United States District Court
Southern District of Texas
ENTERED
June 02, 2026
Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Gene Harney et al.,	§	
	§	
Plaintiffs,	§	
	§	Civil Action No. 4:25-cv-00392
v.	§	
	§	
Maersk A/S, in personam, et al.,	§	
	§	
Defendants.	§	

MEMORANDUM AND RECOMMENDATION

This opinion addresses three motions in this maritime personal injury suit: (1) Defendants Maersk A/S's and A.P. Møller's motion to designate the United States Coast Guard (the "Coast Guard") as a responsible third party under Tex. Civ. Prac. & Rem. Code § 33.004 (Dkt. 21); (2) Plaintiffs Gene Harney's and Brittany Harney's motion to strike the Coast Guard's third-party designation (Dkt. 33), and (3) Defendants' motion to dismiss for lack of subject matter jurisdiction (Dkt. 29). After carefully considering the motions, responses, Dkts. 24, 33, 38, replies, Dkts. 25, 35, 39, supplemental briefing, Dkts. 55, 56, and the applicable law, it is recommended that all three motions be denied.

Background

Plaintiff Gene Harney, an active-duty member of the Coast Guard, was working aboard the Coast Guard Cutter Hatchet (the "Hatchet"). Dkt. 1 at 4. He and other crewmembers were constructing a navigation aid in the Houston Ship Channel when the Monte Rosa, a large ship container owned and operated by Defendants, passed by, allegedly causing a wake and surge that threw the Hatchet against the navigation aid. *Id.* Harney was pinned between the Hatchet and the navigation aid, crushing his arm. *Id.* at 7.

On January 30, 2025, Plaintiffs filed this maritime suit, claiming that Defendants were negligent and negligent per se. *Id.* at 9-11. The parties then filed a series of motions that hinge on Defendants' attempt to designate the Coast Guard as a responsible third party under Texas law.

First, Defendants moved to designate the Coast Guard as a responsible third party under Tex. Civ. Prac. & Rem. Code § 33.004, Dkt. 21, to which Plaintiffs responded, Dkt. 24, and Defendants replied, Dkt. 25. Second, Defendants moved to dismiss Plaintiffs' complaint, or alternatively, to strike their jury demand, arguing that the Coast Guard's designation as a responsible third party would deprive the Court of subject matter jurisdiction. Dkt. 29. Third, Plaintiffs filed a brief that both responded to Defendants' motion to dismiss and moved to strike Defendants' responsible-third-party designation of the Coast Guard. Dkt. 33. Defendants replied in support of their motion to

dismiss, Dkt. 35, and responded to Plaintiffs' motion to strike, Dkt. 38, to which Plaintiffs replied, Dkt. 39.

Because neither party addressed why Texas's proportionate responsibility scheme should apply to Plaintiffs' federal maritime claims, the Court ordered the parties to submit supplemental briefing on that threshold issue. Dkt. 50. Both parties responded. Dkt. 55 (Defendants' supplemental brief); Dkt. 56 (Plaintiffs' supplemental brief). The motions are ripe for resolution.[1]

Analysis

In a series of motions, the parties debate whether Defendants should be allowed to designate the Coast Guard as a responsible third party under Section 33.004 of the Texas Civil Practice and Remedies Code, Dkt. 21, whether such a designation would merit dismissing Plaintiffs' claims or striking their jury demand, Dkt. 29, and whether such a designation should be stricken as unsupported by adequate evidence, Dkt. 33. But the parties did not address why Texas's proportionate responsibility scheme—which is deemed to be substantive state law—should govern Plaintiffs' maritime claims, so the Court ordered supplemental briefing on that issue. Dkt. 50. That

[1] This opinion does not address other pending motions, including the parties' cross-motions for summary judgment, *see* Dkt. 30, 40, 43, and multiple motions to exclude expert testimony, Dkt. 41, 42.

additional briefing only confirms the Court's misgivings. Because allowing Defendants to allocate fault to a non-party would conflict with maritime law's joint-and-several liability approach, this Court should reject Defendants' invocation of Texas law.

When, as here, jurisdiction over maritime claims is premised on diversity, general maritime law nonetheless governs those claims both procedurally and substantively. *See Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 409-11 (1953) (rejecting application of a state's contributory negligence rule). "That [maritime] uniformity is not to be sacrificed to accommodate state law is a fundamental premise of admiralty jurisdiction." *Green v. Vermilion Corp.*, 144 F.3d 332, 341 (5th Cir. 1998).

