

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

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Thomas B. Plunkett, III
Clerk

No. 25-30560

IN RE IN THE MATTER OF THE COMPLAINT OF WHITNEY OIL &
GAS L.L.C.

QUALITY PROCESS SERVICES, L.L.C.,

Third Party Defendant—Appellant,

versus

WHITNEY OIL AND GAS, L.L.C., *as Owner of the Field Boat M/V Lil
Red for Exoneration from and/or Limitation of Liability,*

Plaintiff—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CV-3015

Before JONES, SOUTHWICK, and WILLETT, *Circuit Judges.*

DON R. WILLETT, *Circuit Judge:*

This case turns on whether the Master Service Agreement between Quality Process Services (QPS) and Whitney Oil and Gas (Whitney) is a maritime contract. If it is, federal maritime law governs and the indemnity provision is enforceable. If it's not, Louisiana law applies and vitiates the indemnity provision.

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After a bench trial, the district court held that the MSA was not maritime. It also held that Whitney was entitled to attorney fees, but left the amount for later. We AFFIRM the ruling on the MSA and DISMISS WITHOUT PREJUDICE QPS's appeal of the fee ruling.

I. BACKGROUND

Whitney produces oil and gas in federal and state waters off the coast of Louisiana. QPS supplies oilfield labor. In 2016, the two companies entered a Master Service Agreement under which QPS supplied contract laborers, most of them production operators.

QPS's production operators used vessels to reach Whitney's production platforms. Once there, they got off the vessel and did the work: reading gauges, checking pipes, and making sure the wells were flowing as expected. While traveling between platforms, they also looked for oil sheens on the water as a check for possible leaks.

In 2021, Hurricane Ida shut down Whitney's platforms and other offshore facilities. On September 27, Kerri Espadron, a Whitney employee, boarded a Whitney vessel driven by Wyatt Boone, a QPS employee. They were told to go to a work platform, authorize construction there, and conduct a pollution check. On the way, the vessel allided with a well jacket and seriously injured Espadron.

Espadron sued Whitney and QPS in Louisiana state court. Whitney then filed this federal limitation action. Espadron intervened and sought damages from both companies. QPS, in turn, sought indemnity from Whitney under the MSA, which required Whitney to defend and indemnify QPS for injuries to Whitney employees. The parties later settled Espadron's personal-injury claims. That left only QPS's indemnity claim against Whitney.

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After the bench trial, the district court dismissed QPS's indemnity claim with prejudice. QPS appealed. Whitney then sought attorney fees under the MSA's prevailing-party provision. The district court held that Whitney was entitled to fees but deferred setting the amount until after the appeal. QPS amended its notice of appeal to include the fee ruling.

II. THE MSA IS NOT A MARITIME CONTRACT

QPS's indemnity claim turns on whether the MSA is a maritime contract.¹ If it is, maritime law governs and the indemnity provision is enforceable.² If it is not, Louisiana law applies, and the Louisiana Oilfield Anti-Indemnity Act vitiates the indemnity provision.³ We review findings of fact for clear error.⁴ Legal conclusions we review de novo.⁵ Whether a contract is maritime is a question of law.⁶

Under *Doiron*, a contract is maritime if it (1) provides services that facilitate drilling or oil-and-gas production on navigable waters and (2) provides, or the parties expect, that a vessel will play a substantial role in

¹ We have jurisdiction over the merits even though the attorney-fee issue is unresolved. See *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202 (1988) (“[A]n unresolved issue of attorney’s fees for the litigation in question does not prevent judgment on the merits from being final” for purposes of appeal.).

² See *In re Larry Doiron, Inc.*, 879 F.3d 568, 571 (5th Cir. 2018) (en banc) (“If . . . the contract is maritime and state law does not apply, then the indemnity obligation is enforceable.”).

³ See LA. REV. STAT. § 9:2780(A).

⁴ *Luwisch v. Am. Marine Corp.*, 956 F.3d 320, 326 (5th Cir. 2020) (per curiam).

