

## Admiralty/Maritime Law-Test for Maritime Contracts

The U.S. Fifth Circuit Court of Appeals has now expanded the application of its newly developed test for determining when a contract is maritime in nature. The decision is significant: if a contract is deemed maritime in nature, state law including so-called anti-indemnity statutes, will not apply to the contract which then may allow for the enforcement of certain indemnity and insurance obligations otherwise barred by state law.

In *Barrios v. Centaur, LLC et al.*,<sup>1</sup> a marine construction contractor, Centaur LLC (“Centaur”), had entered into a contract (the “Dock Contract”) with the owner of a dock owner in Louisiana to install a concrete containment rail intended to prevent spilled cargo from falling into the adjacent Mississippi River. The Dock Contract consisted of two documents: (1) a Master Service Contract (“MSC”), and (2) a “proposal” (the “Proposal”) for the construction of the rail which necessitated the use of a tug and barge. The MSC required that Centaur indemnify the dock owner and its other contractors referred to in the MSC as the dock owner’s “Group,” and to name the Group as additional assureds on all of Centaur’s liability insurance policies. To facilitate the project, the dock owner also contracted with River Ventures, LLC (“RV”), to provide a crew boat to transport Centaur’s workers to and from the work site which included the barge.

Devin Barrios, an employee of Centaur, was injured while offloading a generator from RV’s crew boat to the barge. Barrios sued RV and Centaur for vessel negligence under the general maritime law and the Jones Act. RV then cross-claimed against Centaur seeking contractual indemnity as a third-party beneficiary based upon its status as a member of the Group in Centaur’s MSC with the dock owner. The district court granted summary judgment to Centaur, and dismissed RV’s cross-claim, ruling that the Dock Contract was a “land-based construction contract” governed by Louisiana law and that therefore the Louisiana Construction Anti-Indemnity Statute (“LCAIS”)<sup>2</sup> applied to prohibit the indemnity and insurance provisions. RV appealed.

In its analysis, the Fifth Circuit applied its newly developed, two-pronged *Doiron* test<sup>3</sup> to determine whether the Dock Contract was maritime in nature: whether (1) the contract is “one to provide services to facilitate [activity] on navigable waters,” and (2) if so, whether “the contract provide[s] or... the parties expect that a vessel will play a substantial role in the completion of

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<sup>1</sup> CA No. 18-31203, 2019 U.S. App. LEXIS 33638 (5<sup>th</sup> Cir. 11/11/19)

<sup>2</sup> La. R.S. 9:2780.1

<sup>3</sup> *In re Larry Doiron, Inc.*, 879 F.3d 568 (5<sup>th</sup> Cir.) (en banc), cert. denied, 138 S. Ct. 2033, 201 L. Ed. 2d 280 (2018)

the contract."<sup>4</sup> While the Fifth Circuit had since applied the test just once before in an oilfield fact situation,<sup>5</sup> this is the first time the Court has applied the test to a “mixed services” contract involving both land-based and vessel related services outside of the oilfield context.

As to the first prong of the *Doiron* Test, the Court held this was satisfied because the Dock Contract required services to be performed to facilitate the loading, offloading, and transportation of coal and petroleum coke via vessels on navigable waters. That some services were also performed on the dock, which was affixed to the land, wasn't “dispositive.”<sup>6</sup> As to the second prong of the test, the Court held this was satisfied as well because the Proposal showed “that the parties expected the barge to play a critically important role.”<sup>7</sup> Further, the Court noted that Centaur's lead project manager admitted that “at the end of the day, Centaur could not have done the job properly without [the] crane barge,” and, that the barge provided a necessary work platform, an essential storage space for equipment and tools, and a flexible area for other endeavors related to the construction work. The Court also added that simply because Centaur's workers may have worked on the dock a majority of the time doesn't alter that conclusion.<sup>8</sup> On this basis, the Court reversed the granting of summary judgment and remanded for further proceedings.

The Fifth Circuit’s *Doiron* test will now apply in any number of contexts involving “mixed services” to determine whether maritime law will apply which will then bar the application of state law including anti-indemnity statutes. This decision will no doubt significantly impact the assessment of risk and liability going forward for any number of businesses.

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<sup>4</sup> *Barrios v. Centaur, L.L.C.*, 2019 U.S. App. LEXIS 33638, \*14, citing, *Doiron*, 879 F.3d at 576.

<sup>5</sup> *Crescent Energy Services, L.L.C. v. Carrizo Oil & Gas, Inc.*, 896 F.3d 350 (5th Cir.), *cert. denied*, 139 S. Ct. 642, 202 L. Ed. 2d 505 (2018).

<sup>6</sup> *Barrios v. Centaur, L.L.C.*, 2019 U.S. App. LEXIS 33638, \*19

<sup>7</sup> *Id.*

<sup>8</sup> *Barrios v. Centaur, L.L.C.*, 2019 U.S. App. LEXIS 33638, \*20-21