

GILFORD S. BERGERON and SHARON T. BERGERON VERSUS
TRANSOCEAN
> TERMINAL OPERATIONS, INC. and THROUGH TRANSPORT
MUTUAL

> INSURANCE ASSOCIATION, LTD.

> CIVIL ACTION NO. 99-918 SECTION "R"(2)

> UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF LOUISIANA

> 1999 U.S. Dist. LEXIS 9078

> June 11, 1999, Decided

> June 11, 1999, Filed; June 14, 1999, Entered

> DISPOSITION:

> [*1] Plaintiffs' motion for remand GRANTED for lack of subject matter
> jurisdiction.

> CORE TERMS: removal, arbitration, subject matter jurisdiction, crane,
> arbitration agreement, maritime, Harbor Workers Compensation Act,
> insurance contract

> COUNSEL:

> For GILFORD S BERGERON, SHARON T BERGERON, plaintiffs: Rodney Glenn
Cater,

> Jennifer N. Willis, Cater & Willis, New Orleans, LA.

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> For GILFORD S BERGERON, SHARON T BERGERON, plaintiffs: David J. Foshee,
> David J.

> Foshee, Attorney at Law, New Orleans, LA.

> For TRANSOCEAN TERMINAL OPERATORS, INC., defendant: Jerald L. Album,
> Album,

> Stovall, Radecker & Giordano, Metairie, LA.

> For TRANSOCEAN TERMINAL OPERATORS, INC., defendant: Suzanne M.
Ganucheau,

> Aubert

> & Pajares, Covington, LA.

> For THROUGH TRANSPORT MUTUAL INSURANCE ASSOCIATION, LTD.,

defendant:

- > Thomas
- > James Wagner, Thomas Patrick Henican, Wagner & Bagot, New Orleans, LA.

>

> JUDGES:

- > SARAH S. VANCE, UNITED STATES DISTRICT JUDGE.

>

> OPINIONBY:

- > SARAH S. VANCE

>

> OPINION:

>

> ORDER AND REASONS

>

> Before the Court is the motion of Gilford S. Bergeron and Sharon T.

> Bergeron

> to remand this case for lack of subject matter jurisdiction. Defendants,

> Transocean Terminal Operators, Inc. and Through Transport Mutual Insurance

> Association, Ltd., oppose plaintiffs' motion on the grounds that

> plaintiffs'

> claim is removable under 9 U.S.C. @ 205 or under the Longshore and [*2]

> Harbor

> Workers Compensation Act, 33 U.S.C. @ 905. For the reasons set forth

> below,

> plaintiffs' motion to remand is GRANTED.

>

> I. Background

>

> Gilford S. Bergeron alleges that he was injured while demonstrating his

> ability to operate a crane during a job interview with Transocean Terminal

> Operators on September 23, 1996. (Pl.'s Compl. at P II). Bergeron used the

> crane

> to move a forklift onto a vessel, during the course of which the crane

> collapsed, and Bergeron was injured. (Pl.'s Compl. at P VI). The crane was

> allegedly located on a dock at the Nashville Street Wharf.

>

> Plaintiffs originally filed this action in state court, seeking damages

> for

> loss of consortium, past and future medical expenses, loss of earnings,

> physical

> and mental pain and suffering, and a loss of quality of life. Defendant,

> Through

> Transport, removed plaintiffs' case on March 22, 1999. On April 14, 1999,

> plaintiffs moved to remand for lack of subject matter jurisdiction.

>

> II. Analysis

>

> A. Motion to Remand

>

(....)

- > [] Defendants have asserted two bases for federal subject matter
- > jurisdiction.
- > The first is that plaintiff was engaged in maritime employment triggering
- > jurisdiction under the Longshore [*3] and Harbor Worker Compensation Act,
- > 33
- > U.S.C. @ 901. The second basis of federal jurisdiction is asserted under 9
- > U.S.C. @ 205, the section of the Federal Arbitration Act dealing with
- > removal of
- > cases involving foreign arbitration awards or agreements.

