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Supreme Court of Texas.
Energy Service Company of Bowie, Inc., Petitioner,
v.
Superior Snubbing Services, Inc., Respondent.
No. 05-0202.

December 1, 2005

Appearances:
Gregory R. Ave, Walters, Balido & Crain, L.L.P., Dallas, for petitioner.
R. Lynn Fielder, Fisk & Fielder, Dallas, for respondent.

Before:

Justice Nathan L. Hecht delivered the opinion of the Court, in which Chief Justice Wallace B. Jefferson, Justice Scott A. Brister, Justice David M. Medina, and Justice Douglas S. Lang FN1 joined.

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COURT MARSHALL: Oyez, oyez, oyez. The Honorable, the Supreme Court Judges, all persons having business before the Honorable, the Supreme Court of Texas are admonished to draw near and give their attention, for the Court is now sitting. God save the State of Texas and this Honorable Court.
COURT ATTENDANT: Thank you. Please be seated.
COURT MARSHALL: Good morning, the Court has three matters on its oral submission docket. And order of their appearance they are, docket No. 05-0202, Energy Service Company of Bowie, Inc. versus Superior Snubbing Services, Inc. from [inaudible] County and the Second Court of Appeals District. Justice O'Neil is not sitting on that stand. Docket No. 03- 1066 or Promabason Explorations Company, Inc. and other versus Ethan E and Associates 1998 Limited and others from Rockwell County in the Fifth Court of Appeals District. And 04-1004 Luios Loiue [inaudible] LRV versus John D. Walton, Jr. from [inaudible] County in the Eight Court of Appeals District. The Court has allotted 20 minutes per side in these matters. And the Court will take a brief recess between each argument. We expect to conclude all arguments by noon today. The proceedings are being recorded and the length to the argument should be, should be posted on Court's website by the end of the day. The Court is now ready to hear argument in 05-0202, Energy Service Company of Bowie, Inc. versus Superior Snubbing Services, Inc.
COURT ATTENDANT: May it please the Court. Mr. Greg Ave will present argument for the petitioner. Petitioner has reserved five minutes for rebuttal.

ORAL ARGUMENT OF GREGORY R. AVE ON BEHALF OF THE PETITIONER

MR. AVE: May it please the Court. My name is Greg Ave, I'm here on behalf of petitioner Energy Service Company of Bowie, Inc. In 1989, the legislature, at the behest of the oil and gas industry, chose to substantially revise the Texas Oilfield Anti-Indemnity Act. To allow for the enforcement or enforceability of indemnity provisions supported by insurance. That time the statute was kind of filed its article 22-12B its now the Chapter 27, Civil Practice and Remedies Case. That statutory framework has been followed nearly religious further by the oil gas industry in the States since hits adoption and it in effect expressly mandates mutual indemnity obligations. Let's extend not only to the party's agreement, but to their contractors and their employees.

JUSTICE: Why do you think it took so long to notice that the comeback have changed?

MR. AVE: Because I don't believe that any party realistically, in this area, ever thought that the purpose of the change to the comeback was mentally subjected in fact whenever the legislative history think it was not contended to be and it never tried to cross that bridge. As I believe, the amicus brief well explained your Honor. This is something-- this is a benefit, that all contractors operating in the oil and gas industry benefit from. Not just companies like Service, but indeed Superior enjoys the same reciprocal benefit and before this time I don't believe anyone would ever done on it anymore. That the legislature, in adopting its change in 1989 to the third party liability portion and at the comeback intended to preclude an employer from-- agree to a contract which emerged to the benefit of the third party. And the justice take why would the legislature do such a thing. It makes no sense at all. At, at number one we know and that -

JUSTICE :[inaudible].

