

# RUBIN, FIORELLA & FRIEDMAN LLP

ATTORNEYS AT LAW

630 Third Avenue, 3<sup>rd</sup> Floor

New York, New York 10017

Tel: (212) 953-2381 / Fax: (212) 953-2462

Writer's Direct Dial: (212) 447-4605

E-Mail: JMERCANTE@RUBINFIORELLA.COM

## **DECISION OF INTEREST** **(Collision, Sinking, Pollution)**

On December 22, 2016, the U.S. District Court for the District of Columbia issued a notable opinion in *Water Quality Insurance Syndicate v. United States*. In comprehensive fashion, the court, reversed the National Pollution Funds Center's denial of a pollution insurer's \$1.8 million claim for oil spill cleanup costs. The NPFC had determined there was 'gross negligence' by the captain of the MONARCH, an offshore supply vessel that collided with an oil and gas production platform in Cook Inlet, Alaska. This decision will have significant implications for pollution insurers.

The MONARCH's captain was maneuvering in complete darkness through thick ice packs trying to land alongside the platform. The vessel collided with the platform and sank, resulting in a spill of 38,000 gallons into Cook Inlet.

The owner of MONARCH was the 'responsible party' under the Oil Pollution Act of 1990 ("OPA"), but its liability would be limited by law to \$800,000 unless the MONARCH's captain was deemed to be grossly negligent. MONARCH'S insurer, Water Quality Insurance Syndicate ("WQIS"), incurred nearly \$2,700,000 in cleanup costs and expenses, and filed a claim for reimbursement from the Oil Spill Liability Trust Fund, created under OPA, which is managed by the Coast Guard's National Pollution Funds Center ("NPFC"). WQIS's claim was denied by the NPFC on the basis that the captain was grossly negligent.

The district court offered several reasons for its decision to grant the insurer's motion for summary judgment. For example, the NPFC disputed critical findings by the United States Coast Guard in its investigation, and incorrectly defined the "gross negligence" standard applicable to claims for reimbursement under the Oil Pollution Act.

The Coast Guard in Alaska had thoroughly investigated the casualty and attributed the cause of the incident to the thick ice, darkness and swift currents as well as to crew fatigue due to operating in such conditions. The Coast Guard found that the master simply had "lost situational awareness" by concentrating on maneuvering the vessel through the ice flows instead of the vessel's approach to the platform.

Since, the NPFC concluded that the incident was caused by the captain's gross negligence, the responsible party was ineligible for limitation under OPA 90. Relying on its own definition of "gross negligence," the NPFC found that the captain failed to exercise the "*higher degree of care*" required when maneuvering a vessel through ice and currents.

WQIS then submitted a Request for Reconsideration, with additional evidence to the NPFC. One year later, the NPFC still had not responded. Therefore, WQIS sought judicial review under the Administrative Procedure Act (APA) by commencing a lawsuit against the United States in the district court.

Two months *after* WQIS commenced the lawsuit, the NPFC issued a "Second Determination" in which it again denied limitation due to the captain's "gross negligence," and determined that it was not bound by the Coast Guard's investigation.

In a ruling of first impression, the district court held that the Fund's Second Determination should be stricken from the administrative record because it was untimely. Under OPA 90, the NPFC had 90 days to respond to WQIS' Request for Reconsideration. Therefore, the "final agency action" subject to judicial review under the APA was the Fund's First Determination.

The district court also found that the NPFC's definition of "gross negligence" was incorrect. Congress did not define "gross negligence" under OPA 90. The district court, therefore, looked to OPA 90's companion natural resource damage statutes and in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") found a definition of "gross negligence" that required "*reckless, willful, or wanton misconduct.*" The NPFC's definition, in comparison, did not capture the same notion of deliberate and conscious disregard to the risks.

The court also noted that the local Coast Guard personnel who investigated the incident had superior knowledge regarding the conditions experienced by the vessel and her crew.

The district court held that the NPFC's decision to deny recovery was arbitrary and capricious. It set aside the decision and remanded the matter back to the NPFC to handle the claim for reimbursement.

A copy of the decision is available upon request. *WQIS v. USA*, 2016 WL 7410549 (District of Columbia).

We were pleased to handle the matter for WQIS.