

1981

Shell Oil Co. v. Brinkerhoff-Signal Drilling Co. : Brief of Appellant

Utah Supreme Court

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CASE NO. 18084

THE HONORABLE ALLEN B. SORESENSEN, PRESIDING

Attorneys for Appellant

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THE HONORABLE ALLEN B. SORENSEN, PRESIDING

Attorneys for Appellant

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<u>Jacobs v. General Acc. Fire & Life Assur. Co.</u> , 109 NW 2d 462 (Wis. 1961)	8
<u>Jankele v. Texas Co.</u> , 88 Utah 325, 54 P.2d 425 (1936) . .	6
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<u>Titan Steel Corp. v. Walton</u> , 365 F.2d 542 (10th Cir. 1966)	4
<u>Union Pacific RR Co. v. El Paso Natural Gas Co.</u> , 17 U. 2d 155, 408 P.2d 910 (1965).	3
<u>Union Pacific RR Co. Intermountain Farmers Assn.</u> , 568 P.2d 724 (1977)	3

IN THE SUPREME COURT
OF THE STATE OF UTAH

* * * * *

SHELL OIL COMPANY,)	
)	
Appellant,)	BRIEF OF APPELLANT
)	
vs.)	
)	
BRINKERHOFF-SIGNAL)	Case No. 18084
DRILLING COMPANY,)	
)	
Respondent.)	

* * * * *

I. NATURE OF THE CASE

This is a personal injury action by plaintiff back against Shell Oil Company (hereinafter Shell). Shell sued third party defendant Brinkerhoff-Signal Drilling Company (hereinafter Brinkerhoff) under the indemnification provisions of a written contract between those parties.

II. DISPOSITION IN LOWER COURT

The Fourth Judicial District Court, Honorable Allen B. Sorensen, granted Brinkerhoff's motion for summary judgment and dismissed Shell's third party complaint.

III. NATURE OF RELIEF SOUGHT ON APPEAL

Appellant asks this Court to reverse the judgment of the District Court and to remand for trial those issues raised by its third party complaint.

IV. STATEMENT OF FACTS

Plaintiff Billie Thomas Back, an employee of Brinkerhoff was injured during the course of an oil well drilling operation being performed under the terms of a written contract between Brinkerhoff and Shell. Plaintiff sued Shell and Shell joined Brinkerhoff as a Third-Party Defendant claiming that Brinkerhoff is obligated to indemnify Shell for any liability Shell may have to Plaintiff Back (R. 5-10). Shell's claim for indemnification is based on a provision in the drilling contract which says:

"11.6 Except as modified by 11.7 below [11.7 deals with Pollution Control], Contractor agrees to protect, indemnify and save Operator, its employees, and agents harmless from and against all claims, demands and causes of action of every kind and character arising in favor of Contractor's employees, Operator's employees or third parties on account of bodily injuries, death or damage to property arising out of or in connection with the performance of this agreement, except where such injury, death or damage has resulted from the sole negligence of Operator, without negligence or willful act on the part of Contractor, its agents, servants, employees, or subcontractors. Contractor shall defend all suits brought upon such claims and pay all costs and expenses incidental thereto, but Operator shall have the right at its option, to participate in the defense of any such suit without relieving Contractor of any obligation hereunder." (R. 25).

Brinkerhoff moved for Summary Judgment on the grounds that the foregoing provision is void or unenforceable under Utah law. (R. 18-19, 51-59). The District Court, for the Fourth Judicial District, Honorable Allen B. Sorensen, granted Brinkerhoff's motion and entered a final order dismissing Shell's Third-Party

Complaint (R. 98-99). Shell appeals from the said final order.

V. ARGUMENT

1. The District Court's Ruling is Directly Contrary to Existing Utah Case Law.

Shell's third party complaint against Brinkerhoff is based on an express written contract requiring Brinkerhoff to indemnify Shell against all claims in favor of Brinkerhoff's employees except where such claims are based upon the sole negligence of Shell. Brinkerhoff has not denied that it entered into the indemnification agreement; and has not alleged that it entered into the contract as the result of any form of coercion or deception. The District Court's dismissal of the third party complaint is, therefore, necessarily a ruling that under Utah law, parties may not validly enter into any agreement where one party agrees to indemnify the other in the event both negligently participate in causing injury to a third person.

