

Appeals Court Rules on OPA 90 Claim Requirements

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On October 8, 2015, the U.S. Court of Appeals for the Fifth Circuit held that an action for an oil pollution claim is barred unless it is first presented to the responsible party at least 90 days before the expiration of the three-year limitation period. The court also held that the Oil Pollution Act of 1990 does not impose any specific requirements for such claims beyond a statement of a request for a sum certain for compensation for damage or removal costs from an incident of oil pollution.

In the case of *Nguyen v. American Commercial Lines*, a group of fishermen sought compensation for alleged lost revenues and other damages resulting from the oil spill caused by the July 2008 collision between the MV TINTOMARA and ACL's barge DM-932 on the Mississippi River. A year after the incident, an attorney representing a group of claimants submitted claims to the barge owner's representative. The representative responded by requesting additional documentation of the claims, some but not all of which was provided. Shortly before the third anniversary of the incident, the claimant's attorney submitted a number of additional claims and then three days later filed suit on all the claims. The U.S. District Court for the Eastern District of Louisiana denied the barge owner's request for judgment against claims, but certified two issues of law to the Court of Appeals.

The first was whether a claimant must provide certain specific information to present a claim to the responsible party in compliance with OPA 90 requirements. The Court of Appeals held that although federal regulations require substantial, specific information be provided for claims made directly to the U.S. Oil Spill Liability Trust Fund, those regulations do not apply to claims against responsible parties. The court noted that some district courts have held that claims must include sufficient information for a decision on whether to settle, but ruled that the information provided in this case did so. The court declined to expand the statute further.

The second issue concerned the relationship between OPA 90's requirement that claims be presented to the responsible party for at least 90 days before suit may be filed and its requirement that suits be filed not later than three years after the oil spill incident occurred. The court held that the two requirements operate independently, and therefore compliance with one does not excuse non-compliance with the other. Accordingly, if a claimant does not submit a claim at least 90 days before the expiration of the three-year limitation period, then the claim is barred.

Nguyen v. American Commercial Lines, L.L.C., 5th Cir. No. 15-30070 (Oct. 8, 2015).

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