

A Standard Motion Revised

By Judge Lynn N. Hughes

A. ORIGINAL: The underlined parts are the words that contribute to the meaning of the document. This is an ordinary motion taken from a State Bar of Texas program. Of course, the writing principles and the editing should apply as well in Michigan.

Motion to Dismiss of Franklin Well Control, Inc.

THE HONORABLE UNITED STATES
DISTRICT COURT:

Now comes Franklin Well Control, Inc., hereinafter referred to as "Franklin," Third-Party Defendant in the above-styled and numbered action, and files this its Motion [moves] to Dismiss[.] pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure, and in support thereof would respectfully show unto the Court as follows:

I.

The action was initially filed by Garret A. Hobart [sued] against defendants Clinton Service Company, Clinton Producing Company, Clinton Pipeline Co., and Barkley Offshore Company, as the owners and operators of a special purpose drilling platform Clinton No. 6, located on the Outer Continental Shelf of the United States adjacent to the State of Texas. The lawsuit was filed on October 21, 1985 and claim[ed] that the plaintiff was an employee of Franklin. At no time has the plaintiff filed any

claim[ed] or cause of action against Franklin in this action.

On April 2, 1986 Franklin filed its answer to the third-party complaint of Clinton Service Company, defendant and third-party plaintiff, based upon the original in which there was an attempt to state a cause of action based upon an alleged agreement of indemnification.

More recently, however, the defendant and third-party plaintiff Clinton Service Company has [added] attempted to state a claim based upon [of] negligence against the plaintiff's employer Franklin. As will be addressed more particularly hereinbelow, Clinton Service Company has no claim or cause of action against the plaintiff's employer Franklin on an independent theory of negligence.

II.

The Outer Continental Shelf Lands Act, 43 U.S.C.A., Sec. 1331, et seq., makes the laws of the United States applicable to all artificial islands and fixed structures erected on the Outer Continental Shelf for the purpose of exploring for, developing, removing and transporting resources therefrom. Section 905 of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A., Sec. 901, et seq., provides that the liability of an employer prescribed in Section 904 of the Act shall be exclusive and in place of all other liability of such employer to the employee, his parents, next of kin, and anyone otherwise entitled to recover damages from such employer on account of injury or death. This action is therefore barred by the exclusivity provisions of the Longshoremen's and Harbor Workers' Compensation Act and should be dismissed as to Franklin Well Control, Inc.

III.

In response to third-party defendant Franklin's Request for Admissions, third-party plaintiff [Clinton] has admitted to the following facts (the numbers correspond to the Admissions):

1. That the alleged accident in question involving Garret A. Hobart occurred on a fixed platform.

2. That the location of the fixed platform in question was at the time of the alleged occurrence involving Garret A. Hobart on the Outer Continental Shelf.

3. That the fixed platform on which Garret A. Hobart had his alleged accident is more than three miles from the shore.

A true, correct and accurate copy of the Answers to Franklin's Requests for Admissions are attached hereto, marked as Exhibit "A" and incorporated herein by reference.

IV.

In light of the above, third-party defendant Franklin states that there are no disputed fact[s] issues with regard to whether it is an employer under Sections 904 and 905 of the Longshoremen's & Harbor Workers' Compensation Act, which sections were made applicable to this cause by way of the Outer Continental Shelf Lands Act, 43 U.S.C.A., Sec. 1331, et seq. Accordingly, the liability of an employer prescribed in Section 904 of the Longshoremen's & Harbor Workers' Compensation Act is exclusive and in place of all other liability of such employer to the employee and anyone who might otherwise be entitled to recover damages from such employer on account of injury or death. This action is therefore barred by the exclusivity provisions of the Longshoremen's & Harbor Workers' Compensation Act and should be dismissed as to Franklin Well Control, Inc.

V.

In the alternative, if and in the unlikely event that this Court determines that the Longshoremen's & Harbor Workers' Compensation Act does not apply to the facts of this case then, and in that event, this defendant says that at all times material hereto it [Franklin] had in force and effect a policy of Worker's Compensation Insurance and thus the third-party [Clinton's] claim is

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still barred under the applicable provisions of the Texas Workers' Compensation Act. A true, correct and accurate copy of such policy is attached hereto, marked as Exhibit "B" and incorporated herein by reference for all purposes.