This ruling by the District Court is directly contrary to Utah law as announced by this Court in Union Pacific RR Co., v. Intermountain Farmers Assn., 568 P. 2d 724, 726 (1977). In that case, this Court, citing Barrus v. Wilkinson, 16 U. 2d 104, 398 P.2d 207 (1965) Howe Rents Corp. v. Worthen, 18 U. 2d 263, 420 P.2d 848 (1966), and Union Pacific RR Co. v. El Paso Natural Gas Co., 17 U. 2d 155, 408 P.2d 910 (1965), stated that Utah has adopted the majority rule holding that agreements by one party (here Brinkerhoff) to indemnify another party (here Shell) against

claims arising from negligence, including Shell's own negligence, are valid and enforceable. The Intermountain Farmers opinion states the majority rule Utah has adopted in rather cryptic language:

"The intention of the parties governs but the presumption is against any such intention and it is not achieved from general language"

586 P.2d at 726
(emphasis added).

This majority rule has been stated more explicitly:

Broadly speaking, a promise of indemnity for the performance of an act not illegal, immoral, or against public policy is valid. Thus, indemnity against loss on account of a business transaction is proper. And, although there is some earlier authority to the contrary, it is now the prevailing rule that a contract may validly provide for the indemnification of one against, or to relieve him from liability for, his own future acts of negligence provided the indemnity against such negligence is made unequivocally clear in the contract. 41 Am. Jur. 2d. Indemnity § 9 (emphasis added).

The exact same claim Brinkerhoff raises by its present motion was ruled on in Titan Steel Corp. v. Walton, 365 F.2d 542 (10th Cir. 1966). Utah law governed that case, and the Tenth Circuit obviously based its holding on the opinions of the Utah Supreme Court cited above because the indemnification provision at issue in Titan was held enforceable in accordance with its terms despite the fact that the opinion notes that the agreement would have been unenforceable under federal law. The language which was held valid, applicable, and fully enforceable in

accordance with its terms said that the party challenging the validity of the agreement was liable:

" . . . for any and all claims arising from injury to employees of Contractor, or injury to any subcontractor or employees of such subcontractor arising from the performance of the Contract, and for any injury to employees of Owner, or to third persons, or to the public, or their property, caused by any act, or omission of Contractor or subcontractors . . . ; the Contractor agrees to indemnify and hold Owner harmless from liability for any and all losses, claims, damages, expenses and causes of action of every nature whatsoever which may arise out of, or in connection with, the performance of the Contract and which are caused by any act, or omission, of Contractor or subcontractor, their servants, agents, or employees, or may be claimed so to do"

The agreement further provided that this party assumed:

" . . . exclusive responsibility for all injury or damage to persons or property . . . resulting from or arising out of the performance of the work. The subcontractor agrees to indemnify, protect and defend the Contractor and Owner against all claims, suits, losses, damages and costs, including court costs and reasonable attorneys' fees, on account of such injury or damage, except when caused by the sole negligence of the Contractor or Owner. . . ."

This language is indistinguishable from that which appears in the contract between Shell and Brinkerhoff. The Tenth Circuit also found indemnification agreements valid under Utah law in Southern Pacific Trans. Co. v. Nelson, 448 F. 2d 121 (10th Cir. 1971).

2. The District Court Must Necessarily Have Based Its Ruling On Erroneous Grounds.

The record indicates that the District Court must have based its decision to grant Brinkerhoff's motion for summary judg-

ment on one or more of three propositions argued by Brinkerhoff:

Contract provisions which purport to relieve a party from liability for its own negligence are against public policy in Utah (R. 55-57).

Express indemnification contracts contravene the exclusive remedy provisions of the Workmen's Compensation statute. (R. 52-54).

