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Contribution under the Oil Pollution Act

The Fifth Circuit Court of Appeals held that a responsible party under the federal Oil Pollution Act (OPA) could seek contribution for cleanup costs—even though they may include purely economic damages—from a partially liable third party. Longstanding maritime law does not preclude this statutory right. *In re Settoon Towing LLC* (5th Cir. 2017) 859 F.3d 340.

The OPA (33 U.S.C. §§ 2701-2761) establishes liability and provides for compensation for the cleanup of oil spills on the navigable waters of the United States. It provides the government and private parties a cause of action to recover response costs and damages from responsible parties. OPA imposes strict, joint and several liability on (1) a “responsible party” or parties, (2) for the facility or vessel, (3) from which oil was discharged, or from which there was a substantial threat of discharge, (4) into or upon the navigable waters or adjoining shorelines, and (5) that the discharge resulted in removal costs and damages.

In the instant action, two groups of barges heading in the same direction encountered each other on the Mississippi River near Convent, Louisiana. While attempting to pass each other, two of the barges collided and approximately 750 gallons of crude oil were released into the river. Containment and cleanup of the spill soon followed. The U.S. Coast Guard identified the owner of one of the barges as the OPA “responsible party.” That owner fulfilled its obligations under OPA for cleanup costs and third-party claims, and then counter-claimed against the other barge owner for contribution under OPA and/or general maritime law. The United States District Court for the Eastern District of Louisiana found that both barge operators were negligent in causing the spill and awarded contribution according to the percentage of fault of the two operators. Appeal followed on the argument that OPA did not allow a responsible party to obtain contribution from a partially liable third party for purely economic damages.

The Court of Appeals reviewed OPA’s liability and damages process. The injured party presents its claim to the designated responsible party who has 90 days to accept or reject the claim. If the claim is rejected, the injured party may bring a statutory cause of action under OPA in federal district court for recovery of its damages or it may seek recovery from the Oil Spill Liability Trust Fund. Once it has paid costs, the responsible party may bring a suit for contribution under OPA (33 U.S.C. § 2709).

The Court of Appeals rejected appellant’s argument that rather than providing a statutory cause of action OPA merely identifies that contribution is available to a partially responsible party under general maritime

law—and that under maritime law purely economic damages are not recoverable. “We conclude that the most reasonable interpretation of the language of the OPA, as confirmed by the Act's legislative history, grants to an OPA Responsible Party the right to receive contribution from other entities who were partially at fault for a discharge of oil. Specifically, a Responsible Party may recover from a jointly liable third party any damages it paid to claimants, including those arising out of purely economic losses.”

This case emphasizes the importance of careful interpretation of statutes. It also is consistent with the broad inclusive nature of federal environmental laws, which generally expand the rights of injured parties for recovery against those responsible for the environmental harm.

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