"[I]n maritime cases, a federal court may only apply state law to 'fill the gaps' of maritime law." *Ortega Garcia v. United States*, 986 F.3d 513, 532 (5th Cir. 2021). State law may only "modify or supplement the maritime law … when the state action is not hostile to the characteristic features of the maritime law or inconsistent with federal legislation." *Just v. Chambers*, 312 U.S. 383, 388 (1941). "State law may not, however, conflict with federal maritime law, as it would by redefining the requirements or limits of a remedy available at admiralty." *Powell v. Offshore Nav., Inc.*, 644 F.2d 1063, 1065 n.5 (5th Cir. 1981).

Defendants contend that federal maritime law recognizes comparative fault principles but lacks a mechanism enabling a factfinder to allocate fault to actors like the Coast Guard who cannot be sued or joined under *Feres v. United States*, 340 U.S. 135 (1950). *See* Dkt. 55 at 4-5. Defendants argue that Section 33.004's "procedural designation device" fills that "gap" without altering substantive maritime law. *Id.* Plaintiffs disagree, arguing that there is no gap to fill. Dkt. 56 at 3-5. According to Plaintiffs, applying Section 33.004 would conflict with established maritime law principles and would undermine maritime uniformity. Dkt. 56 at 3-5. Plaintiffs are correct.

First, as Plaintiffs observe, *see id.* at 3-4, Defendants inaccurately describe Section 33.004 as a "procedural designation device" that supplements substantive maritime law. Dkt. 55 at 2-3, 5. Defendants' newfound attempt to characterize the statute as procedural is self-defeating. If Section 33.004 were merely procedural, then this Court would disregard it in favor of the Federal Rules of Civil Procedure, as it does in every diversity case. *See Chevron Oronite Co. v. Jacobs Field Servs. N.A., Inc.*, 951 F.3d 219, 227 (5th Cir. 2020) ("[W]e apply federal procedural law, such as the Federal Rules of Civil Procedure and Evidence, when sitting in diversity."). Regardless, Defendants previously argued, and this Court has concluded, that Section 33.004 is actually "state *substantive* law ...." *See* Dkt. 50 at 10 (emphasis added) (May 13, 2026 Memorandum & Order, quoting *Gutierrez v. Tractor*

Supply Co., 2018 WL 3055752, at *1 (S.D. Tex. June 20, 2018)); *see also, e.g.*, *Benchellal v. Okonite Co., Inc.*, 2023 WL 9105695, at *1 (S.D. Tex. Nov. 28, 2023) (collecting cases). And the U.S. Supreme Court has explicitly rejected reliance on a state's idiosyncratic fault scheme—whether characterized as procedural or substantive—to alter federal maritime rights. *See Pope*, 346 U.S. at 205-06.

Far from filling a gap, applying Texas's proportionate responsibility statute would undermine maritime law's joint-and-several liability principles. "[J]oint and several liability is the maritime rule." *Coats v. Penrod Drilling Corp.*, 61 F.3d 1113, 1129 (5th Cir. 1995). That rule "permits a plaintiff to obtain full legal redress from any defendant, even if that defendant's actions were not solely responsible for the plaintiff's injuries." *Hardy v. Gulf Oil Corp.*, 949 F.2d 826, 830 (5th Cir. 1992). In contrast, Texas's responsible-third-party mechanism "allow[s] a liable defendant to *avoid* joint and several liability." *Cortez v. Frank's Casing Crew & Rental Tools*, 2007 WL 419371, at *2-3 (S.D. Tex. Feb. 2, 2007) (emphasis added) (quoting David W. Holman, *Responsible Third Parties*, 46 S. Tex. L. Rev. 869, 870 (2005)). It does so by allowing a defendant to "reduce his liability by a percentage of responsibility attributed to a responsible third party" duly designated under Section 33.004. *See Holiday Inn Club Vacations Inc. v. T&G Corp.*, 2021 WL 2682474, at *1 (S.D. Tex. June 30, 2021) (citing Tex. Civ. Prac. & Rem. Code § 33.003).

Defendants' cited authorities do not endorse their reliance on Texas law to designate an immune non-party. *See* Dkt. 55 at 3-5. Defendants invoke the Supreme Court's adoption of a proportionate responsibility rule for maritime suits in *United States v. Reliable Transfer Company*, 421 U.S. 397 (1975). They cite *McDermott v. AmClyde*, 511 U.S. 202 (1994), which held that in multi-defendant maritime cases, non-settling defendants are liable only for their proportionate share of fault relative to those defendants who settled and were dismissed. From there, Defendants assert that applying Section 33.004 is a "logical extension" of *McDermott* to a case like this where the Coast Guard is immune from suit and cannot be joined. Dkt. 55 at 4.

But the foregoing decisions do not support Defendants' position. In *Reliable Transfer*, the Supreme Court held that, in maritime cases, "[l]iability … is to be allocated among the *parties* proportionately to the comparative degree of their fault." 421 U.S. 397 at 411 (emphasis added). Nowhere does it permit liability to be apportioned to a *non-party*.

