

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

TIMOTHY D. MARTIN,)	
)	
Plaintiff,)	3:11-cv-00012 JWS (JDR)
)	
vs.)	
)	ORDER FROM CHAMBERS
SMAC FISHERIES, LLC, <i>et al.</i> ,)	
)	[Re: Motion at docket 27]
Defendants.)	
_____)	

I. MOTION PRESENTED

At docket 27, plaintiff Martin moved for partial summary judgment. The motion was briefed, and the magistrate judge to whom the matter had been referred filed a report at docket 54 recommending that the motion be denied. Plaintiff Martin filed objections at docket 64, to which defendant SMAC replied at docket 70.

II. STANDARD OF REVIEW

The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.”¹ When reviewing a magistrate judge’s report and recommendation, the district court conducts *de novo* review of all

¹28 U.S.C. § 636(b)(1).

conclusions of law,² and any findings of fact to which objections have been made.³ Uncontested findings of fact are reviewed for clear error.⁴

III. DISCUSSION

Having reviewed the parties' papers and applied the standard of review articulated above, this court concludes that the magistrate judge has correctly found the facts and applied the law with one possible exception, which does not alter the outcome.

To be more specific, for the reasons articulated by SMAC in its reply, none of Martin's objections has merit. Disputed issues of material fact remain. As to the legal issue, this court finds it unnecessary to decide whether to follow the reasoning in *Marine Solution Services v. Horton*, 70 P.3d 393, 406 (Alaska 2003) with respect to the application of the Pennsylvania Rule in non-collision cases involving a crewman's injury. The point made for the present is that even if the rule does apply in such cases, there are material facts which preclude it from being applied at the summary judgment stage.

IV. CONCLUSION

For the reasons above, this court adopts Magistrate Judge Roberts' recommended findings and conclusions, except to the extent he may have indicated that the Pennsylvania Rule definitely does apply in non-collision cases. Based thereon, the motion at docket 27 is **DENIED**.

DATED this 23rd day of April 2012.

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE

²*Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989), *overruled on other grounds by Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996).

³28 U.S.C. § 636(b)(1).

⁴*Taberer v. Armstrong World Industries, Inc.*, 954 F.2d 888, 906 (3d Cir. 1992).