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The Jones Walker Energy E*Zine reviews and discusses developments in the energy industry, with a particular focus on matters that affect Louisiana. It addresses all legal disciplines within the energy industry, including the exploration and production of oil, gas, and other hydrocarbons; as well as the processing, marketing, and valuation of these products.

Recent Fifth Circuit Case Law Addressing the Enforceability of Contractual Indemnity Provisions In the Oil Patch

Houston Exploration Co. v. Halliburton Energy Services, Inc., 269 F.3d 528 (5th Cir. 2001)

After a blowout occurred during a stem drill test, Houston sued Halliburton for damages to the well resulting from the blowout. Halliburton argued that contractual indemnity language between the parties barred Houston's claim. In response, Houston contended that the indemnity language was void based on Halliburton's gross negligence. The Court reviewed Louisiana law on indemnity to define gross negligence and determined that Halliburton's conduct did not amount to "a want of even slight care and diligence." The Court therefore concluded that Halliburton's conduct did not constitute gross negligence and that the indemnity language barred Houston's claim.

Demette v. Falcon Drilling Co., Inc., 280 F.3d 492 (5th Cir. 2002)

An employee of a casing company sued a rig/vessel owner for damages under the LHWCA for an injury sustained while working on a rig on the Outer Continental Shelf. The owner sued the employer for contractual indemnity. The Fifth Circuit held that OCSLA applied to a jack-up rig drilling on the OCS and concluded that the LHWCA applied pursuant to OSCLA. In so holding, the Court found the reciprocal indemnity agreement between the employer and the rig owner valid under 33 U.S.C. § 905(c), which, as of 1984, has allowed reciprocal indemnity obligations on the Outer Continental Shelf.

Sumerall v. Ensco Offshore Co., 291 F.3d 316 (5th Cir. 2002)

Santa Fe contracted with Ensco to provide a drilling rig. The contract contained reciprocal indemnity obligations requiring Santa Fe to indemnify

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EnSCO for personal injuries asserted by Santa Fe's subcontractors. Santa Fe hired Premiere, a casing company, under a contract containing reciprocal indemnity provisions requiring Premiere to indemnify EnSCO for its indemnity obligations. During a personnel transfer on the Outer Continental Shelf, a Premiere employee was injured. By virtue of OCSLA, he was considered a longshoreman. Santa Fe assumed EnSCO's defense and tendered same to Premiere. Elaborating on its previous decisions in *Demette v. Falcon Drilling, Inc.*, 280 F.3d 492 (5th Cir. 2002) and *Campbell v. Sonat Drilling*, 27 F.3d 185 (5th Cir. 1994); 979 F.2d 1115 (5th Cir. 1992), the Court required Premiere to indemnify Santa Fe for its indemnity obligations to EnSCO under 33 U.S.C. § 905(c). Jones Walker represented Santa Fe in the case.

Diamond Offshore Co. v. A&B Builders, Inc., 302 F.3d 531 (5th Cir. 2002)

The Fifth Circuit's *Diamond* decision is an extension of the *Campbell*, *Demette* and *Sumrall* trilogy of cases, which examined the issue of an employer's indemnity obligations under 33 U.S.C. § 905(c) when a nonseaman employee is injured on the Outer Continental Shelf. While repairing a rig for Diamond on the Outer Continental Shelf, A&B's employee was injured. Diamond filed a declaratory judgment action seeking a determination that A&B owed indemnity to Diamond. The Court affirmed that the injured party was a longshoreman under OCSLA and that the indemnity agreements were reciprocal and enforceable under 33 U.S.C. § 905(c). Finding that the contract in effect was a maritime contract, the Court concluded that it was not subject to any state anti-indemnity prohibitions. Further, the Court held that the insurance obligations were separate from the indemnity obligations and were enforceable.

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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