MR. AVE: That is correct your Honor-- of course it is not, but it-- in fact, it all, all rules or laws [inaudible] about what makes sense to us. Perhaps there would be very few laws or they would be quite different than they are but the fact of the matter is that-- I think when looking at the change to that statutory provision, it is necessary to as certain what the legislature was trying to do because there was a law that says and there was a re-clarification. And according to the limited legislative history that we have, that provision was in effect supposed to be the current law. Well, in fact, it makes sense. If there wasn't supposed or to be intended to be subject to change to that law. Which I think Texas, to where I'd like to get next is-- and that is the context in which this supposed change to the comeback occur. According to the Court of Appeals and the respondents, Superior Snubbing year. In the very same year, in 1989 that the legislature judge chose to change the any indemnity statute and allow for reciprocal and unilateral indemnity provision so long as they're supported by insurance. The legislature in the next ground, chose to viserate that statute, and make it such that the component of that statute would provide for mutual indemnity which include not just indemnity for the party at the contract but to the contractors of the parties of the contract. I mean, third parties. It chose to turn around and viserate that very statute. That there, there is no legislative intent anywhere. It was not cited by the Court of Appeals, or actually in fact, from the legislative

session of either the original or the two emergency special session that eventually resulted in a reformation of the, of the comp statute in 1989. The master service agreement that we're talking about here is the standard about the oil gas industry. And there was force in the very image of that state harbor provision which was adopted in 1989 to the any indemnity statute. So what would-- what is this really about? Well, it's about the allocation of risk developed under that statute.

JUSTICE: Is this master service agreement-- you say-- standard, is it a form promulgated by any agency or just something that the government ...

MR. AVE: That, that info-- That is not in the record, Justice Green and, and I believe, that it is based upon a form-- I cannot represent to the Court that it is identical to some of the form which are cited throughout the statute. But I would submit that the Case Law that has evolved in this area would support the suggestion that it is a form if not by a third party group. It is certainly one that used that the language is almost identical in all the cases that ever risen under the any indemnity statute that have wrestled with the issue on enforceability. In fact, the two agreements which are on the record, the one introduced under 1991 between Mitchell, the operator and my client, Energy Service, and the one entered in 1996, between the operator Mitchell and Superior Snubbing are for all intended purposes substantially identical. So did the legislature intended through all out the statute that passed in 1989 essentially got it? The answer in our claim is clearly that it did not. And let's be candid. When we have filed this petition in be pursuing that this remedy if there was a practical, easy solution to fix this. To say, "Okay, so third party beneficiaries don't work." All of you contractors out there that work for an operator just start signing up contracts amongst yourself. Well, I think if some of the Case Law has discussed a [inaudible] in the other cases, which will follow and indicate-- this is a very hazardous industry. It is a very complex enterprise. It involves literally dozens, if not hundreds of contracts. Contracts which operators has sometimes on a state wide basis, multiple county wide basis, county individual well basis. And these contractors don't have any idea about the other one's existence or operation or means to find out about the existence or operation of another contractor at that facility. It simply is unworkable. And without a mutuality indemnity provision or contracts, there would be no indemnity in these contractors. The amicus brief highlights because they are only the operators going to be the, the entity which is obliged to indemnify everyone and it surely is not going to bear that risk alone.

JUSTICE: Well, that means is that you just pay-- you pay for your own fault?

MR. AVE: It-- that, that is correct, your Honor. We, we would refer to exactly the scheme which is just a first year's opinion, the unbound opinion out of the 40 District Court of 2002 Testy versus Negros says, that's exactly what the legislature try to do away with. To create a system, whether we picked a good idea or not, the one that allocates risk to the party in best control. And there's no question that the individual employer of an employee is injured on a well site is in the best position. If not the only position to control that risk.

JUSTICE: But didn't the Texas Workers' Compensation Act amendments put in their specific provisions about employer safety and hazardous employers and things of that nature to induce the employers to pay attention to their employees for safety practices?

MR. AVE: Indeed they did. They provided them with a new set of

liability to make sure that it didn't pay civil liability from the employer. But what it did not do, in fact, what the legislin 1989 was create a system which is at the heart, which is the bedrock of the reciprocal and passed through indemnity process which are a procedural existing in the oil and gas industry today. Which is to allocate that risk. Again, whether we think it's a good idea or not, isn't the issue really. It's the issue of whether or not the legislature approved and allowed for this specific indemnity right to exist.