Express indemnification contracts are in conflict with the legislative policy of Utah's Comparative Negligence Act. (R. 54-55).

a. Indemnification Contracts Do Not Violate Public Policy.

The proposition that one may validly contract to indemnify another against liability arising from events to which the other's negligence contributed is necessarily an implicit premise of the majority rule discussed above and applied in the Intermountain Farmers decision. A representative sample of the many cases declaring that these agreements are valid and do not violate public policy appears as Appendix I to this brief. The only authority cited by Brinkerhoff in support of its public policy argument is dicta from a 1936 Utah case, Jankele v. Texas Co., 88 Utah 325, 54 P.2d 425. The Jankele opinion, however, was cited by this Court in the Intermountain Farmers opinion as standing for the exact opposite of the proposition argued here by Brinkerhoff. Intermountain Farmers cites Jankele for the proposi-

tion that indemnification agreements are strictly construed. If Jankele had determined such agreements to be invalid, the issue of how they are to be construed would never have been reached.

The error in the District Court's decision is further illustrated by the fact that its order could be cited as authority for the proposition that liability insurance policies are against public policy in Utah. Any liability insurance policy is merely one form of an express contract for indemnification, 41 Am. Jur. 2d Indemnity § 3.

A liability insurance policy has exactly the same effect on the insured as the indemnification contract at issue in this case has on Shell; it obligates another to pay in the event liability is assessed against the beneficiary of the contract. Negligence on the part of the beneficiary is a prerequisite to the imposition of such liability. If Shell's contract is invalid because Utah law somehow always requires all parties to pay directly and exclusively for their own negligence, then it follows that the District Court appears to have declared liability insurance policies invalid under Utah law.

In the District Court, Brinkerhoff argued that indemnification contracts should be declared invalid because they might encourage carelessness.

"The contention that such contracts are an inducement to negligence has been rejected as fanciful or untenable, in view of the many automobile liability insurance policies in existence." 41 Am. Jur. 2d

Indemnity § 9, n. 5, citing Northern-Pacific RR Co., v. Thornton Bros. Co., 206 Minn. 193, 288 NW 226; Griffiths v. Henry Broderick, Inc., 27 Wash. 2d 901, 182 P.2d 18.

b. Utah's Workmen's Compensation Statute Does Not Prohibit Indemnification Contracts.

The indemnification claim at issue in this action is not barred by the workmen's compensation statute. Shell's third party complaint in this action is based upon an express contract for indemnification. The law recognizes a distinction between indemnification founded upon an express contract and indemnification based upon common law equitable principles. The doctrine of common law indemnification is summarized in Restatement, Restitution §§ 76-86. Common law indemnification is predicated upon fault and is a concept of tort law. Prosser, Law of Torts, 4th Ed. § 51, see also Jacobs v. General Accident Fire & Life Assur. Corp., 109 NW 2d 462 (Wis. 1961).

While common law indemnification claims by third parties against employers are generally held to be barred by the exclusive remedy provisions of Workmen's Compensation Acts, (Phillips v. Union Pacific RR Co., 614 p.2d 153 (1980) and Curtis v. Harmon, 552 P.2d 117 (1976) fall within this class of cases.) indemnification claims founded upon express contracts are permitted virtually without exception. The many cases cited in Appendix II to this brief hold that the exclusive remedy provisions of the applicable state and federal Workmen's Compensation statutes do not bar suits founded upon express contracts of

indemnification. These cases recognize that a party's right to contractual indemnification is founded upon a contractual duty which is distinct and wholly independent from the legal basis for common law indemnification. This distinction is particularly well illustrated by Brogdon v. Southern Railway Co., 253 F. Supp. 676 (Tenn. 1966), affirmed 384 F. 2d 220 (6th Cir. 1967).

c. The District Court's Ruling is Contrary to Utah Contract Law.

