



Ocean Law Memo

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DAMAGES IN MARITIME COLLISIONS & GROUNDINGS

The United States v. Reliable Transfer Co. Inc.

The Equal Division of Damages Rule.

The U.S. Supreme Court in 1854 adopted the rule that in a maritime collision the aggregate damages suffered must be divided equally among vessels found to be at fault. The U.S. Supreme Court explained this rule, called the "Equal Division of Damages Rule", (or "moiety ") in The Sapphire:

Where both vessels are in fault the sums representing the damage sustained by each must be added together and the aggregate divided between the two. This is in effect deducting the lesser from the greater and dividing the remainder. But this rule is applicable only where it appears that both vessels have been injured. If one in fault has sustained no injury, it is liable for half the damages sustained by the other, though that other was also in fault.

The rule at the time that it was adopted was thought to produce a "just and equitable" allocation of damages. It was also thought to be the best rule to promote safety and caution in navigation.

The rule of equal division of damages has received a great deal of criticism from the courts and from legal scholars. Nevertheless, the rule continued to govern maritime collisions for more than a century. It should be noted that this rule applied to damages arising from ramblings or groundings caused by embarrassment of navigation as well as collisions. Then, on May 19th, 1975, the U.S. Supreme Court in the case of The United States v. Reliable Transfer Co. Inc. overturned the equal division of damages rule and held damages will be apportioned on the basis of the degree of fault of each vessel.

How Did The Case Arise?

On a clear but windy December night in 1968, the Mary A. Whalen, a coastal tanker owned by the . . . Reliable Transfer Company, embarked from Constable Hook, New Jersey, for Island Park, New York, with a load of fuel oil. The voyage ended, instead, with the vessel stranded on a sand bar off Rockaway Point outside New York Harbor

The Whalen's course led across the mouth of the Rockaway Inlet, a narrow body of water that lies between a breakwater to the southeast and the shoreline of Coney Island to the Northwest. The breakwater is ordinarily marked

at its southernmost point by a flashing light maintained by the Coast Guard. The light was not operating that night. As the Whalen approached Rockaway Point about half an hour later, her captain attempted to pass a tug with a barge in tow ahead, but after determining that he could not overtake them, decided to make a 180 degree turn to pass astern of the barge. At this time the tide was at flood, and the waves, whipped by northwest winds of gale force, were eight to ten feet high. After making the 180 degree turn eastwardly, he believed that the vessel was then south of the breakwater and that he was heading her for the open sea. He was wrong. About a minute later the light structure on the southernmost point of the breakwater came into view. Turning to avoid the rocks visible ahead, the Whalen ran aground in the sand.

Reliable Transfer Company then filed an action against the United States under the Suits in Admiralty Act and the Federal Torts Claims Act, for the damages sustained by the Whalen. The District Court found the Whalen responsible for 75% of the fault contributing to the grounding, and the Coast Guard in failing to carry out its duty to maintain aids to navigation 25% at fault. The court felt that the Whalen's captain failed to use the caution necessary to resolve the situation safely:

Equipped with look-out, chart, search-light, radio-telephone, and radar, he made use of nothing except his own guesswork judgment. After . . . turning in a loop towards the north as to pass astern of the tow, he should have made sure of his position before setting his new 73° (degree) course. The fact that a northwest gale blowing at 45 knots with eight to ten foot seas made it difficult to see, emphasizes the need for caution rather than excusing a turn into the unknown...

The court went on to say that even though it believed the Coast Guard to be only 25% at fault, the established rule of equal division of damages required each party to bear one-half of the loss.

This ruling was appealed to the U.S. Court of Appeals for the Second Circuit (N.Y., Conn., & Ver.). The Court of Appeals affirmed the District Court's holding. It held that the District Court was not in error in its determination of the relative fault of each party. The court also commented on the unfairness of the equal division of damages rule, but held that it must adhere to it. Any change in the rule must come from either the U.S. Supreme Court

or the Congress. Thereupon the United States appealed to the U.S. Supreme Court for consideration of the continuing validity of the equal division of damages rule.

The Supreme Court Decision.

This case was not the first challenge to be raised against the equal division of damages rule. To parties involved in maritime collisions and groundings the rule has seemed harsh and often unfair. Several judges had also expressed similar feelings toward the rule. In this setting there evolved an "escape" doctrine designed to mitigate the application of the rule in certain situations. The result of this doctrine called the "Major-Minor Fault Rule" was often to find one of the parties at fault to such a minor degree that the other party would be held liable for the entire amount of damages.

Despite the harshness of the moiety rule, and the difficulties in successfully qualifying a fault as "minor", the attorneys for Reliable Transfer presented several rationales supporting continuation of the rule. None of the rationales overcame the "unjust", "unfair", or "illogical" results that the rule was seen to sometimes produce, nor the fact that the United States was the only major maritime nation still adhering to it. England had abandoned the rule in 1911. This country's retention of the rule, in the opinion of the Court, gave rise to international forum-shopping, legal jargon for looking for a court that one believes will rule favorably towards one's position. Considering the results the rule has produced, the Court said that it no longer is apparent that the rule even achieves "rough justice". The Court supported this view with a discussion of the various other rules that interplay with the moiety rule, and the escape doctrine to that rule.

