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South Port Marine, LLC v. Gulf Oil Ltd. Partnership, 73 F. Supp.2d 17 (D. Me. 1999)

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determine consistency with the NCP. Because the court found that a fully developed record did not exist, it concluded that the NCP issue was not ripe.

Finally, the court found the government's cross-claim and sovereign immunity issues were premature given the liberal pleading standards and the Coop's intent to amend its cross-claim if the families amended their complaint to assert tort claims against the Coop pursuant to the Federal Tort Claims Act. Therefore, the court denied without prejudice the government's motions to dismiss.

Kris A. Zumalt

South Port Marine, LLC v. Gulf Oil Ltd. Partnership, 73 F. Supp.2d 17 (D. Me. 1999) (holding that under the Oil Pollution Act of 1990 damages are not limited to physical property and may include goodwill and other intangibles if adequate evidence was presented to show actual loss).

South Port Marine ("Marina") filed suit under the Oil Pollution Act of 1990 to recover damages from a Gulf Oil ("Gulf") gasoline spill. A jury verdict in favor of the Marina awarded \$181,964 for property damage, \$105,000 for lost profits, and \$300,000 for loss of goodwill and business stress. Subsequently, Gulf filed a motion for judgment as a matter of law or, in the alternative, for a new trial.

The district court granted Gulf's motion for judgment as a matter of law on all but the granting of \$15,000 of lost profits, and eliminated the judgment for the entire \$300,000 for loss of goodwill and business stress. The statute allowed an injured party to recover for economic losses resulting from destruction of real or personal property. The court stated that "personal property" included intangible assets. Therefore, damages for loss of goodwill and business stress were permitted. However, in this case, the Marina did not present adequate evidence to prove future lost profits or the loss of goodwill. The basis for the majority of the \$105,000 of lost profits was a plan prepared by one of the owners of the Marina. The plan included dredging of the Marina to cut down on draft, and for expansion by twenty-five slips. Due to the lack of evidence of market demand for the twenty-five additional slips, the Marina could not recover the \$90,000 of the lost profits attributed to the additional slips. The court did award \$15,000 of the lost profit damages for future slip revenue from customers who left slips due to the spill.

The court stated the Marina was entitled to recover the decline in fair market value ("FMV") due to the dock damage under goodwill but ruled the evidence for assessment was inadequate. The Marina accountant valued goodwill at \$100,000, but he never provided any evidence that the spill reduced goodwill to zero or by any other amount. The accountant provided the figure of \$150,000 as the amount of damages attributable to business stress. He provided this amount as the reduced price a purchaser would pay for the Marina. However, the accountant did not provide any

analysis of the calculation. The court ruled that the inadequate evidence should have prevented the claim for business stress from submission to the jury.

The court granted the motion for a new trial in the event that the judgment as matter of law was vacated, unless the Marina agreed to a remittitur in the amount of \$100,000.

Tiffany Turner

Colbro Ship Management Co. v. United States, 84 F. Supp.2d 253 (D.P.R. 2000) (granting defendant's motion for summary judgment because substantial evidence in the administrative record supported the finding that the plaintiff was liable for the discharge of garbage mixed with plastic into the navigable waters of the United States and holding that the assessment of the civil penalty of \$10,000 was not an abuse of discretion).

In May 1995, the United States Coast Guard ("USCG") in Miami, Florida, received notification that Michael Schrader, an operator of an ocean-going vessel, had witnessed a man throwing a large, white garbage bag from an all-white freighter vessel with a red waterline into the United States' Exclusive Economic Zone ("EEZ") waters off the coast of Florida. Schrader approached the ship and found a trail of food, paper, and plastic trash from a split open trash bag in the water. Two vessels were in the approximate vicinity of the witnessed incident; however, the USCG, based on the reported position and visual description given by Schrader, identified the vessel as the Phoenix Spirit.

An ensuing inspection conducted by the USCG revealed an insufficient amount of garbage on board in relation to the size of the crew and to the voyage's duration since the last port of call where garbage could have been discharged. Further, the ship's master did not produce any receipts from any previous shoreside discharges. Empty white trash bags were found on board. Schrader later identified the vessel from photographs taken by the USCG while on approach and on board. The USCG investigators subsequently filed an official report with the USCG hearing officer.

The hearing officer advised Colbro Ship Management Company ("Colbro"), the responsible party for the Phoenix Spirit, of the initiation of civil penalty proceedings pursuant to the Act to Prevent Pollution from Ships ("APPS"), the International Convention for the Prevention of Pollution from Ships of 1973, and the Federal Water Pollution Control Act for the discharge of garbage mixed with plastic into the navigable waters of the United States. The hearing officer's notice further advised Colbro of the proposed penalty of \$10,000, and of its rights. Colbro purportedly requested a hearing, although such a request never materialized. Colbro never spoke with Schrader. Further, Colbro never secured counsel and chose instead to correspond with the hearing officer, denied liability, and challenged the sufficiency of the evidence.

After reviewing all the evidence in the administrative record, the