

From The Bench

legal news of interest

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Q. Is a drilling rig jacked up on the Outer Continental Shelf a vessel or an artificial island for purposes of application of maritime law?

a. Both.



Vessel Status Dispute for Jacked-Up Rigs Resolved . . . For Now

by Christopher L. Zaunbrecher

Frank's Casing Crew hand, Kermit Demette, sued Falcon Drilling for injuries he sustained on Falcon's rig jacked up on the Outer Continental Shelf (OCS) outside Louisiana's territorial waters. Falcon sued Frank's for indemnity under a master services agreement. The district court granted summary judgment in favor of Falcon, enforcing the indemnity. Frank's settled with Demette and appealed the question whether the indemnity agreement was voided by the Louisiana Oilfield Anti-Indemnity Act (LOAIA).

Generally, maritime law applies to contracts for casing services involving a vessel and allows reciprocal indemnity agreements between the parties, with some exceptions. On the other hand, state law, including the LOAIA, generally prohibits indemnity for the indemnitee's fault for activities on fixed platforms located on the outer continental shelf.

The Court, therefore, had to decide whether a jacked-up drilling rig lost its status as a vessel when attached to the seabed, or if not, whether a jack-up could be both a vessel and an artificial island (OCSLA situs) at the same time.

On June 12, 2001, over a strong dissent by Judge Harold R. DeMoss, the U.S. Court of Appeals for the Fifth Circuit decided a jack-up could be both a vessel and an OCSLA situs when jacked up on the Shelf.

In the original *Demette*¹ opinion, the threshold question was whether the injury occurred on an OCSLA situs. If not, general maritime law would enforce the indemnity provision. Frank's argued that OCSLA did not apply, because it literally applied only to installations "other than vessels," and a jack-up did not cease to be a vessel when attached to the seabed.

The majority agreed with the second premise, but found that the qualifier "other than vessels" applied only to structures intended to transport resources, and not to installations for exploration and production. So, according to the majority, a drilling vessel attached to the seabed for purposes of exploring for and producing minerals is an OCSLA situs.

In a strongly worded dissent which called for an *en banc* hearing to decide the issue once and for all, Judge DeMoss said that the U.S. Supreme Court

decisions in *Rodrigue*² and *Herb's Welding*³ compelled a different result, that a jacked-up drilling rig cannot be distinguished from a fixed platform; a casing crew hand is not engaged in maritime activity; and maritime law should not apply by virtue of an arbitrary designation of vessel status.

Subsequently, Judge Lynn N. Hughes of the Southern District of Texas sided with Judge DeMoss' dissent, holding that "Under the Shelf Act, a vessel ceases to be a vessel the moment it attaches itself to the Shelf; it has become a tiny federal enclave not governed by international admiralty law."⁴

After the U.S. District Courts in the Eastern District of Louisiana and the Southern District of Texas reached conflicting conclusions as to the meaning of *Demette*, the Fifth Circuit issued a revised opinion, and on March 5, 2002 denied Falcon's petition for rehearing, settling the matter, at least for the time being.

The importance of *Demette* is by allowing a jacked-up rig to be considered simultaneously a vessel and an OCSLA situs, the Fifth Circuit has continued the paradox that federal maritime law may apply to activities and contracts which the U.S. Supreme Court has said are clearly not maritime in nature when performed on a fixed platform, where there is no real functional difference between either the activities or the place where the activities are performed.



¹ *Demette v. Falcon Drilling Company, Inc.*, 280 F.3d 492 (5th Cir. 2002)
² *Rodrigue v. Aetna Casualty and Surety Company*, 395 F.2d 216 (5th Cir. 1968)
³ *Herb's Welding, Inc. v. Robert H. Gray*, 470 U.S. 414, 105 S.Ct. 1421
⁴ *EEX Corp. v. ABB Vetco Gray, Inc.*, 161 F.Supp.2d 747 (S.D. Tex. 2001)

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Frederick Speaks at December Houston Claims Association Luncheon

Kevin Frederick recently presented *Ethical Claims Handling in Louisiana* for the Houston Claims Association. The attorneys at Briney & Foret welcome the opportunity to provide continuing education for members of the claims industry. If your organization needs a speaker, please call our Client Services department at (337) 237-4070.

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