
LITIGATING CONTRIBUTION CLAIMS

Under the OIL POLLUTION ACT

ASHLEY A. PECK
HOLLAND & HART LLP

ENERGY INDUSTRY ENVIRONMENTAL LAW CONFERENCE
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LEGAL OVERVIEW

Oil Pollution Act

33 U.S.C. § 2701 *et seq.*

- Comprehensive federal statutory scheme for oil spill response.
- Enacted in 1990 after Exxon Valdez and other large spills.
- Addresses liability, recoverable costs, trust fund, penalties.



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LEGAL OVERVIEW – KEY STATUTORY PROVISIONS

Responsible Party

- Anyone who owns, leases or operates the source of an oil spill is strictly liable.
- Pipelines, vessels, storage tanks, tanker trucks.



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LEGAL OVERVIEW – KEY STATUTORY PROVISIONS

Liability for

- “Removal costs” – costs incurred in response (remediation, oversight, etc.)
- “Damages” – natural resources, property, subsistence, revenues, profits, public services.



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OPA SPILL RESPONSE PROCESS

Unified Command

Shoreline Cleanup Assessment Team

Multiple regulatory agencies

Demand for immediate action



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OPA - CONTRIBUTION PROVISION

Section 1009:

- “A person may bring a civil action *for contribution* against any other person *who is liable or potentially liable under this Act or another law*. The action shall be brought in accordance with section 2717 of this title.” 33 U.S.C. § 2709.

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RELATED PROVISIONS

Liability- a “responsible party” is strictly liable for “removal costs” and specific “damages” following an oil spill.



Subrogation Right - if the oil spill’s cleanup costs were “caused *solely* by an act or omission of one or more third parties,” then the third party may be treated as the “responsible party” under § 1002(a).

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SETTOON TOWING

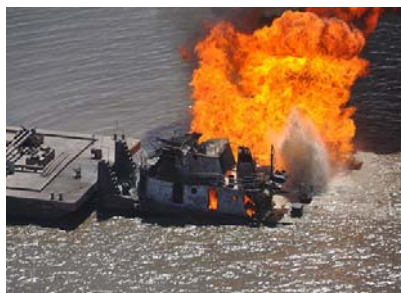


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SETTOON TOWING

- *In re Settoon Towing* (2017)
 - OPA Contribution Provision v. Maritime Law
 - Is pure economic loss recoverable from non-sole cause third party under OPA?



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SETTOON TOWING

- Held: OPA creates a federal statutory right to contribution for removal costs and damages resulting from an oil spill independent of state or maritime law.
- Defendant barge owner need not be the “sole cause” of the oil spill or resulting expenses to be held liable.



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PRIOR CASES TOUCHING ON "SOLE CAUSE"

- *Maytag Corp. v. Navistar Int'l Transp. Corp.*
- *United States v. Egan Marine Corp.*



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RED BUTTE OIL SPILL



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RED BUTTE OIL SPILL

- *Chevron Pipe Line Co. v. Pacificorp (2017)*
 - OPA Contribution Provision v. State Liability Reform Law

Held: Chevron Pipe Line Company could pursue a contribution claim against a power company that it alleged caused a pipeline rupture.



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RED BUTTE OIL SPILL

- Utah law eliminating pure comparative fault did not abrogate OPA contribution claim against a third party that may not have been the sole cause of the oil spill.
- §1009 – creates an independent statutory right to pursue contribution from a “third-party who may have been a partial cause of the spill.”



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UNRESOLVED ISSUES

- The Scope of Recoverable Expenses:
 - Agency penalties?
 - Natural resource project costs – state versus federal.
 - Personal injury?



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UNRESOLVED ISSUES

- Court or Jury:
 - Are “damages” claims for restitution and therefore tried to jury?
 - Recoverable removal costs are only those for acts that are “consistent with the National Contingency Plan,” - determined by the court as a matter of law.



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UNRESOLVED ISSUES

- Liability Standard:
 - How to apportion causal fault to joint tortfeasors?
 - Strict liability or negligence standard?



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LITIGATION CONSIDERATIONS

Discovery
preparation

- Internal Investigation Reports
- Internal correspondence
- Privilege and work product

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LITIGATION CONSIDERATIONS

Agency Investigations

- Reports
- Settlement Agreements
- Penalties

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LITIGATION CONSIDERATIONS

Building Damages Case

- Recordkeeping
- NCP consistency
- Cost justifications

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For more information:

Ashley A. Peck
Holland & Hart LLP
aapeck@hollandhart.com
801-799-5913 (direct)
206-778-8224 (cell)

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