JUSTICE: But there is a difference between the language of the statute arrangement that said an employer is liable unless an infracted injury executed in a contract. Assuming liability for injury to their employees and occurring language which says, execute of the contract with the third emplo-- third party. There is a difference in that language.

MR. AVE: There actually is Justice Johnson may question about that. It, it-- the language change. But I, I-- believe-- I don't believe the analysis in there, and as I believe this Court explained in the Ken Petroleum case. We-- the, the analysis of what would this-- the legislature meant in adopting that statute has to include why it made that change. And I submit, that there's not only not any evidence in the legislative district to support that this was supposed to be a chain which, in my opinion, radically narrow the scope of liability which could be assumed by an employer of-- in fact, the legislature issued that it is available, says, that it meant to purport or continue on for current law. That's what we have in the legislative record. The absence of anything to support the interpretation given to it, given to it by the Court of Appeals and Attorney to support the notion that there was not intended to be the substantive change which is read into the law.

JUSTICE: But we've said, that even if didn't intended it, if they made it, that's intended. So if this language did change things to the extent of the language so there not has to be agreement with the third party. What is your best argument-- what are your best arguments why you still provide you on this case?

MR. AVE: Well, I doubt it. Well, the, the-- what's next to language which is currently on the vouch regarding [inaudible] liability is a contract with the party. It is not in Energy's position or opinion to necessarily eliminate or expressly prohibit a third-- the notion that a third party beneficiary could also be a part of that contract. It, it, it-- and I think, just the fact that it is not consistent with the tenets handed down by this Court with respect to statutory deconstruction to look only at the Comp provision that issue. It is absolutely imperative to consider both statute that any indemnity provision to say, other provisions would expressly contemplate mutual indemnity obligations extending to third party in a Comp provision. I, I don't believe that a proper assessment of the issue here will be raised or conducted without considering both statutory provision side-by-side. And I think when that is done in the statutory history, in the legislative history, behind those two statute is considered that, that it is reasonable to reach the conclusion that the legislature in 1989 meant to prohibit indemnity obligations being enforced by a third party beneficiary which the party specifically intended. The notion that there's somehow some type of sacrifice or undue hardship on a contractor simply not accurate and, and I would submit these ingenuous. Number one, the status quo is that each employer in the oil and fuel industry is responsible for indemnifying other stranger to it. That is the correct status quo. That is clear. That has not been undisputed.

And, and let's not forget that the Fair Notice Doctrine is alive and well and still applies to this agreements. It really isn't consistent to say, let's got a pass the Fair Notice [inaudible] but at the same time, it, it surprises. That indeed is the very Genesis of the Fair Notice requirement is that there is no surprise. And I would also point out that indeed, just as here, we're talking about an indemnity obligation which is only enforceable because it's supported by insurance. So we have a situation where, the indemnitor had a foresight to get exactly the insurance required by the statute and where the making of indemnity obligation enforceable. And in that situation, it, it-- again, it's a non sacred to suggest that, that individual who's in the best position to control the risk of injury to that person. And who got an insurance to protect him or ensure that indemnity obligation somehow supplied or suffered an undue burden simply doesn't hold water. It is in fact, if-- is the, is the-- simply if the Texas Oil and Gas Association's amicus explained it is the Court of Appeals' decision which undoes the status quo and throws the current Court's decision into disarray. We ask the Court to reverse the judgment of the Court of Appeals and form the Trial Court's judgment.

COURT ATTENDANT: Thank you, Counsel. The Court is ready to hear argument from the respondent.

COURT ATTENDANT: May it please the Court. Mr. Lynn R. Fielder will present argument for the respondent.