⁵ *Id.*

⁶ *Barrios v. Centaur, L.L.C.*, 942 F.3d 670, 680 (5th Cir. 2019).

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completing the contract.⁷ The parties agree on the first prong. Only the second is disputed.

The parties' expectations are "central" to *Doiron*'s substantial-role inquiry.⁸ To determine those expectations, "we start with examining the contractual obligations."⁹ "If a contract does not outline a vessel's use, courts may go on to consider whether the parties expected a vessel to play a substantial role."¹⁰

The district court found the MSA "unclear as to whether a vessel will play a substantial role in the completion of the contract." But "[i]n light of the testimony regarding the anticipated work to be provided by QPS's contract workers and the involvement of vessels in that work," it concluded that "the parties did not have a shared expectation that a vessel would play a substantial role in the completion of the contract beyond transportation." It also found that other vessel "uses—such as for temporary work platforms or pollution checks when the facility was shut-in—were atypical and incidental to the work contemplated by the [MSA]." The court accordingly held that "the MSA is a non-maritime contract."

QPS first points to the MSA itself. The agreement says that "the General Maritime Law of the United States" governs its interpretation. The MSA also refers to the Shipowners Limitation of Liability Act and the Jones Act and requires QPS to carry marine insurance.

⁷ *Doiron*, 879 F.3d at 576.

⁸ *In re Crescent Energy Servs., L.L.C.*, 896 F.3d 350, 359 (5th Cir. 2018).

⁹ *Id.* at 360.

¹⁰ *In re Aries Marine Corp.*, 166 F.4th 521, 527 (5th Cir. 2026).

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Those provisions show that vessels were part of the parties' relationship, but not that they would play a substantial role in QPS's work. As we have previously held, a clause purporting to make general maritime law applicable does not matter to the *Doiron* inquiry.¹¹ And references to vessels, maritime statutes, and marine insurance are not enough by themselves to make the contract maritime.¹² We therefore agree with the district court that the MSA is "unclear as to whether a vessel will play a substantial role in the completion of the contract."

That leaves the parties' expectations. Again, we agree with the district court: the MSA is not maritime because the evidence shows that the parties did not expect a vessel to play a substantial role in the completion of the contract. As a rule, "the *Doiron* analysis does not take into account vessels used to merely transport workers from the shore to a platform."¹³ QPS accepts that rule but asks for an exception because its employees "were not mere passengers on a vessel being operated by a third party, but rather were actually driving Whitney's vessels to, from, and between offshore wells and platforms in the daily performance of their duties." QPS says driving the vessels was not only "mutually expected and anticipated," but also "critically necessary for the production operators to be able to perform their assigned duties and tasks."

¹¹ *Offshore Oil Servs., Inc. v. Island Operating Co., Inc.*, 150 F.4th 677, 684 n.4 (5th Cir. 2025).

¹² *Id.* at 684.

¹³ *Id.*

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We see no reason for an exception. Whitney hired QPS to service oil-production platforms, work that is not maritime in nature.¹⁴ The vessels got the operators to that work. Driving them was incidental to the job QPS was hired to perform. “The fact that parties operating under a contract for nonmaritime services can require employees to conduct atypical and incidental vessel-related maritime tasks does not create a maritime contract.”¹⁵ That remains true even when “a vessel ultimately had a key role in the completion of the needed work.”¹⁶

For a vessel’s role to be substantial, the parties must expect it to “directly aid the completion of the project.”¹⁷ *Crescent Energy* gives a useful example. There, the barge served as the work platform. Essential equipment stayed aboard, the wireline operation was controlled from the barge, and the crew used it for quarters.¹⁸

Under the MSA here, QPS operators would pilot vessels to the platforms, tie up, and climb onto the platform or well jacket to do their work.¹⁹ But providing a ride to work falls short of the “substantial role” that *Doiron* requires.

¹⁴ See *Thibodeaux v. Grasso Prod. Mgmt. Inc.*, 370 F.3d 486, 493 (5th Cir. 2004) (“Both this court and the Supreme Court have expressed the opinion that work commonly performed on oil production platforms is not maritime in nature.”).

