

A special reprint from

Claims

COVERING THE BUSINESS OF LOSS

MAY, 1995

By Steven E. Leder

Settling Maritime Claims

*Rules Over Torts, Settlements
Change on the Water*

Just as the navigational rules of the road differ from the rules of the highway, the case law governing recreational boating claims differs from that of land-based torts.

For those settling boating claims, it is best to keep in mind that comparative negligence and proportionate fault apply, and assumption of risk and contributory negligence do not. One turbulent area has been the impact of one of several defendants settling prior to trial. Recently, the Supreme Court calmed these waters in two cases; i.e., *McDermott Inc. v. AmClyde and River Don Castings Ltd.*, 511 U.S. ___, 128 L. Ed. 2d 148, 114 S. Ct. 1461 (April 20 1994) (hereinafter "McDermott"); and *Boca Grande Club*

Inc. v. Florida Power & Light Co. Inc., 128 L. Ed. 2d 165 (1994) (hereinafter "Boca Grande Club").

Before *McDermott* and *Boca Grande Club*, the admiralty courts had not set a single course. Some courts held that the amount of a settlement reduced the ultimate verdict. If the judgment defendant paid more than his equitable share he could sue the settling defendant for the difference. Other courts held that the settling defendant could not be sued. Still other courts held that the proportionate fault of the settling defendant was applied to the verdict and therefore no suit for contribution was necessary or could be maintained.

In *McDermott*, the court adopted this

last position. The court held that the liability of a nonsettling defendant in an admiralty tort case is based on the jury's allocation of proportionate fault, without regard for any settlement amount, and that no suit for contribution would lie.

Illustration 1. Suppose the M/Y Minnow, owned and operated by Billy Budd, and the M/Y Solitude, owned and operated by Davy Jones, collided. Joe Smith is a guest aboard the M/Y Minnow at the time of the collision. Joe Smith sues both boat owners. Davy Jones settles for \$50,000 in advance of trial. The case goes to trial against Billy Budd and the jury finds total damages of \$100,000. The jury allocates responsibility as follows: Davy Jones 70 percent at fault; Billy

Budd 30 percent at fault. The result is as follows:

Jury Allocation of Fault	Amount to be Paid
Davy Jones 70%.....(Settled for \$50,000)	
Billy Budd 30%.....	\$30,000
Plaintiff receives	\$80,000

The impact on the plaintiff is that he receives \$20,000 less than he would have received had he not settled with Davy Jones (\$100,000 less \$80,000). The impact on Davy Jones is that he paid \$20,000 less than he would have paid had he not settled (\$70,000 less \$50,000). The impact on Billy Budd is that he paid exactly his proportionate responsibility for the plaintiff's injury.

Illustration 2. Suppose the jury still finds damages of \$100,000, but allocates responsibility as, Davy Jones 30 percent at fault; Billy Budd 70 percent at fault. The result would be as follows:

Jury Allocation of Fault	Amount to be Paid
Davy Jones 30%.....(Settled for \$50,000)	
Billy Budd 70%	\$70,000
Plaintiff receives	\$120,000

The impact on the plaintiff is that he receives \$20,000 more than the jury found as damages. Isn't this improper under the one "satisfaction rule;" i.e., that a plaintiff may only recover his damages and no more?

The Supreme Court decided not to apply this rule. "It seems to us that a plaintiff's good fortune in striking a favorable bargain with one defendant gives other defendants no claim to pay less than their proportionate share of the total loss." *McDermott*, 123 L. Ed. 2d at 163.

The impact on Davy Jones is that he paid \$20,000 more than he would have paid had he gone to trial. The impact on Billy Budd is that he is responsible only for his equitable share of the damages.

Illustration 3. Suppose, once again, the jury finds damages of \$100,000, but allocates responsibility as, Davy Jones 30

percent at fault; Billy Budd 60 percent at fault; and the plaintiff 10 percent at fault. The result would be as follows:

Jury Allocation of Fault	Amount to be Paid
Davy Jones 30%.....(Settled for \$50,000)	
Billy Budd 60%	\$60,000
Joe Smith 10%.....	\$10,000
Plaintiff receives	\$110,000

The impact on the plaintiff is that he receives \$20,000 more than he would have received had he gone to trial instead of settling. The plaintiff's comparative negligence would have reduced the damages from \$100,000 to \$90,000 (a reduction of 10 percent). However, in this scenario Joe Smith's comparative negligence does not reduce the amount of damages. Since Joe Smith settled with Davy Jones he has already received \$50,000. This is \$20,000 more than Davy Jones would have paid had he gone to trial. His judgment

against Billy Budd translates into \$60,000 (60 percent of \$100,000). Joe Smith's comparative negligence does not reduce Billy Budd's responsibility. Therefore his total recovery is \$110,000 (\$50,000 plus \$60,000). The impact on Billy Budd is that he is responsible for his exact equitable share of the damages.

Can settling defendants be sued for contribution? The proportionate fault rule makes "actions for contribution against settling defendants ... neither necessary nor permitted." *Boca Grande Club, Inc.*, 123 L. Ed. 2d at 167. Hence, in the above situation Billy Budd does not have a claim for contribution against Davy Jones.

Can the plaintiff recover his full judgment from each defendant? If the plaintiff cannot recover from one defendant, for example due to an insolvency, he can still recover the full amount from the other defendant(s). These rules do not affect the joint and several liability of defendants. That is, if the case went to trial against both Davy Jones and Billy Budd, each would be liable for the entire judgment jointly and severally. If Billy Budd could not pay his share, Joe Smith could recover 100 percent of the judg-

ment from Davy Jones. Davy Jones would then have a cause of action against Billy Budd for contribution. However, when the plaintiff settles, he has agreed to take a fixed amount from the settling defendant and the remaining defendants need not make up the difference where it turns out that he has made a bad deal.

"One turbulent area has been the impact of one of several defendants settling prior to trial."

The court designed these rules to be simple to apply. As can be seen, the law governing recreational boating cases differs sharply from the law governing most land-based cases. However, the Supreme Court's preference for proportionate fault is likely to spread rapidly to other areas of the law. See, e.g., *Bragger v. Trinity Capital Enterprise Corp.*, 30 F.3d 14, 17 (2d Cir.1994) (*McDermott* cited in securities fraud action). In the meantime, it is important to keep the differences in mind. ▲

Steven E. Leder, is a maritime attorney with the Baltimore law firm of Niles, Barton & Wilmer.