ORAL ARGUMENT OF R. LYNN FIELDER ON BEHALF OF THE RESPONDENT

MR. FIELDER: May it please the Court. The fact that takes a little bit of energy and effort to comply with the law is not a reason to strike it down. And that's really what we're here about. Because the Texas Oil and Gas Industry missed in its amicus brief that this Case wouldn't be here and no other case likely would be here because if they would just have all contract to sign on the brief. But they don't want to do that. They want to use a master service agreement and be able to use it over a long period of time. But if they would just get everybody to sign one agreement, these statutes are easily reconciled, can easily be worked with. And there is no problem and no conflict to the ...

JUSTICE: Of course, of course, the reason they don't want to do that because they don't want to pay us, the lawyers, every time a well-- well is drilled in 20 different companies are hired. It would be a better business for lawyers if we have to do that. Every time, and everybody hires a separate lawyer, negotiates this every second time. But the fact, the matter is, it's cheaper, ends up in cheaper yes, but consumers etc., etc. If we don't have lawyers fighting over the contract in every well and every subcontract. Right?

MR. FIELDER: Absolutely right. But I don't think that's a reason to strike it all down. I don't think that the fact that it's easier and cheaper means this Court's job negate the law. Our client's says it's easier.

JUSTICE: But you're, but you're saying that-- What you're proposing is same-- we'll just take care of it, just do that in every case, on every well, on every subcontract.

JUSTICE: That would be the way to [inaudible] these statutes

JUSTICE: So no question. Your, your proposal will end up in a cost of order.

MR. FIELDER: I think it would. I think it would probably in end up in cost of order. I think it would also be consistent with what this Court said [inaudible] in the last 15 months about indemnity. In Hassle, in Dresser, in all of those cases that talk about the need for no ...

JUSTICE: No question. We look at them with great suspicion. But also no question, the legislature has carved out the specific exception for all of those oilfield folks had enough clap to go and get there and get one. Right?

MR. FIELDER: They, they did and the Workers' Compensation Law has curved out specific exemption for subscribing employer.

JUSTICE: The Court said it's not covered by the specific law overruling the general law obviously in the Labor Code plus their body in the world. And below the field of indemnity, it only applies in one little industry or big industry. There's only one industry in general. Why wouldn't this have specific control over the general?

MR. FIELDER: Because we don't have to get there. Because Anti-Oilfield Indemnity Act specifically says in its own language that it doesn't affect any benefit conferred by the Workers' Compensation Law. So we don't have to go to that other general principle. The Oilfield Anti-Indemnity access on its face in plain language that the Worker's Compensation benefit is not taken away. And that's something I want to address because it was ...

JUSTICE: And that means the section two of the Labor Code have to deal with third party indemnities?

MR. FIELDER: That is our position and I think that's a good position and I'm glad to explain why because that was raised for the first time and the reply to the response-- that we don't even have a chance to respond to that yet. If benefit, in that context, only means benefits paid to a Workers' Compensation claim, then the language of the Texas Oilfield Anti-Indemnity Act talking about the benefit is minimus and this Court has repeatedly said that we will not intrude the statute so as to make it minimus. Because I can't think if any situation under any circumstances, where an indemnity agreement between a subscribing employer and a third party would ever affect a claimer's right to Workers' Compensation benefits. So the only benefit that it could be talking about in the Texas Oilfield Anti-Indemnity Act, is going to be that benefit to the employer. And that benefit to the employer, in this Case, is derived to have an indemnity agreement that is signed by the party who is seeking indemnity. That has to be the benefit its talking about. And under the private sector's statute, it could have been talking about the fact that you couldn't have an ex post facto indemnity agreement.

JUSTICE: So benefit wouldn't have a statutory meaning that if in the Labor Code that would have a meaning and the-- we just have to say benefit in terms of ...

MR. FIELDER: I think it would have to because other wise the statute would have no meaning. But then I can't think of any situation and perhaps somebody else can, but I can't where an indemnity agreement was an employer, a subscribing employer on third party, for the lack of indemnity would ever affect a claimant's right to benefits, as that term is defined under the Workers' Compensation Act. That isn't going to happen. And so what benefit has to mean is a more global term. But when it come ...

JUSTICE: But if Mr. Ave comes up with one in his rebuttal, he would let us know why [inaudible].