¹⁵ *Offshore Oil Servs., Inc.*, 150 F.4th at 687.

¹⁶ *In re Crescent Energy Servs.*, 896 F.3d at 360; see also *id.* at 361 (“A vessel’s being indispensable may not equate to its role being ‘substantial.’”).

¹⁷ *Genesis Energy, L.P. v. Danos, L.L.C.*, 152 F.4th 648, 655 (5th Cir. 2025).

¹⁸ *In re Crescent Energy Servs.*, 896 F.3d at 361.

¹⁹ The district court found that “[t]he tasks required of the production operators . . . could not be performed from the vessel.” “Rather, the operators had to tie the vessel up to the well, exit the vessel with their tools, and climb onto the platform or well jacket to perform their work.”

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QPS also cites the aftermath of Hurricane Ida. The wells were shut in when the allision occurred, and the parties were working under unusual conditions. QPS argues that the oral work orders issued during the shutdown should change the *Doiron* analysis, no matter what the MSA contemplated.

We need not decide whether the Ida work orders changed the analysis. Actual vessel use may matter “when the expectations of the parties or the terms of the contract remain ‘unclear.’”²⁰ Here, however, the parties’ expectations were clear: vessels would transport QPS workers to Whitney’s platforms but would not play a substantial role in performing the contracted work. The parties ordinarily expected the vessels to provide transportation. That resolves the *Doiron* inquiry without considering how the vessels were used during the Ida shut-in.²¹

QPS makes one final argument. After the allision, Whitney paid Espadron “maintenance and cure,” a remedy QPS describes as available only to Jones Act seamen. But Espadron was a Whitney employee, not a QPS laborer working under the MSA. And Whitney’s actions after the allision tell us nothing about what the parties expected when they signed the MSA.²²

²⁰ *Offshore Oil Servs., Inc.*, 150 F.4th at 685. Even if a court considers such evidence, “the actual use of vessels only represents information that a court considers to determine the parties’ expectations or whether the contract required that vessels play a substantial role in the completion of the work” and “does not represent a distinct test in itself.” *Id.*

²¹ *See Genesis Energy, L.P.*, 152 F.4th at 657 n.8 (“Because the scope of the contract and the parties’ expectations are not ‘unclear,’ we need not turn to the parties’ evidence of how the Vessel was actually used.” (quoting *Doiron*, 879 F.3d at 577)).

²² *See In re Crescent Energy Servs.*, 896 F.3d at 359 (“We must remember that the contracting parties’ expectations are central.”).

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III. THE FEE AWARD IS NOT YET REVIEWABLE

Whitney also sought attorney fees under the MSA, which entitles the prevailing party to reasonable fees in an action “to enforce or interpret the terms of this Agreement.” The district court held that Whitney was entitled to fees but deferred setting the amount until after this appeal. Until the amount of the award is fixed, we lack jurisdiction to review it.²³

IV. CONCLUSION

We AFFIRM the district court’s judgment that the MSA is not maritime. We DISMISS WITHOUT PREJUDICE QPS’s appeal of the attorney-fee ruling.

²³ See *S. Travel Club, Inc. v. Carnival Air Lines, Inc.*, 986 F.2d 125, 131 (5th Cir. 1993) (per curiam) (“[A]n order awarding attorney’s fees or costs is not reviewable on appeal until the award is reduced to a sum certain.”). QPS did not address appellate jurisdiction over the fee ruling in its principal brief. Its reply brief invokes 28 U.S.C. § 1292(a)(3), which permits review of certain interlocutory decrees in admiralty cases. Arguments raised for the first time in a reply brief are generally forfeited. *Guillot ex rel. T.A.G. v. Russell*, 59 F.4th 743, 754 (5th Cir. 2023). QPS’s argument is also underdeveloped—QPS cites no case treating an unquantified fee award as an appealable interlocutory order. We decline to consider the argument.