

## Fifth Circuit Rescues First-Responders From Implied Indemnity Claim by Spiller

JULY 16, 2014

On July 16, 2014, the U.S. Court of Appeals for the Fifth Circuit affirmed the decision of the U.S. District Court for the Eastern District of Louisiana that had dismissed the third-party complaint of the responsible party, American Commercial Lines (ACL), against first-responders U.S. Environmental Services (USES) and Environmental Safety & Health Consulting Services (ES&H), which had cleaned up the 2008 oil spill on the Mississippi River resulting from the collision of the tanker M/V TINTOMARA and the tank barge DM 932, and thereby incurred uncompensated oil pollution removal costs.

After ACL did not pay the first-responders, they submitted claims to the National Pollution Funds Center (the Fund) which paid the claims. Later, when the United States government sued ACL to recover the government's costs, including claims paid by the Fund, in a novel move ACL third-partied the first-responders into the government's cost recovery lawsuit under an implied indemnity theory in admiralty alleging that the Fund's payments were improper. The district court dismissed ACL's third-party complaint as displaced by the Oil Pollution Act of 1990 (OPA). ACL appealed and the court of appeals affirmed the district court's decision.

Importantly, the court of appeals held that "Nothing in OPA authorizes a responsible party to bring a third-party complaint against a claimant that has chosen . . . to submit claims to the Fund after 90 days without a payment. . . . [S]uch a third-party complaint would . . . frustrate the statutory scheme and its goal of providing rapid cleanup and claim resolution." The decision is particularly significant to the first-responder community which depends on the availability of the Fund as the payer of last resort without the burden of litigation with the responsible party.

Winston & Strawn LLP represented first-responder USES both before the district court and the court of appeals.

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