MR. FIELDER: Well, I would gladly submit to response creed to

that. But I don't think he's going to be able to come up with one. He did come up with the argument, but I guess, it's the first in time argument that he came up with. That the predecessor's statute obviously conferred no benefit on the employer. And I'm addressing that and have addressed that just a few minutes ago, by saying yes it did because because what it said is that you can't have an ex post facto indemnity agreement. This Court has recognized that you can have indemnity obligations for existing or future liabilities. While under the old law, the predecessor's statute, even that statute said under Workers' Compensation Law, the indemnity obligation have to be signed before the laws. So I think that's what the term benefits means. And when the Court looks at the term benefit with that meaning, the Texas Oilfield Anti-Indemnity Act on its phase, says that the Workers' Compensation benefit to the employers is not affected by the Texas Oilfield Anti-Indemnity Act. Now, the public policy argument, I read on the brief, repeatedly about the devastation that there's going to be in the oil industry, if this opinion is affirmed. And, and first of, as I have already said, I think it can easily be solved if they'll just sign one contract. But there is another devastation, I guess, that might occur, if this opinion is reverse. And that is what's going to happen to Workers' Compensation in the Oilfield. What employer is going to want Workers' Compensation in the Oilfield, if they're going to have an exposure liability under indemnity for anybody and everybody who works on the oil rim. This Court may take Comp out of the Oilfield if you reverse his opinion.

JUSTICE: What's it been going on for years? Does that happen in Nethan?

MR. FIELDER: I don't think-- I tend to actually agree with my opponent here. I'm not sure this is going to be anybody's rival. We couldn't find in the cases on this issue here, and I'm not sure that employers or their attorneys maybe would really giving this a lot of fun to ...

JUSTICE: If they're only looking at the bottom line, if they feel like that the Comp benefit can't bring, then if they [inaudible].

MR. FIELDER: And that's what I have right it would happen. There is this opinion that says, that the Court of Appeals was wrong ...

JUSTICE: Why would you-- looks like you still want Comp-- Comp coverage for injuries that weren't called late up again.

MR. FIELDER: Well, I'm not sure there's a whole lot of entry of that. I guess the argument could be made that there's some limited benefit if that. And that might take care of the very small on jury and don't require much but I think we all ...

JUSTICE: It seems to me, you're out there and you could sue your employer as well as, third parties that there would be unintended to do that. Wouldn't that?

MR. FIELDER: I think -

JUSTICE: No, they have Comp to keep that from having ...

MR. FIELDER: - I think the nature of Oilfield injuries and I think the Texas Oil and Gas Industry, refers on the brief, and I think Justice Brister referred to an opinion that was written. These are usually devastating injuries. And they usually end up in lawsuits that involve a lot of people and lot of other parties. And that's when the employers gets something back into the case otherwise the petitioner wants us the Court to do. So what was the real point have in common? Let me buy you some piece of small injuries. [inaudible] falling in a [inaudible] and land back [inaudible]. You're going to be right back in the case, and you're going to have the exposure. And as an employer ...

JUSTICE: But you'll get some insurance for that too.

MR. FIELDER: Well, that's where I was going. As an employer, I would much rather have immunity than I would rely on solvency of insurance of the government or their coverage defenses that might rise or the fact that there is a limited liability. I mean, as an employer I want to have some little immunity, but that's not what's we're getting. The Court reverses its opinion. What you're getting is open season on the employer under indemnity. Up to the amount of insurance and we assume that insurance is good. So there's a public policy concerned, what this Court is being asked to do is make it easier on the Texas Oil and Gas Industry so that they wouldn't have to go out and get all the signature on agreement and the trade out may be a lot worse. The trade out may become-- may be not completely disappear, and I think that's overstatement, I wouldn't make that overstatement, but certainly, a lot of people would opt that because there's no rule [inaudible] to have.

