

A Standard Motion Revised

By Judge Lynn N. Hughes

Another of our memorable columns from the past 30 years. This one is reprinted, with some changes, from August 1996. —JK

Original

This is a form from a State Bar program. The underlined words contribute to its meaning.

MOTION TO DISMISS OF GARNER WELL CONTROL, INC.

THE HONORABLE UNITED STATES
DISTRICT COURT:

Now comes Garner Well Control, Inc., hereinafter referred to as “Garner,” Third-Party Defendant in the above-styled and numbered action, and files this its Motion [moves] to Dismiss [under] pursuant to Rule



“Plain Language” is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. To contribute an article, contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901, or at kimblej@cooley.edu. For an index of past columns, visit <http://www.michbar.org/generalinfo/plainenglish/>.

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 Off-shore 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, 2005 claim[ed] that the plaintiff was an employee of Garner Well Control, Inc. At no time has the plaintiff [has never asserted a] filed any claim or cause of action against “Garner” in this action.

On April 2, 2006 “Garner” filed its answer to the third-party complaint of Clinton Service Company, defendant and third-party plaintiff, based upon the original [filed a third-party complaint] 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 “Garner.” As will be addressed more particularly hereinbelow,

Clinton Service Company has no claim or cause of action against the plaintiff’s employer “Garner” 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 [in § 905] 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 [the] employer to the employee, his parents, next of kin, and anyone otherwise entitled to recover damages from such [the] 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 Garner Well Control, Inc.

III.

In response to third-party defendant Garner’s Request for Admissions, third-party

“For a hundred years, good lawyers have been writing without all the garbage and in a simple, direct style.”

—Hon. Lynn N. Hughes (February 2005 column)

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 [was] more than three miles from the shore.

A true, correct and accurate copy of the Answers to Garner'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 Garner states that there are no disputed fact[s] issues with regard to whether it [Garner] 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 Garner 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 [Garner] had in force and effect a policy of Worker's Compensation Insurance and

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

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

Edited Version

This is the underlined parts with the fluff deleted.

MOTION TO DISMISS OF GARNER WELL CONTROL, INC.

Garner Well Control, Inc., Third-Party Defendant [moves] to Dismiss [under] Rule 12(b)(6).

I.

Garret A. Hobart [sued] 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, on the Outer Continental Shelf adjacent to Texas. The lawsuit claim[ed] that the plaintiff was an employee of Garner. The plaintiff [has never asserted a] claim against Garner.

Clinton Service Company [filed a third-party complaint] of indemnification.

Clinton has [added] a claim [of] negligence against Garner. Clinton has no claim against Garner on negligence.

II.

The Outer Continental Shelf Lands Act, 43 U.S.C.A., Sec. 1331, makes the laws of the United States applicable to all fixed structures on the Outer Continental Shelf for developing resources. The Longshore and Harbor Workers' Compensation Act, 33 U.S.C.A. § 901, provides [in § 905] that the liability of an employer shall be exclusive 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 of the Longshore and Harbor Workers' Compensation Act.

III.

[Clinton] has admitted:

1. That the accident involving Hobart occurred on a fixed platform.
2. That the fixed platform was on the Outer Continental Shelf.
3. That the fixed platform [was] more than three miles from the shore.

IV.

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

V.

In the alternative, [Garner] 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.

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

Suggested Version

This is how it should have been written.

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

1. **Dismissal.** Garner moves to dismiss Clinton Service Company's third-party action for indemnity and negligence because, as Hobart's employer, Garner is protected by the exclusivity clauses of (a) the Longshore and Harbor Workers' Compensation Act as applied by the Outer Continental Shelf Lands Act and (b) the Texas Workers' Compensation Act.

2. Facts.

- A. At the time of the accident, Garner employed Hobart on a fixed platform.

- B. The platform was on the U.S.–Texas continental shelf and engaged in resource development.
- C. Clinton was the operator of the platform.
- D. Hobart sued Clinton, and Clinton sued Garner for indemnification and negligence.
3. **Longshore Act.** The Longshore and Harbor Workers' Compensation Act is a federal plan for injured workers that parallels the ordinary state workers' compensation statutes. It governs every claim: "The liability of an employer [under the act is] 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. **Outer-Shelf Act.** The Outer Continental Shelf Lands Act applies the Longshore Act to structures like the platform where Hobart worked. 43 U.S.C. § 1331.
5. **Texas Act.** Garner carried a policy of workers' compensation insurance covering Hobart; therefore, Clinton's action is barred by the similar exclusivity of the Texas statute. Tex. Rev. Civ. Stat. art. 8306 (1967).
6. **Conclusion.** Clinton's third-party action is barred by federal and state law, and its action should be dismissed with prejudice. ■

[Note: The parties' names are derived from names of Vice Presidents of the United States.]

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United States District Judge Lynn N. Hughes was appointed by President Ronald Reagan in 1985. He is a former Texas district judge, 1979–1985; adjunct professor, South Texas College of Law, 1973–2003; and advisory board member, Law & Economics Center, George Mason University, Council of Foreign Affairs. He received his BA from the University of Alabama, his JD from the University of Texas, and his LLM from the University of Virginia.

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VACANCIES

The State Bar Board of Commissioners is seeking names of persons interested in filling the following agency vacancies:

Institute of Continuing Legal Education Executive Committee—One vacancy for a four-year term beginning October 1, 2014. The role of committee members is to assist with the development and approval of institute education policies; formulate and promulgate necessary rules and regulations for the administration and coordination of the institute's work; review and approve the institute's annual budget and the activities contemplated in support of the budget; generally and whenever possible, promote the activities of the institute. The board meets three times a year, usually in February, June, and October.

Michigan Indian Legal Services Board of Trustees—Two vacancies for three-year terms beginning October 1, 2014. The MILS bylaws require that a majority of the board be American Indians. The board sets policy for a legal staff that provides specialized Indian law services to Indian communities statewide. The board hires an executive director. The board is responsible for operating the corporation in compliance with applicable law and grant requirements. Board members should have an understanding and appreciation for the unique legal problems faced by American Indians. Board members are responsible for setting priorities for the allocation of the scarce resources of the program. The board is accountable to its funding sources. The board meets on Saturdays, on a minimum quarterly basis, in Traverse City.

Deadline for responses is July 4, 2014

Applications received after the deadline indicated will not be considered. Those applying for an agency appointment should submit a résumé and a letter outlining the applicant's background and nature of interest in the position.

Interested persons should write: **Nominating Committee, c/o Marge Bossenbery, State Bar of Michigan, 306 Townsend Street, Lansing, MI 48933-2012**