Indeed, the Court's later decision in *McDermott* made clear that the "well established principle" of joint and several liability was "in no way abrogated by *Reliable Transfer*'s proportionate fault approach." *McDermott*, 511 U.S. at 220. And in *McDermott*, the Court cabined its expansion of *Reliable Transfer*'s "proportionate share rule" to instances "when there has been a settlement," reasoning that "[i]n such cases, the plaintiff's recovery against the settling

defendant has been limited not by outside forces, but by its own agreement to settle." *Id.* at 221. Yet here, no such voluntary act by Plaintiffs—much less a voluntary settlement—would justify Defendants' attempt to assign liability to the Coast Guard, a party who, for immunity reasons beyond Plaintiffs' control, cannot be sued. Far from supporting Defendants' view, *McDermott* instructs that in such a case where the "limitations on the plaintiff's recovery arise from outside forces, joint and several liability makes the other defendants, rather than an innocent plaintiff, responsible for the shortfall." *Id.*

Given all those caveats, *Reliable Transfer* "does not support the proposition that a jury may generally allocate fault to entities that are not parties to the admiralty action at bar, especially since doing so would essentially circumvent the long-standing principle of joint and several liability in admiralty law." *See Hausman v. Holland Am. Line-USA*, 2015 WL 11234150, at *3 (W.D. Wash. June 3, 2015). And outside of *McDermott*'s partial-settlement context, courts across the nation have refused to allow the apportionment of fault to non-parties in maritime suits. *See, e.g.*, *Sands v. Kawaski Motors Corp. U.S.A.*, 513 F. App'x 847, 854 (11th Cir. 2013) (per curium) (affirming district court's refusal to include non-party on jury verdict form "even though she might have contributed to [plaintiff's] injuries"); *Wiegard v. Royal Caribbean Cruises, Ltd.*, 473 F. Supp. 3d 1348, 1351 (S.D. Fla. 2020) (holding that Florida law, which permits apportioning liability to

non-parties, does not apply in a federal maritime case); *Horizon Navigation Ltd. v. Progressive Barge Line, Inc.*, 375 F. Supp. 3d 673, 679-80 (E.D. La. 2019) (refusing to extend *McDermott* and denying request to allocate fault to a non-party that plaintiff had not sued nor settled with); *Hausman*, 2015 WL 11234150, at *4 (no apportioning fault to non-parties); *Cook v. Visteon Corp.*, 2008 WL 186121, at *2 (E.D. Mich. Jan. 18, 2008) (no legal basis for allocating fault to a non-party absent a voluntary settlement with plaintiffs).

There is no adequate reason to reach a different conclusion here. Defendants' proposal would undermine maritime law's established joint-and-several liability principles, which is reason enough to reject it. But it would also improperly elevate Texas law over other that of many other states which forbid apportioning fault to third parties based on the mere happenstance that this suit was filed in Texas.[2] Such a result would impair the uniformity of maritime law. Accordingly, this Court should decline to apply Texas's proportionate responsibility scheme and deny Defendants' motion to designate the Coast Guard as a responsible third party (Dkt. 21). Defendants' interrelated motion to dismiss (Dkt. 29) that assumes a right to designate the

[2] *Litigation, Comparison Table—Apportionment of Fault Rules*, Bloomberg Law Practical Guidance (2026) (comparing various state schemes and identifying those that do not permit apportioning fault to analogous immune third parties—including Alabama, Delaware, Maryland, Massachusetts, New York, Oregon, Pennsylvania, and Rhode Island), https://www.bloomberglaw.com/document/X45J1CG8000000 (last accessed June 2, 2026).

Coast Guard under Tex. Civ. Prac. & Rem. Code § 33.004 and Plaintiffs' cross-motion to strike the designation (Dkt. 33) should be denied as moot.

Recommendation

For the foregoing reasons, it is **RECOMMENDED** that Defendants Maersk A/S's and A.P. Møller's motion to designate the United States Coast Guard as a responsible third party (Dkt. 21) be **DENIED**.

It is further **RECOMMENDED** that Defendants' motion to dismiss or to strike Plaintiffs' jury demand (Dkt. 29) and Plaintiffs Gene Harney's and Brittany Harney's motion to strike the Coast Guard's third-party designation (Dkt. 33) be **DENIED AS MOOT**.

The parties have fourteen days from service of this Report and Recommendation to file written objections. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Failure to file timely objections will preclude appellate review of factual findings and legal conclusions, except for plain error. *Ortiz v. City of San Antonio Fire Dep't*, 806 F.3d 822, 825 (5th Cir. 2015).

Signed on June 2, 2026, at Houston, Texas.

Yvonne Y. Ho
United States Magistrate Judge