JUSTICE: Therefore, you're saying that this had been going on for a long time and this three months insurance and all that. I mean, in the Court of Appeals' opinion, years has changed that. Has it not? I mean, because everybody still buying insurance. This is really about insurance. This is really about insurance kind of miscalculating their risks and their premiums for both employer, and the third party. Said under the Oilfield Anti-Indemnity Act is not because we're talking about if you got Comp insurance, you have the employer's liability section to the policy. Don't you?

MR. FIELDER: Yeah. But of course, liability section policy for debt.

JUSTICE: Well, you haven't. Well, that's one of those exemptions you were talking about later that -

MR. FIELDER: Might not come up.

JUSTICE: - but you got to a carrier that you got someone right into the employer. You got somebody placing that, and look at the, the contractual liability for indemnity. If you think you were there on the right track, what we're talking about insurance companies bargaining out their premiums?

MR. FIELDER: Well, as I understand, the Workers' Comp policy will covered this private employers were injuries on the job. The Comp be covers for debt, the general liability policy has a place to exclusions so I could think of they were excluded. And there usually is contractual liability coverage in the GL policy. Which may or not, may not ...

JUSTICE: that's what I'm saying. The carriers go in, they look at these liabilities on both the, the Oilfield Indemnity Act and Workers' Comp and they look what the exposure is and they charge people for what their exposure is.

MR. FIELDER: I don't think ...

JUSTICE: So somebody is going to pay what is liability policy or Workers' Comp employer, GM, whatever. We're talking about the carrier's calculating their risk and exposure so somebody is going to pay for the injured employee.

MR. FIELDER: I agree with that. We're talking about risk allocations scheme here. That's our true. And our, our point about the risk allocations scheme is that the legislature in about explain the language that actually they could say it has said, that you're not going to get an indemnity against the subscribing employer unless you're a signatory do that earlier.

JUSTICE: All that means is all this subjects specifically contract to Court after by liability policies covered them for whatever they do

wrong.

MR. FIELDER: And I think that's what the Texas Oilfield Anti-Indemnity Acts contemplates in, is that they will be insured right? This, this is a risk allocation situation. In truth, when you get right down to it, it's a bunch of insurance company [inaudible] whether it's contractual indemnity situation or whether it's contractual indemnity situation or whether it's a Comp premium employer agreement but I, I just-- I think that the statute on its phase is clear.

JUSTICE: You say that if the Court of appeals is incorrect, there would be severe consequences.

MR. FIELDER: I think there would ...

JUSTICE: But those consequences existed before '89.

MR. FIELDER: And I don't think that ...

JUSTICE: And in 1963 then 1989.

MR. FIELDER: And for whatever reason this is, I don't know why this doesn't come up on the radar. But if I'm a lawyer in Texas, and I read the opinion this Court might right if it does favor with the petitioner, I'm calling up my employer client's I'm saying, "Do you really want Workers' Comp then let's talk about that because you're going to get brought back in." I mean, what do you get wasting your money here. Because you're in the Oilfield. You're going to get brought back and you think lawsuit anyway. You're going to get brought back anything You don't want this. Complex expenses and if you're not going to get immunity ...

JUSTICE: Or isn't this argument you make to the legislature, I mean, why would we care even if that's true? Why, why does that matter? If mean, we, we at the Court, don't have to promote or Workers' Comp I mean, more fees to go else where to the non subscribers. That's okay.

MR. FIELDER: I, I don't think it has some fee dealt by this Court, I think that this Case can be released by this Court by saying, we read the statute it means what it says, now we don't have to get off to the legislative intent. We don't have to get off into public policy. It's the petitioners who have raised the public policy and swearing devastation and eradication and horrible things are going to happen. I think this is a very simple statutory construction case where you read the statute, it means what it says, it's plain, the legislature has spoken and we move on from there and we're going to follow what the Court of Appeals did. But if we want to get well enough in public policy [inaudible]. We can go there, and actually we go down the road about Oilfields really have. Because if we go to policy, we're saying okay, Oil and Gas folks you don't have to go out and get every signatory [inaudible] but we're not going to make to do that. The trade off is, we may be taking Comp out the Oilfield that's really a bad trail but we don't have to go there. It's just that the Court order the stature to go there and that's what I think need to be considered. So-- I, I think this is pretty blank statute, can be construed by this Court on its phase and the Court of Appeals' opinion can be affirmed and it's not going to tear up the industry like it isn't predicted by the petitioner. Thank you.

