



When is an oilfield services contract 'maritime'? And why does it matter?

US Fifth Circuit Court of Appeals applies a new test for determining whether an oilfield service contract is a maritime contract.

Published 19 September 2018

The information provided in this article is intended for general information only. While every effort has been made to ensure the accuracy of the information at the time of publication, no warranty or representation is made regarding its completeness or timeliness. The content in this article does not constitute professional advice, and any reliance on such information is strictly at your own risk. Gard AS, including its affiliated companies, agents and employees, shall not be held liable for any loss, expense, or damage of any kind whatsoever arising from reliance on the information provided, irrespective of whether it is sourced from Gard AS, its shareholders, correspondents, or other contributors.

On January 8, 2018, the Fifth Circuit Court of Appeals, which hears appeals from decisions made by district courts in the states of Texas, Louisiana and Mississippi, issued an *en banc* opinion in the case *In re Larry Doiron, Inc.*, 879 F.3d 568 (5th Cir. 2018), that changed the test for determining whether an oilfield services contract should be classified as a maritime contract. The Court decided that the test should henceforth be as follows:

1. Does the contract provide for services to facilitate the drilling or production of oil and gas on navigable waters?
2. Does the contract provide or do the parties expect that a vessel or vessels will play a “substantial” role in the performance of the contract?

If the answer to each of these questions is “yes”, then the contract is classified as a maritime contract.

Why is this important? Many oilfield services contracts contain indemnity provisions that require the contractor to indemnify the operator of the oilfield for claims resulting from personal injury or death, even if caused by the operator’s sole or concurrent negligence. Both Texas and Louisiana have passed Oilfield Anti-Indemnity statutes which void or limit the enforceability of such indemnity agreements. If an oilfield services contract is deemed to be ‘maritime’, the indemnity agreement is enforceable under federal law; but if it is found not to be a maritime contract, then State anti-indemnity statutes will apply and the indemnity provision may not be enforced.

The recent case of *Complaint of Crescent Energy Services, LLC* (No. 16-31214. filed July 13, 2018), decided by the Fifth Circuit Court of Appeals, applied the new test. The contractor, Crescent Energy Services, contracted with Carrizo Oil & Gas, Inc. to plug and abandon three wells located on fixed platforms in coastal waters of Louisiana. The equipment to be used included three vessels. One of the contractor’s employees was severely injured while sitting on a fixed platform. Crescent and its insurers argued that the indemnity provision in the contract requiring Crescent to indemnify Carrizo, the operator, was not enforceable under Louisiana’s Oilfield Anti-Indemnity statute because the contract was not a maritime contract.

The case was initially heard in the district court which ruled that Crescent and Carrizo’s agreement was a maritime contract and therefore that the Anti-Indemnity statute did not apply. In reaching this conclusion, the district court used the “decades-old test” for determining whether a contract was “maritime”. After the district court made its decision, the Court of Appeals formulated the new test set forth in *In Re Larry Doiron, Inc.* Applying the new test, the Court of Appeals reached the same conclusion as had the district court.

On the appeal, the contractor's insurers argued that the nature of the contract – decommissioning oil wells – was not “facilitating the drilling or production of oil and gas” as required by the first part of the test and was more in the nature of constructing offshore platforms. They also argued that the services did not take place on “navigable waters” since the employee was injured on a fixed platform. The Court of Appeals rejected these arguments, siding with the operator who argued that services to plug and abandon oil wells are part of the “total life cycle of oil and gas drilling.” The Court also found that the contract contemplated that the services would include a vessel on navigable waters. The fact that the employee was injured on a fixed platform was no longer a factor (as it would have been under the law prior to *In re: Larry Doiron, Inc.*)

To determine whether the second part of the test – that the vessel play a “substantial” role in the performance of the contract – had been met, the Court analyzed the technical aspects of the operation in considerable detail. The Court concluded that the use of the vessel, apart from the need to transport equipment and crew, was central to the contract. Perhaps most significantly, the Court concluded that “...the parties anticipated the [vessel] would be indispensably involved in performance of the contract.”

The Court of Appeals stated that the new test introduced in the earlier case of *In Re Larry Doiron, Inc.* to determine whether an oilfield service contract was maritime “...simplified the mission of identifying such contracts”. It is not clear from the Court's most recent decision whether the new test has really achieved that objective. To apply the new test, the Court found it necessary to engage in a fact-intensive inquiry to determine whether the role of the vessel in the performance of the contract was indeed “substantial”. This raises the question whether the new test can be used by contracting parties and their insurers to predict whether a contract will be deemed ‘maritime’, so that its indemnity provisions will be upheld, or whether the test means that each case will inevitably turn on its own facts.