

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN A. MEHELICH,)
)
 Defendant.)

No. 3:14-cv-0247-HRH

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Plaintiff's costs, damages, and disbursements recovery claim founded upon the Oil Pollution Act of 1990, 33 U.S.C. § 2701, et seq., was tried to the court on April 3, 2017.¹ The issues to be tried were settled upon by the plaintiff's statement of issues,² which was incorporated into the court's final pretrial order.³ At the final pretrial conference, defendant accepted plaintiff's statement of uncontested facts.⁴ At the final pretrial conference, defendant specifically accepted the fact that plaintiff incurred costs in the amount of \$1,657,085.53.⁵

¹Verified Complaint, First Cause of Action, at 7, ¶¶ 31-33, Docket No. 1.

²Docket No. 42.

³Docket No. 51.

⁴Docket No. 43.

⁵Docket No. 51 at 2.

Conclusions of Law

(1) This court has jurisdiction of plaintiff's cost recovery claim pursuant to 28 U.S.C. § 1345 and 33 U.S.C. §§ 1321 and 2717.

(2) The Oil Pollution Act of 1990 ("OPA") imposes strict liability for pollution removal costs and damages on the "responsible party" for a vessel from which oil is discharged. 33 U.S.C. § 2702(a). Responsible parties include owners of vessels. 33 U.S.C. § 2701(32). Absence of fault or exercise of due care is not a defense to statutory strict liability.

(3) OPA's strict liability is triggered by either:

- (a) a "discharge" of oil from a vessel into navigable waters; or
- (b) the "substantial threat" of a "discharge" of oil from a vessel into navigable waters. 33 U.S.C. § 2702(a).

(4) OPA authorizes three possible statutory defenses. The responsible party has the burden of proving that a discharge or substantial threat of discharge was caused "solely" by:

- (a) an act of God;
- (b) an act of war; or
- (c) an act or omission of a third party.

OPA, 33 U.S.C. § 2703(a).

(5) In order to take advantage of the third-party defense, the responsible party has the burden of proving that he:

- (a) exercised due care with respect to the oil concerned; and

- (b) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions.

33 U.S.C. § 2703(a)(3).

Findings of Fact

As contemplated by the court's final pretrial order,⁶ the court accepts the following statement of uncontested facts.

(1) The L/C SOUND DEVELOPER was a steel-hulled landing craft originally built in 1960. The vessel was 117 feet long and displaced 147 gross tons.

(2) John Mehelich purchased the vessel for \$100.00 at a court-ordered sale on December 2, 2004.

(3) On January 27, 2005, Mr. Mehelich applied for, and was provided with, moorage space in the Cordova Small Boat Harbor, which comprises navigable waters of the United States.

(4) The vessel was moored in Slip "TA" in the Cordova Small Boat Harbor beginning on January 27, 2005.

(5) On August 27, 2009, the United States Coast Guard ("USCG"), Marine Safety Unit Valdez ("MSU"), was notified by the National Response Center that the SOUND DEVELOPER had sunk in its slip in the Cordova Small Boat Harbor.

(6) In response to the August 27, 2009, notification, the MSU researched the ownership of the vessel and identified John Mehelich as its owner.

(7) After determining that Mr. Mehelich was the owner of the vessel, MSTC Todd Taylor of the USCG, MSU Valdez, called Mr. Mehelich in Nome, Alaska (where he

⁶Docket No. 51.

had relocated after mooring his vessel in the Cordova Small Boat Harbor), and advised him that his vessel had sunk in the harbor and that he was responsible for doing whatever was necessary to ensure that the vessel did not spill oil into the harbor.

(8) On the same day the vessel sank, two officers from Coast Guard MSU Valdez were in Cordova on Coast Guard business. MSTC Taylor contacted the two officers and requested that they go to the small boat harbor and investigate the situation. Upon their arrival the two officers discovered an oil sheen emanating from the sunken vessel.

(9) Upon hearing of the oil sheen emanating from the vessel, MSTC Taylor contacted the Cordova Harbor Office and was advised that the Harbor was planning to retain Alaska Marine Response (“AMR”) to deploy a containment boom around the vessel to contain the discharge of oil.

