

# PUBLICATION

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## Fifth Circuit Adds Some Clarity to Sea of Uncertainty Governing Oilfield Indemnity Claims

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The U.S. Court of Appeals for the Fifth Circuit recently added some clarity to the confusing area of enforcing indemnity agreements in the offshore oil industry. In *Grand Isle Shipyard Inc. v. Seacor Marine, LLC*, 543 F. 3d 256 (5th Cir. 2008), the Fifth Circuit considered whether a contract between Grand Isle Shipyard Inc. (Grand Isle), a contractor of BP American Production Company (BP), and BP with reciprocal indemnity language required Grand Isle to defend and indemnify Seacor Marine, LLC (Seacor), a second contractor of BP, for injuries sustained by a Grand Isle employee while aboard a Seacor vessel. The federal district court held that Louisiana Oilfield Indemnity Act (LOIA), La. Rev. Stat. § 9:2780A, invalidated the indemnity provision. The appellate court, however, held that general maritime law applied to the claim. Thus, the Fifth Circuit vacated the district court's ruling and held that the indemnity provision could be enforced.

The injury occurred while the Seacor vessel transported the Grand Isle employee from a work platform to a residential platform where he slept and ate. Subsequent to the injured worker filing suit, Seacor sought defense and indemnification from Grand Isle under Seacor's contract with BP for the injured employee's claims. Grand Isle rejected Seacor's demand and argued that the LOIA precluded enforcement of the defense and indemnity (as well as an additional insured) provision in the contract.

A TWIC card is an identification credential needed by all personnel requiring unescorted access to secure areas of Maritime Transportation Security Act (MTSA)- regulated facilities and vessels, and all mariners holding Coast Guard-issued credentials. Individuals who meet TWIC eligibility requirements will be issued a tamper-resistant credential containing the worker's biometric (fingerprint template) to allow for a positive link between the card and the individual.

The district court relied on the Fifth Circuit's decision in *Union Texas Petroleum Corp. v. PLT Engineering, Inc.*, 895 F.2d 1043 (5th Cir. 1990), to hold that Louisiana law should be applied as federal surrogate law under the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1331-1356a. In *PLT Engineering, Inc.*, the Fifth Circuit had set forth three conditions for OCSLA (and state law) to apply to a dispute: (1) the dispute must arise on a situs governed by OCSLA (that is, the subsoil, seabed or artificial structures permanently or temporarily attached to the Outer Continental Shelf); (2) federal maritime law cannot apply of its own force; and, (3) the state law to be applied cannot be inconsistent with federal law. The district court looked to the *PLT Engineering, Inc.* case where the dispute involved work performed by vessels and divers in the ocean, not on a platform, and held that the situs requirement had been met in the dispute between Grand Isle and Seacor. Nevertheless, although it acknowledged the difficult task faced by the district court in applying OCSLA jurisprudence, the Fifth Circuit disagreed and stated that the district court did not apply more recent jurisprudence in the area. The Fifth Circuit specifically found that a vessel transporting an oilfield worker from a work platform to a residential platform did not meet the OCSLA situs requirement. Therefore, it held that general maritime law, rather than Louisiana law, applied and that the defense and indemnity provision could be enforced.

The *Grand Isle Shipyard Inc.* decision adds some needed clarity in an area in which the Fifth Circuit and other courts have been less than clear. In *Hodgen v. Forest Oil Corp.*, 87 F.3d 1512 (5th Cir. 1996), the Fifth Circuit “expressed [its] . . . frustration with the inconsistency of . . . case law” governing OCSLA disputes. *Id.* at 1523

n.8 (citations omitted). The result reached in *Grand Isle Shipyard Inc.* might seem to be a logical conclusion concerning the OCSLA situs condition. Prior decisions, however, have held that even though aboard a vessel, a dispute should be governed by OCSLA, rather than general maritime law, because the worker happened to be stepping aboard a platform from a vessel or to be in contact with a rope connected to a platform (even though aboard a vessel). See *Hollier v. Union Texas Petroleum Corp.*, 972 F.2d 662 (5th Cir. 1992); *Hodgen v. Forest Oil Corp.*, 87 F.3d 1512 (5th Cir. 1996). The Fifth Circuit also has indicated that the nature of the underlying controversy, be it tort or contract, may warrant different results depending on the facts of the case. See *Grand Isle Shipyard Inc.*, 543 F.3d at 260-61. As noted by the Fifth Circuit, these cases and other prior jurisprudence made the district court's task in *Grand Isle Shipyard Inc.* somewhat difficult when faced by these seemingly contradictory results. Thus, in reaching a logical conclusion in this case, the Fifth Circuit in *Grand Isle Shipyard Inc.* added some needed clarification to its prior holdings governing the enforcement of oilfield indemnity agreements applicable on the Outer Continental Shelf.