Reliable Transfer argued the rule should be retained because of the difficulties in determining the degree of fault of each of the parties. The Court said that there is some merit to this argument, but that it is not true in many cases, and to that extent, would be unjust in instances of unequal fault. Where it is genuinely impracticable to weigh the faults of the parties or when both parties are in fact equally at fault, division of damages is proper. The Court noted that courts in other nations have successfully coped with the increased difficulty of comparing fault, as have courts in this country when deciding Jones Act cases.

It was also argued that the old rule promoted out-of-court settlements between the parties. The contention was that when the parties knew they would be required to divide the damages if held to be at fault, they had incentive to be more realistic rather than to play the long shot of obtaining exoneration. The Court disagreed and suggested that often, the fault of one party appearing greater than that of the other party, the one with the lesser fault would risk trial in hopes of successfully invoking the major-minor fault doctrine. Finally the Court stated that even if this argument were more persuasive, it would be no reason to continue with such an archaic rule.

Finally, it was argued that if the rule were to be changed, that change would best be left to

the Congress. The Court answered this by saying that there was nothing to preclude the court from changing the non-statutory rule, especially since the judiciary has traditionally exercised its power in formulating flexible and fair remedies in maritime law. In concluding discussion of this point the Court stated:

"The rule of divided damages in admiralty has continued to prevail in this country by sheer inertia rather than by reason of any intrinsic merit. The reasons that originally led to the Court's adoption of the rule have long since disappeared. The result it works has too often been precisely the opposite of what the Court sought to achieve in The Schooner Catharine -- the "just and equitable" allocation of damages".

The U.S. Supreme Court confessed the errors of adhering to the moiety rule, and brought the United States into line with other major maritime nations by holding:

When two or more parties have contributed by their fault to cause property damage in maritime collisions or stranding, liability for such damage is to be allocated among the parties proportionally to the comparative degree of their fault, and that liability for such damages is to be allocated equally only when the parties are equally at fault or when it is not possible fairly to measure the comparative degree of their fault.

The Effect of the Ruling in Reliable Transfer.

What the long-range effect of this ruling will be is rather difficult to determine at this time. The ruling is still relatively new and there are few, if any, cases reported where the rule has been applied. This does not, however, mean that the rule is not being applied at the District Court level; rather that appellate decisions from the application of the new rule have not yet begun to appear. A few general comments about the possible impact can be made.

In day to day operations, the new rule means that owners of a vessel need not fear that they will be held liable for one-half of the damages when their vessel was only slightly at fault. Prior to the Decision in Reliable Transfer even a violation of the General Prudential Rule (Inland Rules, Art. 29, The Reference to Prevailing Standards of Good Seamanship) which was relatively minor, cause of the casualty could have resulted in liability for one half of the damages. The courts now will have to look at the total circumstances of the casualty and determine what percent is attributable to the violation. If it finds that it is 20%, and no other fault is proven, then that vessel will be liable for only 20% of the aggregate damages.

The decision in Reliable Transfer did not involve a skipper claiming against a vessel owner for cargo loss or damage. It is probably that the American rule that the non-carrying vessel found to have been at fault must pay the cargo owner the full value of its claim (including contributions in general average) was left undisturbed. This is notwithstanding the fact that contributions between the

shipowners themselves pertaining to such payments will be subject to the new proportionality rule.

The following examples illustrate by comparing the operation of the old rule with that of the new rule:

Illustrations:

Example #1;

Vessel #1 was 75% at fault for the grounding and suffered \$100,000 in damages. The U.S. Coast Guard was 25% responsible for the grounding, but suffered no monetary loss.

Total Damages equal \$100,000.

- A) Under the Equal Division of Damages Rule: Vessel #1 would be responsible for $\frac{1}{2}$ of the damages, \$50,000. The Coast Guard would also be responsible for $\frac{1}{2}$ the damages, and would owe \$50,000.
- B) Under the ruling of Reliable Transfer: Vessel #1 would be responsible for 75% of the damages, \$75,000. The Coast Guard would be responsible for 25% and would owe only \$25,000.

Example # 2;

Vessel #1 was 75% at fault and suffered \$100,000 of damages from a collision. Vessel #2 was 25% responsible for the collision and suffered \$50,000 in damage. Total Damages equal \$150,000.

- A) Under the Equal Division of Damages Rule: Each vessel would be liable for $\frac{1}{2}$ of the damages or \$75,000. Because Vessel #2 also sustained damage, it can deduct the amount of its damage, \$50,000 from the \$75,000. It would therefore be liable to Vessel #1 for only \$25,000.
- B) Under the ruling of Reliable Transfer: Each vessel would be responsible for damages in proportion to her fault. Vessel #2 would be responsible for 25% of the \$150,000 total damage, which equals \$37,500. As this is less than the amount of damage sustained by Vessel #2, Vessel #1 would be liable to Vessel #2 for the sum of \$12,000.

Tom Dzieman

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