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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 FOSS MARITIME COMPANY,

11 Plaintiff,

12 v.

13 CORVUS ENERGY LIMITED, et al.

14 Defendants.

CASE NO. C14-1243 MJP

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

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16 THIS MATTER comes before the Court on Third-Party Defendant 1169997 Ontario, Ltd.
17 d/b/a Aspin Kemp & Associates' ("AKA") Motion for Summary Judgment. (Dkt. No. 35.)
18 Having reviewed the motion, Third-Party Plaintiff Corvus Energy Limited's ("Corvus")
19 response, (Dkt. No. 41), and the related record, the Court hereby GRANTS the motion. Corvus'
20 pending motion to compel, (Dkt. No. 51), is DENIED as moot.

21 **Background**

22 In December 2010, Plaintiff Foss Maritime Company ("Foss") and AKA entered into a
23 contract for a hybrid power and propulsion system for the Foss tugboat CAMPBELL FOSS.
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1 (Dkt. No. 36-1, 36-2.) Foss contracted with Corvus for a battery system aboard the tugboat.

2 (Dkt. No. 28 at 2–3.)

3 On August 20, 2012, during a routine operation, a fire occurred in the battery
4 compartment of the CAMPBELL FOSS. (Id. at 6.) A later investigation of the fire by a team
5 selected with membership representing Foss, Corvus, AKA and the Coast Guard identified fault
6 attributable to both Corvus and AKA. (Dkt. No. 36-5.)

7 On August 13, 2014, Foss commenced this suit against Corvus, asserting claims of
8 breach of maritime contract, breach of manufacturer’s warranty, negligence, and product
9 liability. (Dkt. No. 1.) Corvus filed a third-party complaint for indemnification or contribution
10 against AKA. (Dkt. No. 10.) Foss then filed an amended complaint asserting additional claims
11 against Corvus and asserting claims directly against AKA. (Dkt. No. 28.)

12 Foss and AKA settled the claims asserted by Foss against AKA. (Dkt. No. 36-8.)
13 Corvus then also settled with Foss. (Dkt. No. 41 at 2.) AKA now moves for summary judgment
14 on Corvus’ indemnification/contribution claims on the grounds that Corvus cannot maintain a
15 cause of action against AKA. (Dkt. No. 35.) Corvus opposes the motion. (Dkt. No. 41.)

16 Discussion

17 **I. Motion for Summary Judgment**

18 **A. Legal Standard**

19 Summary judgment is not warranted if a material issue of fact exists for trial. Warren v.
20 City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, 516 U.S. 1171 (1996). The
21 underlying facts are viewed in the light most favorable to the party opposing the motion.
22 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). “Summary
23 judgment will not lie if . . . the evidence is such that a reasonable jury could return a verdict for
24 the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The party

1 moving for summary judgment has the burden to show initially the absence of a genuine issue
2 concerning any material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 (1970). Once the
3 moving party has met its initial burden, however, the burden shifts to the nonmoving party to
4 establish the existence of an issue of fact regarding an element essential to that party's case, and
5 on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317,
6 323-24 (1986).

7 **B. AKA's Motion for Summary Judgment**

8 Corvus is not entitled to contribution from AKA. In McDermott, Inc. v. AmClyde, 511
9 U.S. 202, 217 (1994), the Supreme Court adopted the proportionate share rule as the proper
10 method to calculate liability for nonsettling defendants in admiralty tort cases. In that case, the
11 Supreme Court further held "no suits for contribution from the settling defendants are permitted,
12 nor are they necessary," because the nonsettling defendants will pay no more than their share of
13 the judgment. Id. at 209; see also Boca Grande Club v. Fla. Power & Light Co., 511 U.S. 222,
14 222 (1994) (under general maritime law, contribution actions against settling parties are barred).
15 Here, the settlement between AKA and Foss forecloses any claim by Corvus against AKA for
16 contribution.

17 There are three types of indemnity in admiralty law: (1) Ryan indemnity, based upon the
18 relationship between the parties; (2) tort indemnity; and (3) contract indemnity. Thomas J.
19 Schoenbaum, Admiralty and Maritime Law §5-19 (5th ed. 2011). Because there is no contract
20 between AKA and Corvus, contract indemnity does not apply in this case.

