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## Murphy v. Fla. Keys Elec. Coop. Ass'n United States Court of Appeals For The Eleventh Circuit 329 F.3d 1 3 1 1 (Decided May 9, 2003)

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Maher argues that the decision in *Farrell* is analogous to this case because the employee in *Farrell* was also injured in an office. The Third Circuit distinguished this case from *Farrell* because unlike the employee in *Farrell*, Respondent actually left the office, whereas the employee in *Farrell* did not engage in activity in the pier or yard, and he did not act as a checker on the dock.

Respondent cited *Levins v. Benefits Review Board*, 724 F.2d 4, 7 (1st Cir. 1984) where the court looked at the “*actual* nature of the employee’s regularly assigned duties as a whole” emphasizing the need to examine the totality of employee’s job. Respondent also cited *Caputo* where coverage was granted to workers that spend “at least some of their time in indisputably longshoring operations.” *Caputo*, 432 U.S. at 273. The Third Circuit also considered the approach followed by other courts, where coverage was granted to an employee who spent anywhere from two and a half to five percent of his time performing longshore activities. *Boudloche v. Howard Trucking Co.*, 632 F.2d 1346 (5th Cir. 1980).

The Third Circuit found that respondent’s employment was similar to that of the employees in *Levins* and *Boudloche* because he spent 50% of his time employed in a position covered by the act. The Third Circuit concluded the proper analysis would be to use the test in *Levins* requiring the court to look at the “regular portion of the overall tasks to which the claimant could have been assigned as a matter of course” (*Levins*, 724 F.2d at 9), in conjunction with the rule from *Caputo*, to assess whether the employee works ‘at least some of the time in indisputably longshoring operations.’ *Caputo*, 432 U.S. at 273. The Third Circuit held that respondent was in fact covered under the Act due to the amount of time spent working as a checker in addition to his overall duties including the subjection to assignment as a checker even though at the time of the injury respondent was not working in his capacity in a maritime employee.

**Monica A. Brescia**  
**Class of 2005**

## **PROPORTIONATE SHARE APPROACH DISALLOWS CONTRIBUTION CLAIMS**

**A defendant in an admiralty tort action who settles with the plaintiff cannot bring a contribution suit against a non-settling defendant who has not been released from liability to the plaintiff by the settlement agreement.**

Murphy v. Fla. Keys Elec. Coop. Ass'n  
United States Court of Appeals For The Eleventh Circuit  
329 F.3d 1311  
(Decided May 9, 2003)

Shortly after midnight on July 25, 2000, Raymond Ashman IV (“Raymond”) and his two friends Brendan and Steven Murphy went out in a boat owned by Raymond’s father to take advantage of the start of annual lobster mini-season. The voyage came to an abrupt end. The boat, piloted by Raymond, crashed into an “electric pole abutment support structure” owned by defendant, Florida Keys Electric Co-op Association, Inc.

("Florida Keys"). As a result, Brendan Murphy was killed while both Steven Murphy and Raymond were injured.

The parents of Brendan and Steven ("Murphys") brought a wrongful death suit against Florida Keys in federal district court under admiralty jurisdiction. No suit was brought against the Ashmans. Florida Keys also invoked the federal court's admiralty jurisdiction in filing a third-party complaint against the Ashmans, claiming that it was entitled to contribution from the Ashmans for liability it incurred to the Murphys. In response, the Ashmans filed a counterclaim against Florida Keys for their son's injuries as a civil action under the supplemental jurisdiction of the district court. Later, the Ashmans filed a suit against Florida Keys to recover for their son's injuries in state court.

While all of the actions were pending, Florida Keys settled its wrongful death suit with the Murphys. However, the terms of the settlement agreement failed to include a provision releasing the Ashmans from liability against claims brought by the Murphys. As a result, the Ashmans moved for summary judgment on Florida Keys' third party contribution claim. The Ashmans argued that since Florida Keys' failed to include a condition in the settlement agreement releasing them from liability, Florida Keys could no longer maintain a contribution claim against them. The district court agreed, granting the Ashmans' motion for summary judgment on the third party contribution claim brought by Florida Keys and dismissed without prejudice the Ashman's counterclaim against Florida Keys.

