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Jason Smith v. Seacor Marine, L.L.C. United States Court of Appeals for the Fifth Circuit 495 F.3d 182 (Decided Aug. 1, 2007)

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INDEMNITY CLAIM UNDER 33 U.S.C. § 905 DISMISSED.

Seacor, a vessel transport company, did not have a claim for indemnity, despite a reciprocal indemnity provision from Greystar, a labor service provider, concerning liability for Smith's personal injuries. For a third-party demand to be met under 33 U.S.C. § 905(c), the indemnity agreement must be between an employer and a vessel.

Jason Smith v. Seacor Marine, L.L.C.
United States Court of Appeals for the Fifth Circuit
495 F.3d 182
(Decided Aug. 1, 2007)

Jason Smith ("Smith"), an employee of AMEC-Greystar, L.L.C. ("Greystar"), a company that provides labor services on a BP America Production Company ("BP") drilling station located on the Outer Continental Shelf ("OCS") off the coast of Louisiana, was injured during a personnel basket transfer from a Seacor vessel to BP's platform. In addition to Greystar, BP hired other contractors to assist in drilling operations, including SEACOR Marine, L.L.C. and SEACOR Offshore, L.L.C. ("Seacor"). Because of his injuries, Smith received Longshore and Harbor Worker's Compensation Act ("LHWCA") benefits from Greystar. Thereafter, Smith brought suit against Seacor only, not against Greystar or BP.

Thereafter, Seacor filed a third-party complaint seeking indemnity from Greystar based on the contractual agreement between BP and Greystar. The indemnity provisions, of both the BP/Greystar and the BP/Seacor contracts, released BP and its contractors from liability resulting from injuries to their employees. The Louisiana district court held that this contract was a non-maritime contract and, therefore, the indemnity provisions were unenforceable under the Louisiana Oilfield Indemnity Act (LOIA).

Seacor challenged this ruling, arguing that it is entitled to enforce the indemnity provision in the BP/Greystar contract. It contends that the district court inappropriately applied LOIA and that the applicable statute is 33 U.S.C. § 905. According to the Fifth Circuit, § 905(b) "bars vessel owners from obtaining indemnity from an LHWCA employer . . . based on . . . express contract."¹ However, § 905(c) partially restores these indemnity rights. Section 905(c) is triggered when the injuries occur on the OCS and "the vessel's claim is based on reciprocal indemnity provisions in its contract with the employer."²

The court rejected this argument and instead followed the ruling in *Wagner v. McDermott*.³ In *Wagner*, the defendant, McDermott, was hired by Capital to perform welding services on its platform similarly situated off the coast of Louisiana. While McDermott was welding, a Capital employee was injured on his vessel allegedly due to vessel negligence. The employee sued under § 905(b), and McDermott sought indemnity from Capital based on a reciprocal indemnity agreement under § 905(c). According to the Fifth Circuit, § 905(c) is only triggered when the indemnity agreement is between the employer and the vessel. Because Capital contracted with McDermott as a platform owner, rather than a vessel owner, the contract between the two was not the sort which would trigger § 905(c), despite the fact that § 905(b) was applicable. Since § 905(c) was deemed inapplicable in *Wagner*, the court applied state law, in this case LOIA, which barred McDermott's recovery for indemnity from Capital.

Finding this case indistinguishable from *Wagner*, the court held that Seacor could not invoke § 905(c) because BP contracted with Greystar in its capacity as platform owner. The court, as in *Wagner*, holds that LOIA law governed and affirmed the dismissal of Seacor's third-party demand.

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¹ Smith v. Seacor Marine, L.L.C., 495 F.3d 182, 184 (5th Cir. 2007).

² *Id.*

³ 79 F.3d 20 (5th Cir. 1996).