



Fifth Circuit Adopts Rule Prohibiting Assignment of Tort Claims From an Injured Party to a Joint Tortfeasor under the General Maritime law.

*Ondimar Transportes Maritimos Ltda. and Ibaizabal Management Services SL
v. Beatty Street Properties, Inc. in personam; M/V Bayou City, in rem
(C.A. No. 08-20079, Fifth Circuit – January 9, 2009)*

This case involves an allision between the tanker *M/T Monte Toledo* and a dock owned by the Port of Texas City, Texas. Following the incident, no suit was filed involving the allision. The owners of the *Monte Toledo*, however, believed the allision was caused by communication problems caused by another vessel “keying” its vhf radio and blocking the radio channel being used by the *Monte Toledo* to communicate with its assist tugs. The other vessel, the *Bayou City*, was owned and operated by Beatty Street. The *Monte Toledo* interests entered into a written settlement agreement with the Port of Texas City, paying the full value of the port’s claimed dock damage pursuant to tariff requirements. In the underlying settlement agreement Ondimar obtained an assignment of the Port of Texas City’s tort claims against defendant Beatty Street. Significantly, the settlement agreement and assignment did not release Beatty Street from liability to the Port.

Beatty Street moved for summary dismissal of the contribution alleging it was barred by the Supreme Court’s *McDermott, Inc. v. AmClyde* decision. Beatty also moved for summary judgment on the assigned negligence claim asserting that such an assignment was invalid under the admiralty law. In a thorough and well-reasoned opinion, Judge Lee Rosenthal of the U.S. District Court for the Southern District of Texas clarified the settlement bar rule of *McDermott* and provided additional landmarks for litigants to utilize when navigating the waters of maritime torts in situations involving multiple tortfeasors where some, but not all, have settled with the originally injured party. Judge



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Rosenthal dismissed the suit for contribution under the settlement bar rule in *McDermott v. AmClyde*, and also found the assignment invalid, dismissing that claim as well. This case was reported in full in an earlier Legge, Farrow newsletter [The Rocky Shoals of AmClyde Capsize Another Contribution Claim](#) (March 2008). Legge Farrow represented Beatty Street and defended the district court's decision on appeal.

On January 9, 2009, the Fifth Circuit issued its opinion affirming the district court's dismissal of Ondimar's claims. In doing so, the Court clarified a previously unsettled area of the law pertaining to assignment of tort claims. As Ondimar did not challenge the application of the settlement bar rule used by the district court to dismiss its contribution and indemnity claim, the only question before the Fifth Circuit was the validity of the Port's assignment of its tort claim to Ondimar. The Court recognized that, in general, assignment of property damage tort claims are permitted and cited various state courts which have allowed such assignments. In fashioning a rule to be used in the general maritime law, however, the court decided that such assignments are prohibited:

We conclude, however, that even if assignment is generally permitted, there are good reasons for imposing certain limitations in the context of *McDermott's* proportionate fault framework . . . we adopt the rule for the general maritime law that the assignment of tort claim from the injured party to one tortfeasor permitting the settling defendant to proceed against a co-tortfeasor is invalid. Accordingly, we must invalidate the assignment of the Port's property damage claim to Ondimar, to the extent that it permits Ondimar to proceed against a co-tortfeasor [Beatty Street].

Ondimar Transportes v. Beatty Street at pp.6, 8.



In its reasoning, the Fifth Circuit considered the Texas Supreme Court's decision in *Beech Aircraft Corp. v. Jinkins*, 739 S.W.2d (Tex. 1987). In *Jinkins*, the plaintiff was prohibited from assigning his cause of action to a joint tortfeasor which each tortfeasor was liable for the underlying tort, because under Texas law each defendant is liable only for its proportionate fault and can not seek contribution from another joint tortfeasor. The Fifth Circuit noted: "We are pleased that the Beech aircraft analysis prohibiting an assignment by a plaintiff to a joint tortfeasor is completely consistent with *McDermott's* reasoning." The Fifth Circuit found that permitting an assignment under such circumstances would not further the primary goals the announced in *McDermott*, namely: "Consistency with the proportionate fault approach..., promotion of settlement, and judicial economy." Allowing such an assignment would, in the Fifth Circuit's opinion, encourage only partial settlement and lead to lead to costly, longer, and more confusing suits which would therefore be contrary to *McDermott's* goal of promoting judicial economy.

If you have any questions about this topic, please contact either of the following Legge Farrow partners:

James T. Brown
jimbrown@leggefarrow.com
(713) 706-1947

Paxton N. Crew
pcrew@leggefarrow.com
(713) 980-8954

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