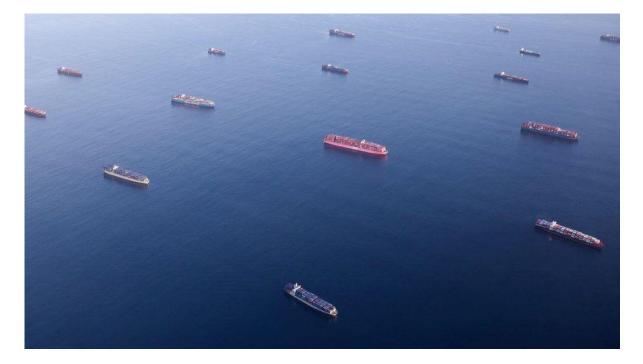




Schouest Bamdas Soshea BenMaier & Eastham Multi-Party Liability and Settlement

## INTRODUCTION



Settlement & Contribution

## The Collateral Source Rule

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### **The Rule**

- Modern Rule: McDermott v. Amclyde
- Where there is a partial settlement in litigation against joint tortfeasors, the liability of the nonsettling defendant(s) should be allocated by proportionate responsibility without credit for the settlement amounts paid by the settling defendants.





#### **Historic Development**

English Law

1855-1975: Divided Damages Rule



#### **Pre-McDermott Approaches**

- Proportionate share (pro rata) method.
- Dollar-for-dollar (pro tanto) method without contribution.
- Dollar-for-dollar (pro tanto) with contribution.





#### The McDermott Decision

#### Uniformity prevails!

### **Recent Applications**

- Ondimar:
  - Contribution action against nonsettling tortfeasor.
- Lexington Ins. Co.:
  - Assignment of claim.
- Combo Maritime, Inc.:
  - Contribution where settlor obtains full release for all parties.





## Recent Applications Cont'dM/V DG HARMONY:

- ► BOL indemnification language.
- Oswalt:
  - J&S liability where independent tortfeasor cannot be found.

Sands:

Non-party absent from jury form.

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### The Rule

Evidentiary

Substantive



#### **The Rule of Evidence**

Prohibits the introduction of evidence offered to show that the claimant has already been compensated for its damages.



#### The Substantive Rule of Law

Provides that a plaintiff is entitled to recover the full value of damages caused by a tortfeasor, without offset for amounts received in compensation for the injury from a third party.



### **Historical Development**

- English law
  - 1792 Lord Mansfield
- United States
  - **SCOTUS** 1854
  - Vermont Supreme Court 1871
  - Increasing litigation



### **Recent Applications**

- Fringe benefits
- Government Benefits
- Phantom/billed v. paid/writeoffs
- Maintenance
- Payment by Attorneys
- Subrogation

- ► LHWCA
- Death
- Attachment
- "No Claims" bonus
- Evidence of future payments
- Cargo
- Costs of survey



#### **Fringe Benefits**

- Employer entitled to set-off when 5-factor test is met.
  - Gauthier
  - Davis
  - Johnson
  - Limited to employment relationship.
- No set-off where employee purchases policy.

#### **Government Benefits**

> 2d Cir: Employer can offset.

► D.R.I.: Employer cannot offset.

E.D.Va.: Cure vs. tort distinction.



Cannot offset in tort.

### Phantom Damages/Billed vs. Paid/Write-Offs



- Gross amounts.
- Amounts negotiated by insurer.
- Cure limited to expenses actually incurred.
- In tort: issue of fact.
  - ► BUT courts are divided.

### Questions?

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