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Article 10

Devon Louisiana Corporation v. Petra Consultants Inc. United States Court of Appeals for the Fifth Circuit 247 Fed.Appx. 539 (Decided September 13, 2007)

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TO DETERMINE IF A CONTRACT IS "MARITIME IN NATURE" THE TEST OF THE CONTRACT'S CHARACTER IS WHERE THE RELEVANT WORK WAS ACTUALLY PERFORMED.

The Court of Appeals for the Fifth Circuit affirmed the District Court's judgment that the Master Services Agreements between a platform owner and repairers were "maritime in nature" where use of a vessel was required for repairs and the relevant work was performed aboard the vessel rather than the platform. Therefore maritime law rather than Louisiana law governed the indemnity provisions in the MSA's.

Devon Louisiana Corporation v. Petra Consultants Inc.
United States Court of Appeals for the Fifth Circuit
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Petra Consultants ("Petra") and Magnolia Industrial Fabricators ("Magnolia") contracted with Devon Louisiana Corporation ("Devon") under Master Service Agreements ("MSA") to provide services to Devon's fixed offshore oil and gas production platform from time to time. Petra and Magnolia further agreed to defend and indemnify Devon against all claims arising from work performed under their MSA's. A work order dispatched a Magnolia crew with a Petra supervisor to perform certain repairs on Devon's platform. While Devon also had a similar MSA with Gulf Fleet Marine ("Gulf Fleet") for vessel support services, Gulf Fleet did not have a vessel available for this crew and therefore contracted with Abdon Callais Offshore, L.L.C., for use of the M/V PETER CALLAIS. Due to inclement weather, the crew was unable to complete all items on the work order. As for the completed work, some was performed aboard Devon's platform and some from onboard the M/V PETER CALLAIS. All welding was done aboard the M/V PETER CALLAIS since no "hot work" permit was issued. During the repairs, Harry Thomas, a rigger employed by Magnolia, was injured when a wave propelled him into some welding equipment as he was moving heavy equipment on the M/V PETER CALLAIS's deck.

Thomas sued Devon, among others, who cross-sued Gulf Fleet, Magnolia, and Petra on an indemnity clause in the MSA's under maritime law. Magnolia and Petra sought dismissal of Devon's claim arguing that Louisiana law governs their MSA's and that indemnity and insurance obligations are unenforceable under the Louisiana Oilfield Indemnity Act (LOIA). The United States District Court for the Southern District of Texas found that maritime law governs the MSA's and that the indemnity and insurance provisions are valid and enforceable, but that Petra and Magnolia had not breached their contractual obligations to have Devon named as an additional insured.

Petra, Magnolia and St. Paul's Surplus Lines (Magnolia's insurer) appeared before the United States Court of Appeals for the Fifth Circuit on consolidated interlocutory appeals asserting that the district court erred in concluding that maritime law governs the MSA's. The Fifth Circuit reviewed the district court's holding *de novo* and examined whether the MSA's were "maritime in nature" by looking "in part at historical treatment in the jurisprudence and in part on a fact-specific inquiry."[1] The Fifth Circuit found that the jurisprudence portion of the inquiry indicated that where the use of a vessel is required for completion of the contract, maritime law appropriately governs. Since the crew had failed to procure a "hot work" permit, a vessel would be required for any welding to be done. Even though the failure to procure a "hot work" permit imposed a legal prohibition on welding from the platform, as a practical matter, the welding work was best completed through the use of a vessel anyway. For the second portion of the test, the fact specific inquiry, the court looked at the six factor test from *Davis &*

[1] Davis & Sons, Inc. v. Gulf Oil Corp., 919 F.2d 313, 316 (5th Cir. 1990).

Sons, Inc. v. Gulf Oil Corp.[2] The Fifth Circuit analyzed these factors considering the actual performance on the contract, rather than considering the parties' expectations from the contract at signing. Therefore the MSA's were maritime in nature and the clauses were not subject to LOIA and valid. St. Paul's ancillary issue that Devon had breached their MSA with Magnolia for failure to reimburse Magnolia for the insurance premiums was also dismissed for St. Paul's failure to adequately brief the claim.

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[2] "(1) [W]hat 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 the injury?" 919 F.2d 313, 316 (5th Cir. 1990).