

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

\_\_\_\_\_  
No. 16-40823  
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United States Court of Appeals  
Fifth Circuit

**FILED**

February 15, 2017

Lyle W. Cayce  
Clerk

MARK HILTON,

Plaintiff - Appellant

v.

KIRBY INLAND MARINE, L.P.; TUBAL-CAIN MARINE SERVICES,  
INCORPORATED; TUBAL-CAIN GAS FREE SERVICES,  
INCORPORATED,

Defendants - Appellees

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:15-CV-93  
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Before SMITH, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Summary judgment was granted in favor of the defendants, Kirby Inland Marine and Tubal-Cain. We AFFIRM.

At oral argument before this court, the attorney for the plaintiff Mark Hilton stated he was abandoning the issue that the district court erred in

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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failing to remand this case to state court. That concession, which is a sound one, obviates the need to analyze the district court's denial of a remand.

As to Hilton's summary-judgment claims, we have examined the parties' briefs and the district court's comprehensive opinion. We agree with the district court's reasoning that Kirby did not breach any of the duties outlined in *Scindia Steam Navigation Co. v. De Los Santos*, 451 U.S. 156, 166–76 (1981). We further agree that Tubal-Cain neither owned, occupied, nor controlled the barge on which Hilton was injured. *See Allen Keller Co. v. Foreman*, 343 S.W.3d 420, 426 (Tex. 2011). The district court did not err in its grant of summary judgment.

AFFIRMED.