(10) Later that same day, MSTC Taylor called Mr. Mehelich again and verbally read a Coast Guard’s Notice of Federal Interest (“NOFI”) that was going to be issued to him, and explained that he was responsible for the oil leaking from his vessel. He then mailed the NOFI to Mr. Mehelich at the address Mr. Mehelich provided.

(11) Between August 27 and August 31, 2009, MSU Valdez received reports that the sunken vessel continued to leak oil into the harbor.

(12) On August 31, 2009, MSU Valdez contacted Mr. Mehelich to determine whether he had a plan to deal with the situation. Mr. Mehelich advised that he had retained AMR to undertake oil removal and abatement services.

(13) Subsequently, MSU Valdez contacted AMR and confirmed that it had been retained by Mr. Mehelich to provide cleanup and abatement services.

(14) On September 10, 2009, MSU Valdez lost contact with Mr. Mehelich.

(15) Due to concerns over Mr. Mehelich's willingness to address the situation involving his vessel, the USCG appointed Commander D. P. Verfaillie as the Federal on Scene Coordinator ("FOSC").

(16) As the FOSC, Commander Verfaillie opened a federal project so that he would be prepared to request funding from the Oil Spill Liability Trust Fund ("OSLTF") if Mr. Mehelich failed to properly respond.

(17) By October 1, 2009, the FOSC concluded that Mr. Mehelich was either unable or unwilling to respond and hired Global Diving and Salvage, Inc., and Alaska Chadux to remove one 55-gallon drum of oil and seven 5-gallon buckets of oil/bilge trash. Global also sealed all the fuel vents and open pipes in addition to removing a large generator with several bags of oil-soaked trash. Global further prepared the vessel to be raised from the ocean floor.

(18) On October 28, 2009, the NPFC wrote to Mr. Mehelich and advised him that the USCG had identified the SOUND DEVELOPER as a source of a pollution incident. Mr. Mehelich was further advised that as the owner of the vessel he might be held liable for all resulting response costs, and that he should contact the NPFC to further discuss the matter. The NPFC did not hear back from Mr. Mehelich.

(19) On November 3, 2009, the FOSC hired Manson Construction Company to lift the sunken vessel with its derrick crane VIKING. The VIKING raised the SOUND DEVELOPER to the water's surface and it floated momentarily. However, due to the vessel's deteriorated condition, it quickly developed a severe starboard list and appeared to be on the verge of capsizing. In an effort to prevent yet another casualty, the crane operator lowered the vessel back onto the sea floor. After divers reexamined the hull, the

FOSC determined that the sunken vessel could not be removed by the crane derrick VIKING.

(20) After the first attempt to remove the vessel failed, the FOSC entered into a long-term contract with AMR to contain the oil sheening from the sunken vessel.

(21) On October 1, 2010, the FOSC wrote to Mr. Mehelich and advised him that he intended to remove and destroy the vessel unless Mehelich came up with an alternative plan for the vessel.

(22) After Mr. Mehelich failed to respond, the FOSC authorized the vessel's removal.

(23) Several weeks later, Manson was able to successfully raise the vessel, and after it was properly decontaminated, the USCG turned it over to the City of Cordova for disposal.

(24) The USCG, National Pollution Funds Center ("NPFC"), paid two claims filed as a result of the pollution incident. On January 19, 2010, the NPFC authorized payment of \$37,319.93 from the OSLTF to AMR as compensation for their services. Additionally, on February 3, 2010, the NPFC authorized an OSLTF payment of \$3,156.94 to the City of Cordova for their costs incurred during the response.

