



OPA 90 Forum

Comment on Savage Marine v. United States, No. 21-10745 (11th Cir., February 8, 2022)

As a matter of information, the OPA 90 Forum is monitoring a recent OPA decision from the 11th Circuit Court of Appeals. In the following circumstances the court decided that Savage, having been the “responsible party” and paying for the cleanup of a spill from one of its barges had no third-party claim against the United States for causing the spill, ruling that OPA does not waive the federal government’s sovereign immunity. The facts may be briefly summarized. A loaded Savage tank barge, pushed by a Savage tug, entered a boatlift (lock) operated by the US Army Corps of Engineers. Without warning the Savage personnel on the tug, the lift operator suddenly began dewatering the lift with the result that the bow of the barge hung up on the lift wall. The hull ruptured and the spill followed.

The decision rests on a purportedly careful application of various rules of statutory construction. Whether the court applied the appropriate rules may be considered a substantial question in and of itself.

In any event, the result may be viewed as completely contrary to the Oil Pollution Act’s effort to hold those ultimately accountable for a spill to bear the appropriate liability.