WHEREFORE, PREMISES CONSIDERED, third-party defendant, Franklin Well Control, Inc., respectfully requests this Honorable Court to grant its Motion to Dismiss, and dismiss this cause of action against it with prejudice.

Respectfully Submitted,

B. EDITED VERSION: This version is simply the underlined parts of the original without the fluff. Which reads better?

Motion to Dismiss of Franklin Well Control

Franklin Well Control, Inc., [moves] to dismiss. Rule 12(b)(6).

Garret A. Hobart [sued] Clinton Service Company, Clinton Producing Company, Clinton Pipeline Co., and Barkley Offshore Company, as the owners and operators of special purpose drilling platform Clinton No. 6, on the outer continental shelf adjacent to Texas. The lawsuit claim[ed] that the plaintiff was an employee of Franklin. At no time has the plaintiff claim[ed] against Franklin.

[T]he third-party complaint of Clinton Service Company was on indemnification. Clinton [added] a claim [of] negligence against the plaintiff's employer, Franklin. Clinton has no action against Franklin on negligence.

The Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, makes the laws of the United States applicable to all fixed structures on the outer continental shelf for developing resources. The Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901, provides that the liability of an employer [under] the Act shall be exclusive in place of all other liability of [the] employer to the employee and anyone otherwise entitled to recover damages from [the] employer. This action is barred by the exclusivity provisions of the Longshoremen's and Harbor Workers' Compensation Act.

[Clinton] has admitted:

1. The accident involving Hobart occurred on a fixed platform.
2. The fixed platform was on the outer continental shelf.

3. The fixed platform is more than three miles from the shore.

[The] Admissions are attached.

There are no disputed fact[s] whether [Franklin] is an employer under the Longshoremen's & Harbor Workers' Compensation Act, applicable by the Outer Continental Shelf Lands Act.

[Franklin] had in force a policy of Worker's Compensation Insurance and thus [Clinton's] claim is still barred under the Texas Workers' Compensation Act. A copy of [the] policy is attached.

Franklin Well Control, Inc., respectfully requests this Court to dismiss this action with prejudice.

Respectfully submitted,

C. SUGGESTED VERSION: This is how it should be written.

Franklin's Motion to Dismiss Clinton's Third-Party Action

1. *Dismissal.* Franklin moves to dismiss Clinton Service Company's third-party action for indemnity and negligence because, as Hobart's employer, Franklin is protected by the Exclusivity Clauses of the Longshoremen & Harbor Workers' Compensation Act, as applied by the Outer Continental Shelf Lands Act, and of the Texas Workers' Compensation Act.

2. *Facts.*

- A. Franklin employed Hobart at the time of the accident on a fixed platform.
- B. The platform was on the US-Texas continental shelf and engaged in resource development.
- C. Clinton was the operator of the platform.
- D. Hobart sued Clinton, and Clinton sued Franklin.

3. *Longshoremen Compensation Act.* The Longshoremen & Harbor Workers' Compensation Act is a federal plan for injured workers that parallels the ordinary state workers' compensation statutes. It includes a provision that "The liability of an employer [under the act] shall be exclusive and in place of all other liability of such employer to the employee . . . and anyone otherwise entitled to recover damages from such employer . . ." 33 U.S.C. § 905.

4. *Continental Shelf Land Act.* The Outer Continental Shelf Lands Act applies the Longshoremen Compensation Act to structures like the platform on which Hobart worked. 43 U.S.C. § 1331.

5. *Texas Act.* Franklin carried a policy of workers' compensation insurance covering Hobart; therefore, Clinton's action is barred by the similar exclusivity provision of the Texas statute. Tex. Rev. Civ. Stat. art. 8306 (1967).

6. *Conclusion.* Clinton's third-party action is barred by federal and state statutory law, and its action should be dismissed with prejudice.

Submitted respectfully,

Attachments:

- A. Admissions
- B. Insurance Policy ■

Lynn N. Hughes is a U.S. District Judge for the Southern District of Texas. He received his B.A. from the University of Alabama, his J.D. from the University of Texas, and his master of laws from the University of Virginia. Before his appointment to the federal bench in 1985, Judge Hughes was a Texas trial judge. He is an adjunct professor at South Texas College of Law and has taught at the University of Texas Law School. He also serves on the Plain Language Committee of the State Bar of Texas.



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