

Fifth Circuit Considers OPA's Third-Party Defense in Connection with Mississippi River Oil Spill

United States v. Am. Commercial Lines, L.L.C., 2017 WL 5146110 (5th Cir. Nov. 7, 2017)

Right after midnight on March 24, 1989, the Exxon Valdez oil tanker struck the Bligh Reef off the coast of Alaska's Prince William Sound. The accident resulted in an eleven million gallon oil spill and spurred the enactment of the Oil Pollution Act ("OPA"), which generally holds statutorily-defined "responsible parties" strictly liable for removal costs and damages associated with such spills. Recently, the Fifth Circuit considered one exception to that general rule.

The oil spill in *United States v. Am. Commercial Lines, L.L.C.*, 2017 WL 5146110 (5th Cir. Nov. 7, 2017) occurred on the Mississippi River when an unlicensed steersman fell unconscious after working too many hours. As a result, the tugboat he was navigating veered across the river and put the oil-filled barge it towed into the path of an ocean-going tanker. Liability for all associated removal costs and damages would generally be cast upon the owner of the tug as the statutorily-defined responsible party under the OPA. However, the owner in the case pointed the finger at the third-party operator, claiming that the operator caused the spill and breached its charter when it allowed the unlicensed steersman to navigate the tug.

The owner's argument depended on the applicability of the OPA's third-party defense, which provides that a statutorily-defined responsible party (like the owner in the case) is not liable for oil spill removal costs or damages when a third-party (like the operator) caused the spill. Notably, the defense is not available if the third-party was acting "in connection with any contractual relationship with the responsible party." Since the operator and owner had a charter agreement, the narrow question for the Fifth Circuit was whether the operator acted in connection with the charter.

The owner argued that the operator was not acting in connection with the charter when it allowed the unlicensed, overworked steersman to navigate the tug because those actions violated the very terms of the charter. The court disagreed, noting that "in connection with" is a broad phrase that should be construed in conjunction with Congress' intent to prevent a responsible party from shifting liability to a third-party that merely acts as the responsible party's extension. The court then held that actions or omissions occur in connection with an agreement if they would not have occurred *but for* that agreement. Applying this test to the facts of the case, the court reasoned that, because the operator would not have been operating the tow but for the charter, the operator was acting in connection with the charter when it caused the accident and spill. As a result, the owner could not exonerate itself of liability under the third-party defense.

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The “but for” test articulated by the Fifth Circuit isn’t a hard one to meet. For vessel owners and statutorily-defined responsible parties, the decision highlights the importance of vetting subcontractors or operators, as initial liability under OPA will often trigger against the statutorily-defined responsible party even when a subcontractor is solely at fault.