

Disputed Facts Preclude Summary Judgment on The Oregon Rule

[Jason Minkin](#) and [Jonathan Cipriani](#) of the Chicago firm of BatesCarey write:-

Under maritime law, The Oregon Rule presumes that a moving vessel is at fault when it allides with a stationary object. This rule has its origins from the 1895 United Supreme Court case, *The Oregon*, 158 U.S. 186 (1895). The owner of the stationary object that is hit by the moving vessel can satisfy its initial burden of demonstrating the moving vessel's breach of duty by invoking The Oregon Rule. The burden then shifts to the moving vessel to demonstrate that it acted with reasonable care, the stationary object was at fault, or the allision was unavoidable. This presumption was recently rebutted in *Vane Line Bunkering, Inc. v. Natalie D M/V, et al.*, 2018 WL 999912 (E.D. La. Feb. 21, 2018), where the federal district court in New Orleans found contested issues of material fact precluding a finding that the moving vessel was solely at fault. The factual determinations, according to the court, will be best left for the trier of fact.

Vane Line Bunkering involves an allision in the Mississippi River. Vane Line Bunkering owned and operated the M/V Chesapeake and a tank barge. According to Vane Line, the Chesapeake and the tank barge were placed in a designated anchorage area by a federal pilot and displayed proper lights. The following day, at about 7:00 p.m., the M/V Natalie D entered the anchorage area, attempted to pass between the Chesapeake and another vessel, and struck the Chesapeake's anchor cable causing it to part and setting the tow adrift.

Vane Line argued that the sole cause of the accident was the negligence of the Natalie D and its owner/operator, Triple S Marine, LLC. Triple S disagreed and filed a counterclaim, arguing that Vane Line was responsible for the allision because its vessels were not properly moored.

In determining whether The Oregon Rule would apply to relieve Vane Line from liability, the court noted that the "presumption derives from the common-sense observation that moving vessels do not usually collide with stationary objects unless the [moving] vessel is mishandled in some way." While the presumption of fault has been found not to apply to allisions with sunken and hidden objects, a vessel operator's knowledge of the nonvisible object gives rise to the presumption because such knowledge means the accident is not fortuitous or unavoidable. Here, the moving vessel allided with a stationary object, the tow's anchor cable which, according to Triple S, was below the water and not visible to its captain. The Natalie D's captain also claimed that he did not know the location of the anchor wire. Thus, where, as here, the allision is with an allegedly unknown, nonvisible object, the court noted that The Oregon Rule may not apply.

Finally, the court noted that The Oregon Rule is rebutted if the stationary object is also at fault. Triple S, the owner of the moving vessel Natalie D, argued that such fault on the part of the stationary object exists here because: (1) it acted reasonably in navigating between anchored vessels to reach the fleeting facility, as it claimed was customary in this area of the river; and (2) the anchored vessel was an obstruction to navigation because its anchor chain was improperly set and the anchor cable protruded into the area where other vessels navigated.

In light of the competing arguments and evidence as to which party is at fault, the court declined to enter summary judgment in favor of Vane Line under The Oregon Rule. Rather, the factual determinations will be decided by the trier of fact.