“The Legal Consequences of 46 C.F.R. Subchapter M”

By

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How did we get here?....

- Coast Guard and Maritime Transportation Act of 2004 (New Authority for Towing Vessels)
- Request for Comments & Public Meetings (12/30/2004)
- Final Rule: ???
The Proposed Rulemaking

- “The Coast Guard proposes to establish a comprehensive safety system that includes company compliance, vessel compliance, vessel standards, and oversight in a new Code of Federal Regulations subchapter dedicated to towing vessels.”
Legal Consequences

- Limitation of Liability
- Negligence Per Se
- Civil Penalties / Suspension & Revocation
- Criminal Liability
- Reimbursement Claims Under the Oil Pollution Act of 1990 (OPA)
Limitation of Liability Act

- 46 U.S.C. 30505 (b) limits the owner of a vessel’s liability to the value of the vessel and pending freight
- Unless, the owner had “privity or knowledge” of the negligent act
- Violation of a Subchapter M regulation can form the basis for denying an owner’s request to limit liability
- Subchapter M will put owners on notice of the standards necessary to safely operate vessels
Limitation of Liability
(Case Study)

- 46 C.F.R. § 140.410 & 140.415 (Safety Orientations)
- 46 C.F.R. § 140.510 (“Owner must implement procedures to identify and mitigate health and safety hazards”)
Negligence Per Se

- Negligence As a Matter of Law (Breach Of Duty Is Not A Jury Question)
- Violation of a U.S.C.G. regulation Can Trigger Negligence Per Se
- Personal Injury Actions- Can Not Consider The Comparative Fault Of The Injured
- Jones v. Spentonbush-Red Star Co., (2d Cir. 1998)(Distinguishing OSHA Standards (General Workplace) From U.S.C.G. Standards (Specific to Shipping))
Negligence Per Se (Case Study)

  - Plaintiff – owner violated OSHA regulation and the defense of comparative negligence is barred.
  - Owner- comparative negligence of Falconer is “fair game.”
- Result: Followed the Jones decision
Civil Penalties

- Violations of regulations can result in possible assessment and collection of civil monetary penalties
- 46 U.S.C. 2302 (a): Operating a vessel in a negligent manner that endangers life, limb or property of a person. ($25,000 Maximum Penalty Amount)
- 46 U.S.C. 3318: Failure to comply with a direction issued by the U.S.C.G. ($11,000 Maximum Penalty Amount)
Suspension & Revocation

- Failing to comply with regulations will subject mariners to suspension & revocation proceedings.
- 46 CFR § 5.27-Misconduct is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship’s regulation or order, or shipping articles and similar sources.
Criminal Liability

- Seaman’s Manslaughter – 18 U.S.C. § 1115
- United States v. O’Keefe, 2005 AMC 2805 (5th Cir. 2005)(Tugboat)
- As to owners & operators, simple negligence can form the basis of a homicide charge
Criminal Liability

- “Any degree of negligence is sufficient to meet the culpability threshold.”
- As to owners & operators, don’t have to prove “gross negligence”
- Violation of a safety regulation can form the basis for a Seaman’s Manslaughter charge.
Criminal Liability

- Corporate officers can also be charged for knowingly and willfully causing or allowing the negligence that resulted in death.

- United States v. Ryan, 365 F. Supp 2d 338 (EDNY 2005) (Director of Ferry Operations charged with failing to enforce a “two-pilot rule”)
OPA 90 Claims

- National Pollution Funds Center (NPFC) & Entitlement to Limit Liability

- Responsible Party (RP) may limit its liability and recover costs and damages which exceed monetary limitations

- Limits on liability do not apply if the incident was caused by “the violation of an applicable Federal safety, construction, or operating regulation” (33 U.S.C. § 2704 (c))