



Marilyn Raia
San Francisco,
Shareholder

Direct Dial: 415.352.2721
Fax: 415.352.2701
Email Attorney

A Mutual Fault Collision – Who Pays What?

By Marilyn Raia

After reading a news story about two ships that collided miles off the Japanese coast with significant damage and loss of life, my brother wrote to me: "How the hell do two ships collide at sea?" Unfortunately, it is not a rare occurrence and commonly both vessels are at fault. So, if both parties are at fault, how much does each party have to pay?

Divided Damages Rule

Until 1975, American courts followed the "divided damages" rule in a mutual fault collision. Under that rule, the total damages suffered by the parties would be divided equally between them. The respective faults of the parties in causing the collision were not taken into consideration by the court. Rather, each party would be liable for one half of the damages suffered.

The United States Supreme Court established the divided damages rule in *The Schooner Catharine v. Dickinson*, 58 U.S. 170 (1854). In that case, the schooner **San Louis** was sailing down the US East Coast and the schooner **Catharine** was sailing up the US East Coast. The **Catharine** struck the **San Louis**, which sank and was later raised.

The district court entered judgment in favor of the **San Louis**, which was affirmed on appeal. The US Supreme Court reversed. It found both vessels to have been at fault, the **San Louis** for an improper maneuver and the **Catharine** for not having a proper lookout. The court noted the issue of the proper method for determining the recoverable damages in a mutual fault collision had never come before it. Following the "well-settled rule in English admiralty", it held the damages suffered should be equally divided because that was "the most just and equitable, and as best tending to induce care and vigilance on both sides in the navigation."

Harsh Results of the Divided Damages Rule

The divided damages rule sometimes led to harsh results. For example, a vessel only slightly at fault in causing a collision would be held liable for half of the total damages suffered. In *Adams v. Construction Aggregates Corporation*, 237 F.2d 884 (2d Cir. 1956), the sand dredge **Sandcraft** was struck by the freighter **Melrose** in clear weather in New York Harbor and sank. The court found the **Sandcraft** was "acting like a maverick loose in the harbor" immediately before the collision and allocated 80 percent fault to it. It allocated 20 percent fault to the **Melrose** because it failed to appreciate a risk of collision when the **Sandcraft** was being operated in a negligent way, and failed to sound the danger signal sooner. Despite the disparate percentages of fault, the court held the damages should be divided equally, resulting in the **Melrose** being liable for 50 percent of the damages even though it was only 20 percent at fault. The court recognized the unfairness of the divided damages rule. However, because the rule was so well established, it believed it was bound to apply it "until there shall be authoritative sanction for departure therefrom."

The Major Minor Fault Rule

To provide some relief for inequitable results that followed a 50/50 division of the damages suffered in a mutual fault collision, the courts fashioned the "major minor fault rule." Under that rule, if the fault of one vessel was undisputed and sufficient by itself to have caused the collision, a presumption was raised that the other vessel was not at fault, or that its fault was not a cause of the collision. Accordingly, the other vessel avoided paying half of the damages.



In *Compania de Maderas de Caibarien, 1955 AMC 797* (5th Cir. 1955), the tanker ***Queenston Heights*** struck the ***Star of Honduras*** and caused it to sink. At the time of the collision, the ***Star of Honduras*** was properly lit and being navigated by a pilot. The master and a lookout were also on the bridge but there was no lookout on the bow. The ***Queenston Heights***, which was also properly lit, took a diagonal course across the river at a speed of 15 knots and into the path of the ***Queenston Heights***. When the vessels were 500 feet from each other, the ***Queenston Heights*** sounded two blasts indicating a starboard to starboard passing. The ***Star of Honduras*** responded with a four blast danger signal because the starboard to starboard passing could not be safely negotiated, and reversed her engines. Shortly thereafter, the ***Queenston Heights***, which had not reversed her engines, rammed the port bow of the ***Star of Honduras***, which was beached but later sank.

