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Maritime

U.S. District Court Finds U.S. Coast Guard’s National Pollution Funds Center Acted Arbitrarily and Capriciously When Denying Oil Spill Claim

Action Item: In December 2016, the U.S. District Court for the District of Columbia found that the U.S. Coast Guard’s National Pollution Funds Center (“NPFC”) wrongfully denied a reimbursement claim by the Water Quality Insurance Syndicate (“WQIS”) for the costs of cleaning up an oil spill in Cook Inlet, Alaska in January 2009. This opinion provided a powerful finding that a federal agency acted arbitrarily and capriciously in taking final agency action under the Administrative Procedure Act (“APA”). The opinion puts federal agencies on notice that agency determinations must be supported by the factual record.

Background

The NPFC was established to implement provisions of the Oil Pollution Act of 1990 (“OPA 90”), including provisions related to the Oil Spill Liability Trust Fund (“OSLTF”), which adjudicates claims and issues reimbursements for oil spill response and removal actions. The Responsible Party (“RP”) is responsible for cleanup when an oil spill occurs, subject to limitation of liability caps. Once the limit is reached, the OSLTF makes up the difference between the limit and the cost of cleanup. The RP is not entitled to the limitation of liability if found, among other things, to have acted with “gross negligence.”

The case before the Court involved a January 2009 allision of the supply vessel *Monarch* with an offshore oil and gas production platform, which occurred in icy waters in Cook Inlet, Alaska. The allision caused approximately 38,000 gallons of oil to spill into Cook Inlet. Ocean Marine Services, Inc. (“OMSI”), the vessel owner, responded to the spill, recovering 12,445 gallons of oil. WQIS, as OMSI’s insurer, incurred nearly \$2.7 million removal costs and expenses and, in January 2012, submitted a reimbursement claim to the NPFC for \$1.9 million— the cleanup costs less the \$800,000 limitation of liability. In its marine casualty investigation into the allision, the U.S. Coast Guard found no evidence of gross negligence.

First and Second Denial Decisions

Over 18 months after WQIS submitted the reimbursement claim and documentation to the NPFC, the NPFC issued its First Denial Decision on June 30, 2014 concluding that the conduct of the Master of the *Monarch* amounted to “gross negligence.” In December 2014, WQIS filed a request for reconsideration. The NPFC did not respond for over a year and a half and WQIS thus filed suit in May 2015 to set aside the First Denial Decision as arbitrary and capricious.

After WQIS filed suit, the NPFC attempted to cure its initial determination by filing a Second Denial Decision on July 21, 2015 and attempted to treat its Second Denial Decision as the final agency action. WQIS moved to strike the Second Denial Decision from the administrative record as untimely due to NPFC's failure to respond to the reconsideration request within the required 90-day period. Both parties then filed cross-motions for summary judgment.

The NPFC's Determination was Arbitrary and Capricious

In a Memorandum Opinion filed on December 22, 2016, the Court granted WQIS' motion for summary judgment. Initially, the Court struck the Second Denial Decision as untimely, and treated the First Denial Decision as the *de facto* final agency action.

The Court dedicated the remainder of its opinion to analysis of the First Denial Decision. The Court noted numerous deficiencies in the NPFC's denial of WQIS' claim based on a "gross negligence" determination. Under the APA, a court must set aside an agency action if found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A). Applying the APA standard of review, the Court found two main issues to be of particular concern: (1) the NPFC's factual findings were flawed, and (2) the NPFC's legal reasoning was inadequate.

First, the Court rejected the NPFC's factual findings as "alternately incorrect or speculative," commenting that the NPFC not only ignored essential information in the U.S. Coast Guard's marine casualty investigation report, but also "cherry-picked" evidence. For example, the NPFC asserted that the Master had failed to determine the vessel's position after assuming his watch, and suggested the Master made two telephone calls in the midst of his last-minute maneuvers to avoid the allision, which diverted the Master's attention. The U.S. Coast Guard's report, however, did not support this finding. Accordingly, the Court found the NPFC factual findings to be assumptions unsupported by evidence in the record, and made clear that the NPFC cannot ignore or exclude contrary evidence without explanation.

Second, the Court found the NPFC's definition of "gross negligence" to be overly broad and contrary to agency precedent. Since OPA 90 does not define "gross negligence," and Congress has not granted the NPFC the authority to formulate its own definition, the Court reviewed similar natural resource

statutes to define gross negligence. The Court ultimately relied on the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), which requires conduct that is "reckless, willful, or wanton" for gross negligence.

The Court concluded that Congress intended OPA 90 to provide for limited liability absent misconduct by an RP deemed "wanton, willful, or reckless," and the NPFC failed to articulate how its gross negligence definition applied the appropriate standard. The Court further cited precedent in prior NPFC decisions that involved more egregious circumstances, yet did not find gross negligence, demonstrating inconsistency in the NPFC's application of the definition of gross negligence. Overall, the Court determined that the NPFC failed to fulfill its obligation for reasoned decision-making, and was arbitrary and capricious in its methodology. Consequently, the Court remanded the matter to the NPFC for a determination consistent with the correct legal standards. The government may still appeal, and the NPFC could deny the claim again once the matter is final and reaches the NPFC on remand. However, such a denial appears unlikely, especially given the Court's critique of the prior denials in its opinion.

Conclusions

In recent years, some industry stakeholders have suggested the NPFC has made determinations that have run counter to the underlying purposes of OPA 90 and the OSLTF. With this ruling, the Court holds accountable a federal agency for its untimely responses, and signaled that the NPFC may not deny claims absent sound legal argument and clear evidence. It remains to be seen what effect this ruling will have on other agency rulings, but the Court in this case put the NPFC on notice that any denials of coverage must be based on the evidence of record and legally tenable constructions of the statute. When filing a claim with the NPFC, vessel owners and insurers should be sure to compile a complete record and not take "no" for an answer when agency decisions are not supported by the record.

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