



Case Alert

To Sea or Not to Sea: Fifth Circuit Spares Indemnity Provision from Louisiana Oilfield Indemnity Act

Faced with the issue of whether maritime or state law should be applied to determine the validity of an indemnity clause in a Master Services Contract (MSC), the Fifth Circuit affirmed that where there is no historical treatment of the contract in question¹, it would consider six factors established in *Davis*².

In *Doiron*, the Apache Corporation and STS³ entered a broad-form blanket MSC, under which STS agreed to perform flow-back services, a process designed to dislodge solid objects from inside a well, on Apache's well located offshore of Louisiana. The MSC also contained an indemnification provision, which required STS to defend and indemnify Apache and its company groups against all claims of property injury or bodily injury. During the flow-back operation, Larry Doiron Inc. (LDI), one of the Apache Company groups, supplied a crane barge for use by STS employees. Subsequently, the crane knocked over an STS employee, causing him to suffer severe injuries. LDI then made a formal demand to STS for defense and indemnification. STS rejected the demand and argued that the Louisiana Oilfield Indemnity Act applied to the MSC instead of maritime law. Pursuant to the Act, indemnity clauses in agreements pertaining to wells for oil, gas or water are void as against public policy. But, under maritime law, the enforcement of such provisions is not barred. Therefore, if the MSC was construed under the Act, STS had no duty to defend or indemnify LDI.

Since the MSC contained a blanket contract followed by later work orders, the court interpreted the two parts together to determine whether state law or maritime law applied. The Fifth Circuit first determined the nature of the contract by reference to its historical treatment and found no clarity to the historical treatment of contract because the court had never considered operations similar to the one STS employees performed. As a result, it then looked to six factors established in the *Davis* case for clarity. The factors include: (1) what does the specific work order in effect at the time of the injury provide; (2) what work did the crew assigned under the work order actually do; (3) was the crew assigned to work aboard a vessel in navigable waters; (4) to what extent did the work being done relate to the mission of that vessel; (5) what was the principal work of the injured worker; and (6) what work was the injured worker actually doing at the time of injury? The court explained that factors one, two, four and six indicated that the contract was maritime in nature and, as such, the indemnity clause was not void.

STS argued that state law should apply, but the cases it cited were either distinguishable by law or not factually analogous. STS then argued that there was no basis for applying federal law to claims arising in Louisiana territorial waters considering that state law applied to claims arising on the Outer Continental Shelf. But the court explained that, while applying the law of the situs seemed appealing, it would disrupt the twin aims of maritime law which are: (1) achieving uniformity in the exercise of admiralty jurisdiction, and (2) providing special solicitude to seamen. Finally, STS argued that the court should draw a distinction between the underlying tort claim

¹ *Larry Doiron, Inc. v. Specialty Rental Tools & Supply, LLC et al.*, No. 16-30217 (5th Cir. 2017).

² *Davis & Sons, Inc. v. Gulf Oil Corp.*, 919 F.2d 313 (5th Cir. 1990).

³ Defendants Specialty Rental Tools & Supply, Oil States Energy Services, and Zurich American Insurance Company, collectively called "STS."

and the contract at issue. More specifically, STS wanted the tort claim to be governed solely by maritime law and the indemnity clause issue to be governed purely by contract law. The court found this argument imaginative but unpersuasive given its prior treatment of analogous situations. While it recognized the basic distinction between tort and contract claims, the distinction was immaterial.

This ruling affirms the notion that if a contract provides services on navigable waters aboard a vessel, it is a maritime contract even if the contract calls for incidental or insubstantial work unrelated to the use of a vessel. Although the *Doiron* decision ultimately reinforced the contractually agreed-upon allocation of risk between the parties to the MSC, firms with offshore well operations must be conscious of conflicts between state and federal law and the potential application and effect of the Oilfield Indemnity Acts of Louisiana and Texas.

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