

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

JOSEPH E. LACHANCE, )  
 )  
 Plaintiff )  
 )  
 v. ) Civil No. 97-0223-B  
 )  
 PARTNERSHIP FOR AMERICA'S )  
 CUP TECHNOLOGY )  
 FOUNDATION, d/b/a PACT 95 )  
 and PACT 2000 )  
 )  
 Defendant/Third-Party )  
 Plaintiff )  
 )  
 v. )  
 )  
 NAUTICA INTERNATIONAL, )  
 INC. )  
 )  
 Defendant/Third-Party )  
 Defendant )

***RECOMMENDED DECISION***

Defendant Nautica International, Inc. ["NAUTICA"] has filed a Motion seeking leave to (1) amend its answers to both Plaintiff's and Third-Party Plaintiff's Complaints to assert the affirmative defense of assumption of the risk, (2) amend its answer to the Third-Party Complaint to assert a counterclaim for indemnification and/or contribution, and (3) file a fourth-party complaint. Defendant/Third-Party Plaintiff Partnership for America's Cup Technology Foundation ["PACT"] objects to

the Motion on the grounds that Nautica's claim for indemnification or contribution is futile, and that the other amendments are untimely and would unduly delay trial in this matter. Plaintiff has not filed an objection to the Motion to Amend Pleadings.

The resolution of all aspects of Nautica's Motion requires a description of the species of comparative negligence applicable to both Plaintiff's Jones Act and admiralty claims. *Carter v. Schooner Pilgrim*, 238 F.2d 702, 705 (1<sup>st</sup> Cir. 1956). Under this system, when more than one party is responsible for the harm, the damages are allocated among them in proportion to the degree of their fault. *United States v. Reliable Transfer*, 421 U.S. 397, 1715-16 (1975);<sup>1</sup> *Socony-Vacuum Oil v. Smith*, 305 U.S. 424, 432 (1939). This is true whether the claim sounds in negligence or strict liability. *Eg.*, *Miller v. American President Lines*, 989 F.2d 1450, 1461-63 (6<sup>th</sup> Cir. 1993) (and cases cited therein). There is no assumption of the risk or contributory negligence defense in an admiralty case, because Plaintiff's degree of fault, if any, is

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<sup>1</sup> The Court in *Reliable Transfer* dealt the final fatal blow to the "major-minor fault" rule, also known as the "active-passive negligence" rule, on which PACT relies in support of its objection to Nautica's motion to add a counterclaim. *United States v. Reliable Transfer*, 421 U.S. 397, 406 (1975). The rule had been used to mitigate the equal division of damages that had long been the law in admiralty actions, in cases where the negligence of one party so outweighed that of the other that an equal division of damages was seen as most unfair. *Id.* The comparative negligence doctrine now applicable to admiralty actions was adopted for the purpose of eliminating any inequity caused by an equal division. *Id.*

included in the allocation. *Carter*, 238 F.2d at 705 (citing *Jacob v. City of New York*, 315 U.S. 752, 755 (1942)).<sup>2</sup>

Accordingly, Nautica's Motion, insofar as it seeks to amend its Answers to the Complaint and Third-Party Complaint to assert the defense of assumption of the risk should be denied. Further, Nautica's request to add a counterclaim against PACT for indemnity and/or contribution should be denied. The comparative fault doctrine applicable to Plaintiff's claims automatically functions to reduce any liability of Nautica by that found to be the responsibility of PACT. There is no basis, and no need, for Nautica to assert an indemnity claim directly against PACT. In addition, because Nautica's proposed claim against the Fourth-Party Defendant is identical to that Nautica wished to assert against PACT, the Motion to Add a Fourth-Party Defendant should be denied as futile. *Jackson v. Salon*, 614 F.2d 15, 17 (1<sup>st</sup> Cir. 1980).<sup>3</sup>

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<sup>2</sup> The doctrine of superseding cause survives, however, as does the requirement that Plaintiff prove proximate cause as to each source of harm. *Exxon Company v. Sofec, Inc.*, 116 S. Ct. 1813, 1818 (1996).

<sup>3</sup> The Court acknowledges the practical difficulty of resolving the allocation of damages issue without the presence of all potentially liable parties. Nautica appropriately does not argue that its proposed fourth-party defendant is a necessary party under Rule 19. *See, Temple v. Synthes Corp.*, 498 U.S. 5, 7 (1990) ("It has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit"). The Court takes no position regarding whether Nautica would have a right of contribution upon the entry of judgment against it in this action. *Cf.*,

### *Conclusion*

For the foregoing reasons, I hereby recommend Defendant/Third-Party Defendant Nautica's Motion to Amend Pleadings be DENIED in its entirety.

### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated on March 3, 2000.

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*McDermott, Inc. v. AmClyde and River Don Castings*, 511 U.S. 202, 211, 212 (1994) (rejecting an allocation scheme that would grant a right of contribution to nonsettling defendants as against *settling defendants* because it would create a disincentive to settle).