



Court Rejects Arguments to Block Claims for Compensation Paid to Oil Spill Response Organizations

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In the continuing litigation saga flowing from the July 2008 collision between the M/V TINTOMARA and the barge DM 932 on the Mississippi River near New Orleans, on September 19, 2016, Judge Ivan Lemelle of the U.S. District Court for the Eastern District of Louisiana issued another important ruling bearing ultimately on the practical ability of oil spill response organizations (OSROs) to recover compensation from the Oil Spill Liability Trust Fund (the “Fund”) pursuant to the Oil Pollution Act of 1990 (OPA90) in circumstances where the responsible party has not paid them for cleaning up the spill.

In this litigation which is advancing to trial, the U.S. Government seeks to recover sums paid by the Fund, including to OSROs that filed claims after the responsible party did not pay them. Judge Lemelle ruled in favor of the Government and rejected the legal arguments of the responsible party aimed to defeat the Government’s lawsuit to recover for sums paid the OSROs by the Fund. Among other things, the responsible party argued that: (1) Coast Guard regulations governing the details of submitting claims to the Fund applied with equal force to a claimant’s presentation of claims to the responsible party before the OSRO could go to the Fund for compensation, (2) claimants must submit claims to the entity identified by the responsible party in its advertisement, not the responsible party itself, and (3) the venue provision of the cleanup contract between the responsible party and the OSRO was breached by the OSRO’s submission of its claim to the Fund, thereby defeating the Government’s cost recovery action for sums paid by the Fund to the OSRO.

Judge Lemelle’s decision further strengthens the statutory oil pollution claims framework established by OPA90. It is well-established that if an OSRO is unable to obtain payment from a responsible party it may submit a claim to the Fund for uncompensated removal costs. Judge Lemelle’s decision signals that the responsible party’s arguments raised in this litigation will not likely block the Government’s litigation to recover over against the responsible party sums paid by the Fund.

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