(25) In addition to paying the claims of the City of Cordova and AMR, the NPFC, by and through the OSLTF paid \$1,476,168.41 to the following contractors for their services rendered in mitigating the pollution incident and in raising the vessel in order to abate a substantial threat of additional discharge of oil from the vessel:

- Global Diving and Salvage, Inc.: \$1,302,355.42
- Alaska Marine, Inc.: \$ 169,207.91
- Alaska Chadux, Inc.: \$ 4,605.08

(26) The USCG also incurred direct, recoverable costs as follows:

- USCG Equipment: \$ 709.68
- USCG Personnel: \$ 80,322.50
- USCG Purchases: \$ 5,126.47
- USCG Travel/Temporary Duty Costs: \$ 54,281.60

(27) In the end, the NPFC, by and through the OSLTF, incurred a total of \$1,657,085.53 in response costs as a result of the discharge and substantial threat of discharge of oil from the SOUND DEVELOPER into the navigable waters of the Cordova Small Boat Harbor, including \$1,476,168.41 of out-of-pocket invoiced costs paid to the foregoing third parties.

Based upon the evidence taken at trial and imposing the burden of proof upon plaintiff except as to defenses as to which defendant has the burden of proof, the court makes the following additional findings of fact.

(28) As owner of the SOUND DEVELOPER, defendant was the responsible party with respect to a discharge of oil in the navigable waters of the Cordova Small Boat Harbor.

(29) The continuing appearance of oil sheening around the sunken SOUND DEVELOPER constituted a substantial threat of further discharges of oil into the Cordova Small Boat Harbor. Although the fuel and lubricant tanks of the SOUND DEVELOPER were probably drained and cleaned, a substantial quantity of petroleum lubricants remained in the crankcases of two large and two small engines located on the SOUND DEVELOPER.

(30) Although defendant had effected some repairs to the SOUND DEVELOPER prior to its sinking, a 2003 vessel survey of the SOUND DEVELOPER

(Exhibit 1) and subsequent pictures (Exhibit 6) demonstrate that the SOUND DEVELOPER was not seaworthy when surveyed, and was still not seaworthy when it sank. The quarter-inch thick sides of the hull were heavily corroded, and were holed in several places a few inches above the water line. In connection with engine replacement or repair which was underway, defendant had opened deck hatches which, more probably than not, remained open just prior to the sinking of the SOUND DEVELOPER.

(31) It was customary and permissible for third-party vessels to be moored to another vessel, such as the SOUND DEVELOPER. On or about August 27, 2009, the vessel LADY HELEN entered the Cordova Small Boat Harbor and, in connection with tying the LADY HELEN up to the SOUND DEVELOPER, the LADY HELEN struck the SOUND DEVELOPER hard, 15 to 20 feet from the stern of the SOUND DEVELOPER, and slid down the side of the SOUND DEVELOPER. The LADY HELEN was tied off to the SOUND DEVELOPER, after which her fish holding tanks were de-watered, and the water was discharged onto the SOUND DEVELOPER. The crew of the LADY HELEN went into town and upon their return realized that the SOUND DEVELOPER was sinking. No report of the condition of the SOUND DEVELOPER was given to the Cordova harbor master or anyone else. The LADY HELEN could not be untied from the SOUND DEVELOPER because of tension created by the sinking of the SOUND DEVELOPER. The lines had to be chopped. The LADY HELEN left the SOUND DEVELOPER to sink.

(32) More probably than not, the collision of the LADY HELEN with the SOUND DEVELOPER and the water-dumping was the immediate cause of the sinking of the SOUND DEVELOPER.

(33) Defendant more probably than not exercised due care with respect to oil remaining on the SOUND DEVELOPER. However, defendant did not take precautions against foreseeable acts or omissions of third parties or the foreseeable consequences of those acts or omissions. While it is not foreseeable that a third party would discharge fish holding tank water onto the SOUND DEVELOPER, the kind of allision which took place was plainly foreseeable and, given the unseaworthy condition of the hull of the SOUND DEVELOPER, it was foreseeable that the SOUND DEVELOPER could easily be damaged in such a fashion as to cause it to sink at its moorings.

(34) Defendant has not borne his burden of proving that the sinking of the SOUND DEVELOPER was solely the result of the act of a third party, the LADY HELEN.

Conclusion

Plaintiff United States of America is entitled to judgment against defendant John Mehelich in the amount of \$1,657,085.53. The second, third, fourth, fifth, and sixth causes of action are dismissed with prejudice. The clerk of court shall enter judgment accordingly.

DATED at Anchorage, Alaska, this 17th day of April, 2017.

/s/ H. Russel Holland
United States District Judge