the South Sabine Point Lighterage Area, some sixty miles off the Texas coast. *Ensco 74* was located over a hundred miles off the Louisiana coast when its legs failed during the height of the hurricane. After floating for roughly 90 nautical miles in a West, Northwest direction, the *Ensco 74* sank in an area designated for tanker lighterage operations. While *Ensco 74* sank in approximately 110 feet of water, it protruded within some 31 feet of the surface. *Satilla* had a draft well in excess of 31 feet. Fortunately, *Satilla* was a relatively new, double hulled tanker. Even though the hull of the *Satilla* was significantly damaged when it came into contact with the *Ensco 74*, its cargo tanks were not breached and there was no pollution. The vessel’s cargo was successfully offloaded and the vessel underwent successful repairs and returned to service. When it was discovered that *Ensco 74* was missing, its owner, Ensco, conducted both aerial and subsea searches, but failed to locate the rig. While a potential environmental catastrophe was averted, the *Satilla* incident serves as a reminder of the potential consequences of a vessel striking a submerged wreck.

The owner of *SKS Satilla* brought suit against ENSCO, the owner of the rig, in federal court in Houston.<sup>1</sup> After several days of trial, the district court found that Ensco had met its obligations under the Wreck Act to conduct a full, good faith search for the *Ensco 74* and held that ENSCO was not liable for the damages sustained by *Satilla*. The Fifth Circuit held that the findings of the trial court were not clearly erroneous in an unpublished opinion.<sup>2</sup> The purpose of this paper, however, is not to discuss the case or the court’s ruling in any detail other than to note that the question of whether a “full, good faith search” has been carried out is a question of fact,

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<sup>1</sup> Civil Action No. 4:09-cv-00781 (S. D. Tex).

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