

1-1-2000

Colbro Ship Management Co. v. United States, 84 F. Supp.2d 253 (D.P.R. 2000)

Elizabeth Appleton

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

Custom Citation

Elizabeth Appleton, Court Report, Colbro Ship Management Co. v. United States, 84 F. Supp.2d 253 (D.P.R. 2000), 3 U. Denv. Water L. Rev. 441 (2000).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Colbro Ship Management Co. v. United States, 84 F. Supp.2d 253 (D.P.R. 2000)

analysis of the calculation. The court ruled that the inadequate evidence should have prevented the claim for business stress from submission to the jury.

The court granted the motion for a new trial in the event that the judgment as matter of law was vacated, unless the Marina agreed to a remittitur in the amount of \$100,000.

Tiffany Turner

Colbro Ship Management Co. v. United States, 84 F. Supp.2d 253 (D.P.R. 2000) (granting defendant's motion for summary judgment because substantial evidence in the administrative record supported the finding that the plaintiff was liable for the discharge of garbage mixed with plastic into the navigable waters of the United States and holding that the assessment of the civil penalty of \$10,000 was not an abuse of discretion).

In May 1995, the United States Coast Guard ("USCG") in Miami, Florida, received notification that Michael Schrader, an operator of an ocean-going vessel, had witnessed a man throwing a large, white garbage bag from an all-white freighter vessel with a red waterline into the United States' Exclusive Economic Zone ("EEZ") waters off the coast of Florida. Schrader approached the ship and found a trail of food, paper, and plastic trash from a split open trash bag in the water. Two vessels were in the approximate vicinity of the witnessed incident; however, the USCG, based on the reported position and visual description given by Schrader, identified the vessel as the Phoenix Spirit.

An ensuing inspection conducted by the USCG revealed an insufficient amount of garbage on board in relation to the size of the crew and to the voyage's duration since the last port of call where garbage could have been discharged. Further, the ship's master did not produce any receipts from any previous shoreside discharges. Empty white trash bags were found on board. Schrader later identified the vessel from photographs taken by the USCG while on approach and on board. The USCG investigators subsequently filed an official report with the USCG hearing officer.

The hearing officer advised Colbro Ship Management Company ("Colbro"), the responsible party for the Phoenix Spirit, of the initiation of civil penalty proceedings pursuant to the Act to Prevent Pollution from Ships ("APPS"), the International Convention for the Prevention of Pollution from Ships of 1973, and the Federal Water Pollution Control Act for the discharge of garbage mixed with plastic into the navigable waters of the United States. The hearing officer's notice further advised Colbro of the proposed penalty of \$10,000, and of its rights. Colbro purportedly requested a hearing, although such a request never materialized. Colbro never spoke with Schrader. Further, Colbro never secured counsel and chose instead to correspond with the hearing officer, denied liability, and challenged the sufficiency of the evidence.

After reviewing all the evidence in the administrative record, the

hearing officer determined that Phoenix Spirit was responsible for the discharge of garbage mixed with plastic into the EEZ and assessed a penalty of \$10,000. Colbro appealed the decision to the USCG Commandant, who, through his designee, affirmed the decision of the hearing officer. Colbro brought this action to review the decision of the monetary penalty against it under the Clean Water Act. Both parties moved for summary judgment on the issue of substantial evidence.

The court reviewed two issues: (1) whether liability for the discharge of garbage into United States waters was supported by substantial evidence in the record; and (2) whether the assessment of the \$10,000 penalty was arbitrary and capricious and an abuse of discretion. The court, limiting its review to the administrative record, affirmed the USCG's determination on both issues.

On the first issue, the court defined substantial evidence as relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The agency, in determining liability, relied on both direct and circumstantial evidence. The USCG had authorization to inspect the Phoenix Spirit to determine if the ship complied with APPS under Title 33 of the Code of Federal Regulations. Section 151.63 enumerated the types of evidence that the USCG could consider in its determination: records and receipts of garbage discharged at port facilities; the absence of plastics on board; and the presence of shipboard spaces used for collecting, storing, and discharging ship-generated garbage. Although the evidence regarding the amount of garbage on board was not overwhelming, the court found that when viewed in totality with the lack of receipts, empty trash bags, and the eyewitness account of trash being thrown overboard from the vessel positively identified as the Phoenix Spirit, the preponderance of the evidence supported the hearing officer's determination of liability. The court further found that the manner in which the USCG handled the issue of vessel identification was rational.

Last, the court determined that the \$10,000 penalty was not arbitrary, capricious, or an abuse of discretion based on provisions in the Federal Water Pollution Control Act, which provided factors the court considered in determining the amount of the civil penalty. The factors included: the seriousness of the violation; the degree of culpability involved; history of prior violations; the economic benefit to the violator; and the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge. Colbro presented no mitigating evidence. Further, the USCG determined that the \$10,000 penalty was appropriate in light of the seriousness of the violation. Thus, the court granted the United States' motion for summary judgment, denied Colbro's cross-motion, and affirmed the Commandant's decision.

Elizabeth Appleton