21 In Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp., 350 U.S. 124, 133 (1956), the
22 Supreme Court created an implied warranty of workmanlike performance in every contract
23 between a maritime contractor and shipowner. The shipowner could receive indemnification
24 from the contractor for injuries to the longshoreman which were a result of the contractor's

1 breach of warranty. Id. However, the Ninth Circuit has not extended Ryan indemnity outside of
2 the context in which it was created. See Cape Caution, Inc. v. Port of Grays Harbor, No. C09-
3 5041-RBL, 2010 WL 55854, at *2 (W.D. Wash. Jan. 5, 2010) (“Within this Circuit, application
4 of Ryan indemnity has not been extended beyond personal injury claims.”) Therefore, Ryan
5 indemnity does not apply in this case. Indeed, Corvus appears to concede that Ryan indemnity
6 and contract indemnity do not apply, and argues, instead, that it has a viable claim against AKA
7 based on a theory of tort indemnity. (Dkt. No. 41 at 9.)

8 “Tort indemnity . . . is a doctrine that was developed by the courts to allow the total loss
9 to be allocated to one tortfeasor in a joint liability situation where the negligence or fault of one
10 tortfeasor was much greater compared to the fault of the other.” Admiralty and Maritime Law
11 §5-19. The continuing validity of tort indemnity is questionable in light of AmClyde. See e.g.
12 Cargill Ferrous Int’l Div. of Cargill, Inc. v. M/V PRINCESS MARGHERITA, No. CIV. A. 98-
13 3825, 2001 WL 1426678, at *1 (E.D. La. Nov. 13, 2001) (“Although AmClyde did not
14 specifically discuss actions for tort indemnity, it is clear that the analysis is applicable to such a
15 claim.”) Courts that recognize its validity do so where a non-negligent or vicariously liable
16 tortfeasor is entitled to indemnity from a person who is guilty of actual fault. See e.g. Marathon
17 Pipe Line Co. v. Drilling Rig ROWAN/ODESSA, 761 F.2d 229, 236 (5th Cir. 1985).

18 Corvus argues tort indemnity applies in this case because it was non-negligent. (Dkt. No.
19 41 at 9–10) (citing Marathon Pipe Line, 761 F.2d at 236.) In Marathon Pipe Line, the Fifth
20 Circuit Court of Appeals held the user of a defective product which injures a plaintiff has an
21 indemnification claim against the manufacturer of the product. 761 F.2d at 236. The Fifth
22 Circuit clarified in a later decision that “‘non-negligent tortfeasor,’ as used in Marathon Pipeline,
23 applies only to those defendants on which the law imposes responsibility even though they
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1 committed no negligent acts.” Hardy v. Gulf Oil Corp., 949 F.2d 826, 833 (5th Cir. 1992).
2 Corvus is not this type of defendant. Corvus is an ordinary defendant; its liability, if any, arises
3 from its own negligence. As such, Corvus is “adequately protected under the comparative
4 negligence system” and has no need for tort indemnity. Id. 833–34. If Corvus had not settled
5 with Foss and this case had proceeded to trial, Corvus would be liable to Foss for damages based
6 on its own percentage of fault, if any. If the trier of fact determined Corvus was not negligent,
7 then Corvus would not owe Foss damages and would have no need to pursue an indemnity action
8 against AKA. Id.

9 Moreover, the right to indemnification arises where the indemnitee satisfies a joint
10 obligation. See Restatement (Third) of Torts §22 cmt. b. Here, that is not the case. AKA has
11 settled the claims against it directly with Foss. (Dkt. No. 36-8.) The settlement agreement
12 between AKA and Foss provides: “Plaintiff/Owner presently has claims pending against Corvus,
13 as outlined in the amended complaint. Plaintiff/Owner is not seeking to recover in those claims
14 for liabilities arising from the actions or inaction of Defendant/Contractor.” (Id.) Corvus then
15 settled with Foss based on its potential liability to Foss. Corvus cannot now demand
16 indemnification from AKA by claiming it had no fault. Corvus does not have a viable
17 indemnification claim against AKA based on a theory of tort indemnity. Accordingly, the Court
18 GRANTS AKA’s motion for summary judgment.

19 Conclusion

20 The Court GRANTS AKA’s motion for summary judgment, (Dkt. No. 35), and DENIES
21 Corvus’ pending motion to compel, (Dkt. No. 51), as moot.

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1 The clerk is ordered to provide copies of this order to all counsel.

2 Dated this 28th day of October, 2015.

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5 Marsha J. Pechman
6 United States District Judge
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