

First Circuit Holds Military Sealift Command Vessel Operated by Private Contractor is a “Public Vessel” Under the Oil Pollution Act

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On September 15, 2017, the United States Court of Appeals for the First Circuit held that a vessel owned by the United States and managed by a private company under contract with the Government is exempt from the Oil Pollution Act of 1990 (OPA).

Under OPA, the statute does not apply to a “public vessel” defined as “a vessel owned or bareboat chartered *and* operated by the United States.” 33 U.S.C. § 2701(29) (emphasis added). The vessel at issue in the decision, the Large Medium Speed Roll-On, Roll-Off carrier USNS FISHER, is owned by the United States Navy Military Sealift Command, and there was no dispute that the first part of the test was met. However, the appellant insurer argued that OPA applied because the vessel was operated by a private contractor, American Overseas Marine Company, Inc. (AMSEA), and not by the United States.

The court disagreed. Siding with the United States and AMSEA, the First Circuit held that “if a vessel functioning in a public capacity is owned (or bareboat chartered) by the United States, but crewed by a private contractor, such vessel constitutes a ‘public vessel’ so long as the private contractor is operating under the operational control of the United States and except when the vessel is engaged in commerce.”

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