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More Energy Service Contracts Should Now Qualify as Maritime

By **James D. Bercaw** on January 12, 2018

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As **anticipated previously**, the *en banc* Fifth Circuit in ***In re Larry Doiron, Inc.***, jettisoned the two-tier, six-factor test of ***Davis & Sons, Inc. v. Gulf Oil Corp.*** in favor of a new "simplified" test to determine whether "a contract for the performance of specialty services to facilitate the drilling or production of oil and gas on navigable waters is maritime," and thereby adopted a conceptual approach. *Doiron* at 2.

The new tests are as follows: "Is the contract one to provide services to facilitate the drilling or production of oil and gas on navigable waters?" *Doiron* at 12. If so, "does the contract provide or do the parties expect that a vessel will play a substantial role in the completion of the contract"? *Id.* If so, then the contract is maritime in nature.

Under circumstances in which it is unclear as to the scope of the contract or the parties' expectations as to whether vessels will be involved, the *en banc* Court indicated that the

following factors of *Davis & Sons* may provide clarity: (1) the work actually performed under the contract; (2) the extent of vessel involvement in the job required by the contract at issue; and (3) the extent to which the vessel's crewmembers (i.e., seamen) perform work under the contract at issue.

In the wake of this decision, it appears that contracts to perform well casing services from drilling vessels will remain maritime contracts. I anticipate that wireline and coiled tubing activities on a well that required the use of a vessel should now be viewed as maritime contracts. Accordingly, this decision has expanded the number of energy service contracts that will qualify as maritime in nature, and thus, the contract provisions concerning choice of law, indemnity and insurance will be determined under the general maritime law (absent a choice of law provision adopting state law).

James D. Bercaw
Jim's legal practice fields include offshore and maritime casualty litigation, maritime lien enforcement and collection, insurance coverage and commercial litigation.