Following this decision, Florida Keys appealed the summary judgment granted against its contribution claim and the dismissal without prejudice of the Ashman's counterclaim. Regarding the summary judgment, Florida Keys argued that the *Great Lakes Dredge & Dock Co. v. Tanker Robert Watt Miller*, 957 F.2d 1575 (11th Cir. 1992) decision should be followed, whereby the *pro tanto* approach enables a settling defendant to sue a non-settling defendant for contribution. However, the Court of Appeals for the Eleventh Circuit found that the *Great Lakes* decision was not the applicable approach. Instead, the court referred to the holding of *McDermott, Inc. v. AmClyde*, 511 U.S. 202 (1994), whereby the proportionate share approach applied.

According to the proportionate share approach, when a non-settling defendant goes to trial and the amount of damages and corresponding liability percentage is calculated, the defendant is only responsible for its proportion of damages as determined in the trial verdict. The court further held that in settling with the plaintiff, Florida Keys assumed the risk of misjudging the amount of damages the court would calculate as its share. The Ashmans did not assume any such risk and therefore if the Murphys got larger damages from Florida Keys than if they had gone to trial, such discrepancy does not provide the Ashmans with less potential damages liability. As applied to Florida Keys' claim for contribution against the Ashmans, the court held that the decision in *Jovovich v. Desco Marine, Inc.*, 809 F.2d 1529, 1531 (11th Cir. 1987) is binding and therefore Florida Keys must pay the damages as settled and cannot sue the non-settling Ashmans for contribution of any portion of those damages.

The remaining issue on appeal by Florida Keys was the dismissal without prejudice of the Ashmans' suit. Here, the Court of Appeals held that upon the granting of the Ashmans summary judgment motion against Florida Keys' contribution claim, the court had the ability to dismiss the counterclaim filed by the Ashmans. The court relied upon *Federal Rule of Civil Procedure* § 31(a), whereby Florida Keys' filing of a third-

party counterclaim against the Ashmans placed the Ashmans' maritime tort claim within the court's jurisdiction as a compulsory counterclaim because the claim arose under the same occurrence or transaction. Therefore, overall the court affirmed the holding of the District Court.

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### **EXCULPATORY CLAUSE ABSOLVING PARTY FROM ITS OWN NEGLIGENCE HELD VALID**

**An exculpatory agreement that shifted the risk of loss to the boat owner and released the Yacht Club from all liability, including that liability arising from its own negligence will be held valid where the terms of the agreement are clearly and unequivocally defined.**

Sander v. Alexander Richardson Invs.  
United States Court of Appeals For The Eighth Circuit  
334 F.3d 712  
(Decided July 1, 2003)

Appelles filed a negligence claim against the appellant, the Yacht Club of St. Louis ("Yacht Club") after its boats was destroyed in a fire at the club. The Yacht Club argued that the exculpatory clause in the boat owners' slip rental agreement released it from liability even if it was due to the Yacht Club's own negligence. The United States District Court for the Eastern District of Missouri granted recovery to the boat owners. On Appeal the United States Court of Appeals for the Eight Circuit reversed.

Ronald and Martha Jessup owned a houseboat that was kept at the Yacht Club marina. Mr. Jessup noticed a fuel leak near the engine fuel pump and requested the Yacht Club to assist him in the repairs. The Yacht Club then referred Mr. Jessup to Mr. Shulte a maintenance worker for the Yacht Club who installed a new fuel pump. Three days later Mr. Jessup started the engine; shortly after he heard an explosion and watched as flames engulfed the hatch area where the engines were located. Fire engulfed the boat and then spread to other docks in the marina destroying the appelle's boats.

Following the fire, the Jessups brought an action for declaratory judgment in district court seeking to exonerate or limit their liability for all claims arising from the incident. Each of the boat owners filed claims against both Jessups and the Yacht Club, while the Yacht Club and the Jessups filed claims against each other. The claims against the Yacht Club were based on the theory that Mr. Shulte negligently installed the fuel pump which caused the fire, and that the Yacht Club was liable for assuring that Mr. Shulte was qualified to perform the repair, when in fact he was not.

The Yacht Club defended against the boat owners by asserting that an exculpatory clause printed on the back of each boat owner's slip agreement exonerated it from any liability for damages caused by the fire.

In reversing the district court's decision, the Court of Appeals discussed four main issues (1) whether the exculpatory clause is valid, (2) whether the exculpatory