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Catalyst Old River Hydroelectric Limited Partnership v. Ingram Barge Co. United States Court of Appeals, Fifth Circuit 639 F.3d 207 (Decided April 15, 2011)

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DISTRICT COURT ERRED IN GRANTING BARGE OWNERS' MOTION FOR SUMMARY JUDGMENT IN SUIT SEEKING DAMAGES FOR ECONOMIC LOSS AS A RESULT OF BARGE BLOCKING THE INTAKE CHANNEL OF A HYDROELECTRIC FACILITY

The United States Court of Appeals for the Fifth Circuit reversed an order of the district court granting summary judgment in favor of the Defendant barge owner, finding that the entry of Defendants' barge into a hydroelectric facility caused physical damage to Plaintiff's property and invasion of its proprietary interest

Catalyst Old River Hydroelectric Limited Partnership v. Ingram Barge Co.
United States Court of Appeals, Fifth Circuit
639 F.3d 207
(Decided April 15, 2011)

Plaintiff, Catalyst Old River Hydroelectric Limited Partnership ("Catalyst"), owns and operates a hydroelectric station on a privately owned channel from the Mississippi River. Plaintiff sued the Defendants, American River Transportation Co. ("ARTCO") and Ingram Barge Co. ("Ingram"), for damages arising as a result of a collision between Defendants' barge drifting into the intake channel of Catalyst's facility and becoming grounded on the bank of the intake channel, lodged against the station and abutment. The physical presence of the barge obstructed the intake channel, which provides water to the turbines of the facility. The presence of the barge forced Catalyst to reduce its output of electricity in order to prevent the barge from sinking and to allow safe access to the barge for its removal. Catalyst shut down six turbines and reduced the remaining two to minimum power. Catalyst restarted the dormant turbines and restored the other turbines to normal capacity approximately 18 hours later.

Catalyst, seeking damages for the value of power it could not generate as a result of the blockage, brought suit in Louisiana state court. The Defendants removed the case to the United States District Court of the Western District of Louisiana. The Defendants filed a motion for summary judgment seeking dismissal of all claims. The district court entered summary judgment against the plaintiff, finding the entry of the barge into the hydroelectric facility's intake channel did not satisfy the damage requirement of *Louisiana ex. Rel. Guste v. M/V Testabank*,¹ preventing Catalyst from recovering its economic losses. In *Testabank*, the Fifth Circuit set forth that "there can be no recovery of economic loss absent physical injury to a proprietary interest."² This parallels the general maritime law that there can be no recovery for economic loss unless there is physical damage to, or an invasion of, a proprietary interest.³

The Defendants argued that Catalyst did not suffer physical harm, relying upon *Reserve Mooring v. American Commercial Barge Line*.⁴ The Court of Appeals rejected this comparison, stating that the Plaintiff's claim in this case is "markedly different [from that in *Reserve*] as [Catalyst] argues that the presence of the barge "impair[ed] the ability of the facility to operate as designed."⁵ The Court agreed with Catalyst's view that such harm qualifies as damage to its proprietary interest, stating that "by interfering with the flow of water, Catalyst's proprietary interest in its facility was invaded and

¹ 752 F.2d 1019 (5th Cir. 1985).

² Catalyst Old River Hydroelectric Ltd. P'ship v. Ingram Barge Co., 639 F.3d 207, 211 (5th Cir. 2011) (citing *Testabank*, 752 F.2d at 1024).

³ Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303 (1927).

⁴ 251 F.3d 1069 (5th Cir. 2001) (denying claim for economic damages where company sued for the loss of use of mooring where a sunk barge interfered with ability of other vessels to moor at facility).

⁵ *Catalyst*, 639 F.3d at 211.

harmed.”⁶ Furthermore, the Court stated that “simply because the physical damage to . . . Catalyst’s facility has been repaired by removal of the barge without cost to Catalyst does not mean that no physical damage occurred by the intrusion.”⁷ In reaching its decision the Court relied on *Consolidated Aluminum Corp. v. Bean Corp.*,⁸ where the Fifth Circuit held, “harm resulting from the interruption of the gas supply to [Plaintiff’s] facility satisfied *Testabank*.”⁹ Much like the disruption to the flow of gas in *Consolidated*, the *Catalyst* Court found the blockage of water to the Plaintiff’s facility also satisfied *Testabank*.

The Court further found that Catalyst’s voluntary reduction of its turbines, to prevent additional damage to its facility, may also be used to satisfy the *Testabank* rule. The Court stated that “[a]cts taken in mitigation to prevent permanent physical damage can serve as the physical damage requirement in the *Testabank* rule.”¹⁰ Without mitigating potential damage, Catalyst would have run the “unacceptable” risk of incurring physical damage to its hydroelectric station. By applying the rule set forth by this Court in *Corpus Christi Oil & Gas Co. v. Zapata Gulf Marine Corp.*,¹¹ such reduction of power would be enough to satisfy the requisite damage requirement, despite the fact that there was no lasting physical damage to the facility or intake channel after the removal of the barge was completed.

For the above stated reasons the Court of Appeals reversed and remanded the judgment of the district court.

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**UNDER ALTERNATIVE EMPLOYMENT ENDORSEMENT POLICIES NAMED AND ANY
ADDITIONAL INSUREDS ARE SUBJECT TO THE SAME BENEFITS AND RESTRICTIONS**

**The United States Court of Appeals for the Fifth Circuit reversed an order of the district court
granting summary judgment in favor of the Plaintiff-Appellee, finding that the Protection and
Indemnity Clause and the Alternative Employment Endorsement Clause were not conflicting and
thus, SNIC was not awarded reimbursement for their defense costs**

Cal-Dive International, Inc. v. Seabright Insurance Company
United States Court of Appeals, Fifth Circuit.
627 F.3d 110
(Decided November 22, 2010)

This case involves an insurance policy coverage dispute. Coastal Catering, LLC (“Coastal”) and Horizon Offshore Contractors, Inc. (“Horizon”) entered into a catering services agreement. David Brown, a Coastal employee, was injured while aboard a Horizon vessel. Brown brought a Jones Act lawsuit, naming Coastal and Horizon as co-defendants. Under the terms of their business contract, Coastal was obligated to defend Horizon through plaintiff-appellee State National Insurance Company (“SNIC”), its Maritime General Liability (“MGL”) insurer. Coastal defended itself through defendant-appellant Seabright Insurance Company (“Seabright”), its Maritime Employer’s Liability (“MEL”) insurer. After the underlying case settled, SNIC and Seabright divided the defense costs fifty-fifty, and SNIC sought reimbursement.

⁶ *Id.* at 213.

⁷ *Id.* at 214.

⁸ 772 F.2d 1217 (5th Cir. 1985).

⁹ *Catalyst*, 639 F.3d at 212–13.

¹⁰ *Id.* at 213 (citing *Corpus Christi Oil & Gas Co. v. Zapata Gulf Marine Corp.*, 71 F.3d 198 (5th Cir. 1995)).

¹¹ 71 F.3d 198.