JUSTICE: Thank you Mr. Fielder. Be ready for the a rebuttal.

REBUTTAL ARGUMENT OF GREGORY R. AVE ON BEHALF OF PETITIONER

MR. AVE: May it please the Court. Section 006 which says that the

any indemnity statute does not affect any Comp benefits, doesn't do one thing to further the respondent's position here. In the first instance, that statute pre dated the 1989 statute which is the basis for the Court of Appeals' decision in this Case by five years. By four years said, the notion here is when a legislature adopted 127006, if foresaw that in two regular sessions and two special sessions after this, then it would adopt the statute. It would somehow be construed to benefit as a to the employer and that's what I wanted to protect. Not supported by the legislative history. That construction also ignores the history about the any indemnity say Barbara Edition in 1989 and also ignores change in '89 for the Comp provision that issue which indicates it's not intended as subject of change. So ...

JUSTICE: So do you agree though with the respondent that it's hard to think of an example of an indemnity agreement affecting an employer's benefits?

JUSTICE: I do-- I'm sorry but I agree with you that the respondent that-- you'll never need Comp?

MR. AVE: No but it's hard to think of why the indemnity agreement affect the employees benefit.

JUSTICE: Right. In the situation that I believe existed at the time the any indemnity statute was adopted, it is the section I believe 002, the statute indicates that it was Comp for them to be joint enterprise and project that's going on at the time. And I believe that the fear was is that, well, one employer will attempt to use the-- a law-- the benefist-- the Comp benefits that are never received from them and say, "Aha! he's been paid so he can't sue me." or conversely, if that third party gets sued, the employer says, well you don't get Comp because we're in a joint enterprise. And you just sue the other guy and the idea is, what goes on between the fight that goes on between contractors, is talked about in the Chesapeake versus Nabors situation that we want to stop shouldn't effect the benefits that the injured employee get. This dispute that the any indemnity statute is all about and the [inaudible] provision is all about shouldn't have anything to do with that individual-- worker he's receiving benefit. And again, benefit isn't just generic idea under the Comp statute, is they defined the term, is convenient, I understand for the respondents to ignore the statutory definition.

JUSTICE: Can you respond to the public policy issue that the Court-- this Court was to affirm the Court of Appeals will take that Comp-- situated policy Comp in the Oilfield?

MR. AVE: With all due respect, I think it's a silly argument. And it, I think let's talk about ...

JUSTICE: What would be the effect?

MR. AVE: I believe there would be nothing. I believe the employer would still have Comp number one, they still, they would still get sued unquestionably for injuries to an employee in well site, but the suggestion, that ...

JUSTICE: But they don't get sued anyway if they can't claim. Right?

MR. AVE: Well, an employer does not, but they get sued if they, if they have, if they-- I think the term is open season used by the respondents on employers. No, it's not an open season. The employer chose to enter into a contract. It says, "I will indemnify third parties for my negligence or their negligence." No one declared open season on them. They contractually agreed to indemnify third parties. And, and number one, the Comp benefit will protect them from claims against their, their insurance in that context. But the key to that

suggestion just within-- that somewhere out there is the idea that the only time the employer gets sued is on rib site or drill site. Let's talk about the fence contractors, cement contractors. A guy that delivers the portalot, to claim the portalot out. The idea that the only work their employers do when they show upon a drill site is simply-- doesn't have anything to do with reality. Comp's not going anywhere. No one suggested that, and there's no evidence of that. The fact of the matter is, employers would still have Comp because they need the Comp to protect themselves. We ask the Court to reverse the opinion in front of Trial Court's decision.

JUSTICE: Thank you, Counsel. The case is submitted and the Court will now take a brief recess.

COURT ATTENDANT: All rise.

2005 WL 6166139 (Tex.)