The District Court has declared a class of contracts invalid under Utah law. This Court has recently reiterated in Park Valley Corp. v. Bagley _____ P.2d _____, Case No. 17162, July 30, 1981 that under Utah law, parties are to be afforded freedom to contract on their own terms without the indulgence of paternalism by the courts in relieving one side or the other from effects of a poor bargain. The District Court's ruling violates this principle.

d. Utah's Comparative Negligence Statute Does Not Prohibit Indemnification Contracts.

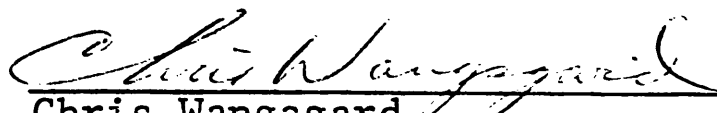
As has been indicated above, a party's right to indemnification under an express contract is founded upon a contractual duty wholly independent of the type of common law tort duties which are the subject of the Comparative Negligence Act. The argument urged in the District Court by Brinkerhoff in support of this ground of its motion is blatantly illogical. Brinkerhoff first argues that a legislative policy requiring that liability always be apportioned according to fault is to be discerned from

the Comparative Negligence Act. Citing Phillips v. Union Pacific supra, Brinkerhoff next correctly concludes that the Comparative Negligence Act cannot apply to Brinkerhoff in the instant case because Brinkerhoff cannot be a joint tort feisor toward its own employee. Finally, Brinkerhoff argues that the policy of the act (which it has demonstrated not to apply in this case) should somehow be applied to protect Brinkerhoff against the consequences of its contract with Shell.

VI. CONCLUSION

The District Court's ruling is contrary to Utah's law as it has been declared by this Court. The District Court has, without legally valid grounds, undertaken to relieve Brinkerhoff from the burden of a lawful and valid contract. The District Court's order and judgment should be reversed; and Shell's third party complaint against Brinkerhoff should be remanded for trial.

Respectfully submitted this 28th day of December, 1981.


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APPENDIX I

United States Supreme Court

1970 United States v. Seckinger,
397 U.S. 203, 90 S.Ct. 880,
25 L.Ed. 2d 224(1970).

First Circuit

1978 Roy v. Star Chopper Co.,
584 F.2d 1124 (1st Cir. 1978).

Second Circuit

1975 Batchkowsky v. Penn Central Co.,
525 F.2d 1121 (2nd Cir. 1975);

1973 Warren v. Hudson Pulp and
Paper Corp. 477 F.2d 229
(2nd Cir. 1973).

Third Circuit

1978 Draper v. Airco, Inc., 580
F.2d 91 (3rd Cir. 1978);

1970 Jamison v. Ellwood Consolidated
Water Company, 420 F. 2d 787
(3rd Cir. 1970);

1957 Brown v. Moore, 247 F.2d 711
(3rd Cir. 1957).

Fourth Circuit

1970 United States v. Hollis, 424
F.2d 188 (4th Cir. 1970);

1967 Eastern Gas and Fuel Ass'n. v.
Midwest-Raleigh, Inc., 374
F.2d 451 (4th Cir. 1967).

Fifth Circuit

1981 Barnes v. Lone Star Steel Co.,
642 F.2d 993 (5th Cir. 1981);

- 1981 Smith v. Seaboard Coast Line Railroad Co., 639 F.2d 1235 (5th Cir. 1981);
- 1977 Wedlock v. Gulf Mississippi Marine Corp., 554 F.2d 240 (5th Cir. 1977);
- 1975 Hicks v. Ocean Drilling and Exploration Co., 512 F.2d 817 (5th Cir. 1975);
- 1967 James F. O'Neil Co. v. United States Fidelity & Guaranty Co., 381 F.2d 783 (5th Cir. 1967).

Sixth Circuit

- 1974 Jones Truck Lines, Inc. v. Ryder Truck Lines, Inc., 507 F.2d 100 (6th Cir. 1974);
- 1959 General Accident Fire & Life Assurance Corp. v. Smith & Oby Co., 272 F.2d 581 (6th Cir. 1959).

