



DISTRICT COURT REJECTS CHALLENGES TO THE ASSESSMENT OF A CIVIL PENALTY

Written by Robert Bruce

On July 26, 2010, the Honorable Judge Coar of the U.S. District Court for the Northern District of Illinois issued his Memorandum Opinion and Order in the case of *Egan Marine Corporation v. Allen*. In this case, the plaintiff, Egan Marine Corporation (Egan), raised several challenges against a \$21,000.00 penalty assessed for six violations involving the failure to have tank barges properly inspected. Egan asserted that the Coast Guard's civil penalty process denied it due process because it was not afforded a hearing before an impartial fact finder, it did not have a meaningful opportunity to question Coast Guard witnesses, and the penalty was not assessed in a timely manner. Judge Coar rejected these assertions. He stated that Egan's argument, that the civil penalty process was not impartial because the penalty was assessed by the same agency that brought the charges against it, was frivolous. Judge Coar also stated that Egan's subjective opinion that the Coast Guard could not be impartial did not give Egan the right to bypass the Coast Guard's administrative process and have the case tried in district court instead. Judge Coar also stated that the hearing officer's determination that the evidence did not prove some of the charges showed that the hearing officer was capable of impartial judgments.

Regarding the claim that Egan had been denied a meaningful opportunity to question Coast Guard witnesses, Judge Coar found that Egan had not raised this issue in its appeal to the Commandant of the Coast Guard, and that the record did not support Egan's claim that it was not advised of its right to request witnesses because the record included correspondence in which Egan was advised of the

regulations governing civil penalty hearings. Those regulations explain the right to request witnesses.

On the issue of timeliness of the assessment of the civil penalty, Judge Coar rejected the claim because Egan did not show that it was prejudiced by any relevant delay in assessing the penalty. He found that Egan offered only speculation that certain Coast Guard witnesses may have been unavailable and noted that Egan never even tried to have Coast Guard witnesses testify at its hearing.

Finally, Judge Coar rejected Egan's claim that the civil penalty violated the Excessive Fines Clause of the Eighth Amendment. Egan asserted that the \$21,000.00 penalty was excessive because it violated the Coast Guard's own guidelines and because the Coast Guard did not consider Egan's ability to pay the penalty. The judge found that Egan had not raised these issues in its appeal to the Commandant of the Coast Guard. Additionally, he found that the guidelines relied upon by Egan were only recommendations and that they did not apply to a case such as this where one party was charged with a series of recurring violations. Judge Coar also noted that the assessed penalty was only about one/ninth of the maximum penalty that could have been assessed. With respect to ability to pay, the judge found that Egan had not offered any information about ability to pay at its hearing.

Ultimately, Judge Coar found that the Coast Guard action assessing the civil penalty was supported by substantial evidence and was not arbitrary and capricious. He granted the United States' motion for summary judgment and dismissed the case.