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## Ondimar Transportes Maritimos v. Beatty Street Properties, Inc. United States Court of Appeals, Fifth Circuit 55 F.3d 184 (Decided January 09, 2009)

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**CONTRIBUTION CLAIMS AND ASSIGNMENT OF MARITIME TORT CLAIMS TO A  
TORTFEASOR ARE NOT PERMISSIBLE PURSUANT TO *MCDERMOTT***

**The United States Court of Appeals for the Fifth Circuit affirmed the district court's holding that assignment of a tort claim is not a valid approach to impose liability on a non-settling tortfeasor when a settling tortfeasor has already paid their portion of damages.**

Ondimar Transportes Maritimos v. Beatty Street Properties, Inc.  
United States Court of Appeals, Fifth Circuit  
555 F.3d 184  
(Decided January 09, 2009)

The plaintiff, Ondimar Transportes Maritimos (“Ondimar”), owned a vessel that allided with a dock owned by the Port of Texas City (“Port”). The incident caused considerable damages amounting to \$133,608.46. Ondimar alleges that this accident occurred when reserved communications channels used by a vessel owned by Beatty Street Properties Inc (“Beatty”) disrupted the Ondimar vessel’s ability to communicate effectively, due to interference. The Port insisted upon Ondimar to pay for all resulting damages. This requirement was based on the U.S. Customs Code 5306, Circular No. 4 – H, (the “Tariff”).<sup>16</sup> The Tariff is imposed as an implied contract under the Shipping Act of 1984.<sup>17</sup> Moreover, the Tariff asserts that when Port users cause physical damage to these premises they will be required to pay for all associated repair costs.

Ondimar and the Port entered settlement negotiations, to which Beatty was notified but was not included. Ondimar then paid the Port all the damages that were owed. Subsequently Ondimar filed suit against Beatty to recover these paid damages by either contribution, indemnity, or assignment; and for damages caused by Beatty to Ondimar’s vessel. Beatty filed a motion for summary judgment with the intent to dismiss all claims. The district court denied this motion in regard to the damages caused to the plaintiff’s vessel. However, the motion was granted for all other claims. The contribution and indemnity claims were dismissed through the court’s application of the general maritime law of proportional liability, which prohibited suit when the Port had not released the defendant from settlement. In addition, the Port’s assignment was dismissed as invalid under maritime law. The plaintiff appealed the dismissal of the Port’s assigned tort claim. Ondimar argued that: (i) under maritime law the assignment could be considered valid due to the contractual obligation imposed by the Tariff and (ii) pursuit an assigned claim is permissible through equitable subrogation.

To assess the plaintiff’s first argument the court referred to *McDermott, Inc v. AmClyde*<sup>18</sup>. Here, the Supreme Court dealt with the issue of “whether the liability of non-settling defendants should be calculated with reference to the jury’s allocation of proportionate responsibilities, or by giving the non-settling defendants a credit for the dollar amount of the settlement.”<sup>19</sup> The Court held that the proportionate liability approach was suitable. In asserting this conclusion the Court pointed to three factors: “consistency with the proportionate fault approach of earlier case law, promotion of settlement, and judicial economy.”<sup>20</sup> This approach presumes that when a tortfeasor settles their portion of the liability damages, the non-settling defendants’ damages are not credited for the payment. In cases since, this reasoning has nearly all possible contribution claims between settling and nonsettling tortfeasors.<sup>21</sup>

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<sup>16</sup> U.S. Customs Port Code 5306, Circular No. 4-H.

<sup>17</sup> 46 U.S.C.A. § 40501.

<sup>18</sup> 511 U.S. 202 (1994).

<sup>19</sup> *Id.* at 204.

<sup>20</sup> 555 F.3d 184 quoting *McDermott* at 211.

<sup>21</sup> *Id.* at 209; *Murphy v. Florida Keys Elec. Co-op Ass’n Inc.*, 328 F.3d 1311 (11<sup>th</sup> Cir. 2003).

The court next addressed the issue of whether the assignment of the tort claim for property damage was allowable. As a primary matter, the court noted that a tort assignment for property damage is considered invalid if either: (a) it is restricted by law or (b) condoned by law but prevented when the *McDermott* and *Murphy* standards are utilized. The court noted that regardless of whether the assignment was permissible the limitations expressed in *McDermott* should still be applicable.<sup>22</sup> The court in *Beech Aircraft Corp v. Jinkins* stated that there was no advantage to permitting a defendant to essentially purchase a plaintiff's claim in order to then pursue claims against other joint-tortfeasors. *Beech* worked with *McDermott*, the court found, to promote judicial economy and has minimize the potential to confuse or prejudice a jury. Allowing such a tort assignment between a co-tortfeasor and settling defendant would undermine *McDermott*'s authority on repudiation of contribution claims when dealing with partial settlement. The Court stated that tort claim assignments from the injured party to the tortfeasor, followed by a claim against a co-tortfeasor, should be considered void as a matter of maritime law.

The Court held that the district court had properly dismissed the assignment claim. In response to the Ondimar's second argument the Court held that the matter of equitable subrogation was waived because it involved an issue of fact not addressed in district court. Therefore, the district court's holding of partial summary judgment was affirmed.

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<sup>22</sup> *Beech Aircraft Corp v. Jinkins*, 739 S. W.2d 19 (Tex.1987).