



The Rocky Shoals of *AmClyde* Capsize Another Contribution Claim

Ondimar Transportes Maritimos LTDS v. Beatty Street Properties, Inc.
2008 WL 45793 (Jan. 2, 2008 S.D.Tex)

This case involves an allision between the *M/T Monte Toledo* owned by Plaintiff Ondimar, and a dock owned by the Port of Texas City, Texas. Following the incident, suit was never filed. Ondimar believed that the allision was caused by communication problems aboard the *Monte Toledo* that were brought about by another vessel “keying” its vhf radio and blocking the radio channel being used by the *Monte Toledo* to communicate with its assist tugs. That other vessel, the *Bayou City*, was owned and operated by Beatty Street. Ondimar entered into a written settlement agreement with the Port of Texas City, paying the full value of the Port’s claimed dock damage. 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.

Ondimar filed a suit against Beatty asserting three claims:

1. A contribution and indemnity claim against Beatty for the \$133,628.06 Ondimar paid the Port.
2. A negligence claim against Beatty Street by virtue of the Port’s assignment of its negligence claim to Ondimar in the settlement agreement; and
3. A negligence claim directly against Beatty Street for damages to the *Monte Toledo’s* hull.

Beatty moved for summary dismissal of the contribution and indemnity alleging it was barred by the Supreme Court’s *McDermott, Inc. v. AmClyde* decision. Beatty also moved for summary judgment of the assigned negligence claim asserting that such an assignment was invalid under the admiralty law. In *McDermott v. AmClyde*, the Supreme Court’s primary focus was establishing a rule for apportioning fault in cases involving multiple defendants when some of those defendants have settled prior to trial. The Supreme Court framed the issue as “how a settlement with less than all of the defendants in an admiralty case should affect the liability of non-



settling defendants.” *McDermott* at 207. The *McDermott* Court clearly adopted the proportionate share approach where the fault of the settling defendant would be submitted to the trier of fact and a pro-rata credit given to the remaining tort feors based upon the percentage of fault accessed against the settling tort feor.

The Court also discussed suits for contribution when one, but not all, defendants have settled. While the *McDermott* decision has generally been interpreted as setting forth a “settlement-bar rule” whereby contribution claims involving a settling tort feor were prohibited, the *McDermott* Court’s discussion of this issue was not as clear as its pronouncement on the pro rata credit issue. The Court further did not discuss the settlement bar rule as it may relate to tort feors who were not parties to the litigation.

In a thorough and well-researched opinion, Judge Lee Rosenthal of the U.S. District Court for the Southern District of Texas clarified the settlement bar rule and provided additional navigation aids for litigants to utilize when navigating the waters of maritime tort in situations involving multiple tort feors where some, but not all, settle with the plaintiff.

Judge Rosenthal commented that the Supreme Court stated under its proportionate share approach that “no suits for contribution permitted, nor are they necessary, because non-settling defendants pay no more than their share of the judgment.” Judge Rosenthal reasoned that “under this approach, no suits for contribution may be brought by the settling tort feors against the settling defendants, because a non-settling defendant pays no more than their share of any settlement or judgment. . . . courts have applied this rule to preclude contribution used by settling tort feors against non-settling tort feors as well.” *Ondimar* at p.4. Judge Rosenthal cited the 11th Circuit’s *Murphy v. Florida Keys* decision which found that a settling tort defendant could not bring an action for contribution against a non-settling defendant who was not released from liability to the plaintiff under the settlement agreement. Judge Rosenthal agreed with the 11th Circuit and stated “when a tort feor settles a claim against it, but does not obtain a release for the other tort feors, it has settled only its proportionate share of the total damages, no more and no less.” *Ondimar* at p.5. Judge Rosenthal concluded that a settling defendant who has not obtained a release for the liability of a non-settling party may not file a contribution against that party.



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The Court concluded the application of these principles prohibited Ondimar from maintaining an action for contribution against Beatty because “only Ondimar settled with the Port and the settlement did not release Beatty.”

Judge Rosenthal considered the long, slow, downward spiral of common law indemnity in maritime tort. She concluded that courts have applied the *McDermott* rule to claims for common-law indemnity, as well as contribution. She then ruled that Ondimar had no common-law claim for indemnity against Beatty.

Turning to the purported assigned negligence claim of Ondimar, she noted there is scant authority on the issue of assignment of property damage claims under the maritime law. She did recognize a Southern District of Texas decision that previously ruled the assignment of a personal injury or wrongful death claim to be invalid under the maritime law. She found that the absence of case law involving assignments of property damage claims for the purpose of enabling a settling joint tortfeasor to obtain reimbursement from a non-settling joint tortfeasor supported Beatty’s arguments that such assignment would be precluded by *McDermott’s* proportionate liability approach to fault in maritime tort. She then dismissed Ondimar’s assigned negligence claim noting that to permit a tortfeasor to sue a non-settling joint tortfeasor in such a situation would be inconsistent with the Supreme Court’s proportionate liability rule in *McDermott*.

Ondimar has appealed Judge Rosenthal’s decision to the Court of Appeals for the Fifth Federal Circuit. Legge, Farrow, Kimmitt, McGrath & Brown is defending that decision on appeal and will provide an update once the Fifth Circuit has ruled. For the time being, Judge Rosenthal’s opinion provides useful guidelines for maritime litigants attempting to settle multiparty disputes:

1. When obtaining assignment, insure that the assignor releases any potential party that the assignee intends to pursue;
2. Before settling, insure the potential party is given the opportunity to approve the settlement and/or assume the assignee’s defense;
3. If you are unsure whether your contribution claim will survive the settlement, it may be advisable to file suit against the intended third-party and bring them into the litigation.



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If you have any questions about this topic, or other marine related issues, please contact either of the following Legge Farrow partners:

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

Michael J. Wray
mwray@leggefarrow.com
(713) 706-4905

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

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