The district court found the ***Queenston Heights*** had committed many violations, which amounted to gross negligence. It also found the ***Star of Honduras*** had committed a violation by not having a lookout on the bow. Because both vessels were at fault, the district court divided the damages equally. The owner of the ***Star of Honduras*** appealed. The Fifth Circuit reversed, holding the ***Queenston Heights*** solely at fault. It reasoned the lack of a lookout on the bow of the ***Star of Honduras*** did not actively contribute to the collision. It also noted it was difficult to perceive what action the ***Star of Honduras*** could have taken to avoid the collision even if there had been a bow lookout given the reckless action of the ***Queenston Heights***.

The Reliable Transfer Decision

In 1975, the US Supreme Court re-visited the 121 year old divided damages rule in *United States v. Reliable Transfer Co. Inc.*, 95 S. Ct. 1708 (1975). With that decision, which involved a vessel grounding and not a collision, the American courts joined the courts of every major maritime nation that had already abandoned the unfair divided damages rule.

Reliable Transfer owned a coastal tanker, the ***Mary A. Whalen***, which was transporting fuel oil from New Jersey to New York. The vessel's course led across the mouth of Rockaway Inlet, which lies between a breakwater and the shoreline of Coney Island. The breakwater was equipped with a Coast Guard-maintained flashing light at its southernmost point. On the night in question, the light was not functioning. The ***Mary A. Whalen*** went aground because, when making a turn, the captain was mistaken about the vessel's position in the absence of the flashing breakwater light.

Reliable Transfer sued the United States for the damage suffered by the ***Mary A. Whalen*** as a result of the stranding. The district court found the stranding was caused 25 percent by the Coast Guard's failure to maintain the flashing light at the end of the breakwater and 75 percent by the vessel whose captain set a course and made a turn without knowing where the vessel was. Under the divided damages rule, the district court held each party was liable for 50 percent of the damage suffered by the ***Mary A. Whalen***. The court of appeals affirmed. It recognized the divided damages rule had been criticized and would yield an inequitable result. Nonetheless, it believed it was bound by that rule and had to leave what it described as "doctrinal development" to Congress or the Supreme Court.

Upon the petition of the United States, the Supreme Court agreed to decide whether the divided damages rule should be replaced by a rule assessing liability in a mutual fault vessel collision case based on the percentage of each vessel's fault. It began its analysis by reviewing the



history of the divided damages rule in England and as adopted in The Schooner **Catharine** v. Dickinson. It described the rule as "an ancient form of rough justice" or a means of allocating damages when it was difficult to determine which party was at fault, but then stated "it is no longer apparent, if it ever was, that this Solomonic division of damages serves to achieve even rough justice."

The court reasoned the divided damages rule produced a fair result only when both parties to a collision were equally at fault. It also noted the **Pennsylvania** rule (*Pacific Maritime Magazine*, March 2017) increased the potential unfairness of the divided damages rule. That is, under the **Pennsylvania** rule, if a party in a collision has violated a statute or regulation that is designed to prevent collisions, fault is presumed unless the violator sustains the heavy burden of establishing the violation did not and could not have been a cause of the collision. Therefore, a minor violation could result in the violator being held liable for one half of the collision damages.

The Supreme Court also criticized the "major minor fault rule" finding it replaced one unfairness with another. Although one vessel was primarily at fault in a collision, it was not fair for it to be responsible for all of the collision damages. Nor was it fair for the vessel that was only slightly negligent to have no responsibility for any of the collision damages.

The court held when a maritime collision or stranding has resulted from the fault of two or more parties, the damage is to be allocated among the parties based on their respective percentages of fault. Only when the parties' percentages of fault are the same, or when it is not possible to fairly determine the percentages of fault should the damages be divided equally.

The Reliable Transfer rule of comparative fault is the modern day answer to the question, who pays what in a mutual fault vessel collision? Each party pays based on the percentage of fault allocated to it.