*For
33 U.S.C. Sect. 901
removal full in*

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> 1. Maritime Employment

- > [] Maritime employment does not provide a basis for original subject
- > matter
- > jurisdiction. Bergeron does not allege that he was employed by Transocean,
- > and
- > defendants have produced no evidence that he was so employed. n1 In any
- > event,
- > even if the Court decided that Bergeron was engaged in maritime
- > employment,
- > removal would not be timely since the case was not removed within the
- > 30-day
- > window established by 28 U.S.C. @ 1446(b). See 28 U.S.C. @ 1446(b) (notice
- > of
- > removal shall be filed within thirty days after the receipt by the
- > defendant of
- > the initial pleading setting forth the claim for relief). Rather, Through
- > Transport removed the case over three months after it was served with the
- > amended petition.

(footnote omitted)

> -----Footnotes-----

- > n1 Defendants refer to a claim form filed by Bergeron for compensation
- > under
- > the Longshore and Harbor Workers Compensation Act. However, the form,
- > which was
- > filed months after the petition in this case, expressly states that
- > employer
- > status was at issue.

> -----End Footnotes-----

> [*4]

> 2. 9 U.S.C. @ 205

> [3] Relying on an arbitration clause in the insurance contract between
> defendants, defendants contend that the case was properly removed pursuant
> to 9
> U.S.C. @ 205. This section deals with removal of state cases arising under
> the
> Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
> Defendants further contend that the timeliness of removal is not an issue
> since
> Section 205 expressly provides for removal any time before trial. Section
> 205
> provides:

> Where the subject matter of an action or proceeding pending in a state
> court
> relates to an arbitration agreement or award falling under the Convention,
> the
> defendant or the defendants may, at any time before the trial thereof,
> remove
> such action or proceeding to the district court of the United States for
> the
> district and division embracing the place where the action or proceeding
> is
> pending. The procedure for removal of causes otherwise provided by law
> shall
> apply, except that the ground for removal provided in this section need
> not
> appear on the face of the complaint but may be shown in the petition for
> removal
> . For the purposes of Chapter 1 of this title any action or proceeding
> removed
> [*5] under this section shall be deemed to have been brought in the
> district
> court to which it is removed.

> 9 U.S.C. @ 205. While it is true that the 30-day time limit does not
> apply to
> removal under 9 U.S.C. @ 205, this statute does not apply here for reasons
> given
> below.

> [4] The Fifth Circuit has held that to determine whether the Convention
> applies,
> courts must consider (1) whether there is an agreement in writing to
> arbitrate
> the dispute; (2) whether the agreement provides for arbitration in the
> territory
> of a Convention signatory; (3) whether the agreement to arbitrate arises

> out of
> a commercial legal relationship; and (4) whether a party to the agreement
> is not

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> an American citizen. Sedco, Inc. v. Petroleos Mexicanos Mexican Nat'l Oil
> Co.,

> 767 F.2d 1140, 1144 (5th Cir. 1985). Here, the first requirement is not
> met

> because Bergeron is not a party to any arbitration agreement. Rather, the
> arbitration clause is in the insurance contract between the co-defendants.

> The

> Convention only applies if there is an agreement in writing in which the
> parties

> undertake to submit their differences to arbitration. Convention, art. II
> @ 1;

> see Sphere Drake Insurance Plc v. Marine Towing [**6] Inc., 16 F.3d 666,
> 669

> n.5 (5th Cir. 1994).

> [5] This is consistent with arbitration law in general, concerning which
> the

> Supreme Court has stated that "arbitration is a matter of contract and a
> party

> cannot be required to submit to arbitration any dispute which he has not
> agreed

> so to submit." AT & T Technologies, Inc. v. Communications Workers of
> America,

> 475 U.S. 643, 647, 89 L. Ed. 2d 648, 106 S. Ct. 1415 (1986). Accordingly,
> the

> Court has no jurisdiction under 9 U.S.C. @ 205 because Bergeron was not a
> party

> to any arbitration agreement.

> III. Conclusion

> For the reasons set forth above, it is ordered that plaintiffs' motion
> for

> remand is GRANTED for lack of subject matter jurisdiction.

> New Orleans, Louisiana, this 11th day of June, 1999.

> SARAH S. VANCE

> UNITED STATES DISTRICT JUDGE

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