Eighth Circuit

- 1976 Hysell v. Iowa Public Service Co., 534 F.2d 775 (8th Cir. 1976);
- 1972 Missouri Pacific Railroad Co. v. Winburn Tile Mfg. Co., 461 F.2d 984 (8th Cir. 1972);
- 1963 Chicago, M., St. P. & P.R. Co. v. Famous Brands, Inc., 324 F.2d 137 (8th Cir. 1963);
- 1963 Northern Natural Gas Co. v. Roth Packing Co., 323 F.2d 922 (8th Cir. 1963).

Ninth Circuit

- 1961 Ryan Mercantile Co. v. Great Northern Railway Co., 294 F.2d 629 (9th Cir. 1961).

Tenth Circuit

- 1971 Southern Pacific Transportation
Co. v. Nielsen, 448 F.2d 121
(10th Cir. 1971);
- 1967 Colorado Milling & Elevator
Co. v. Chicago R.I. & P.R.
Co., 382 F.2d 834 (10th Cir.
1967);
- 1966 Pittsburgh-Des Moines Steel
Co. v. American Surety Co.
of New York, 365 F.2d 412
(10th Cir. 1966);
- 1966 Titan Steel Corp. v. Walton,
365 F.2d 542 (10th Cir. 1966).

United States District
and
State Courts

Alabama, 1980	<u>Industrial Tile, Inc. v. Stewart,</u> 388 So. 2d 171 (1980);
1972	<u>Eley v. Brunner-Lay Southern Corp.</u> <u>Inc., 266 So. 2d 276 (1972).</u>
Arizona, 1969	<u>Southern Pacific Co. v. Gila River</u> <u>Ranch, Inc., 9 Ariz. App. 570, 454</u> <u>P.2d 1010 (1969);</u> rvsd. on other ground 460 P.2d 1 (1970);
1966	<u>Graner Tank & Manufacturing Co. v.</u> <u>Fluor Corp., Ltd., 4 Ariz. App.476,</u> 421 P. 2d 909 (1966).
Arkansas, 1970	<u>Ross v. Smith,</u> 315 F. Supp. 1064 (Ark. 1970).
California, 1964	<u>Goldman v. Ecco-Phoenix Electric</u> <u>Corp., 41 Cal. Rptr. 73, 396 P.2d</u> 377 (1964).
Florida, 1973	<u>Ivey Plants, Inc., v. F.M.C. Corp.,</u> 282 So. 2d 205 (1973);
1973	<u>University Plaza Shopping Center</u> <u>v. Stewart, 272 So. 2d 507 (1973).</u>
Georgia, 1975	<u>Camp Concrete Products v. Central</u> <u>of Georgia Ry Co., 134 Ga. App.</u> 537, 215 S.E. 2d 299 (1975);
1975	<u>Seaboard Coast Line Railroad Co.</u> <u>v. Dockery, 135 Ga. App. 540, 218</u> S.E.2d 263 (1975);
1975	<u>Southern Protective Products Co. v.</u> <u>Leasing International, Inc., 134</u> Ga. App. 945, 216 S.E. 2d 725 (1975);
1968	<u>Kraft Foods v. Disheroon, 118 Ga.</u> App. 632, 165 S.E. 2d 189 (1968).

United States District
and
State Courts

- Illinois, 1980 Schrier v. Indiana Harbor Belt Co.,
 82 Ill. App. 3d 561, 402 N.E. 2d 872
 (1980);
- 1975 American Picco Corp. v. Concrete Building
 Systems Co., 392 F. Supp. 789 (N.D.
 Ill. 1975);
- 1975 Ahlvers v. Terminal Railroad Ass'n. of
 St. Louis, 334 N.E. 2d 329 (1975);
- 1974 Valerio v. R & R Const. Co., 312 N.E.
 2d 713 (1974);
- 1971 Leach v. Eychaner, 273 N.E. 2d 55
 (1971);
- 1967 Halperin v. Darling & Co., 225 N.E.
 2d 92 (1967);
- 1966 Patent Scaffolding Co. v. Standard
 Oil Co., 215 N.E. 2d 1 (1966).
- Indiana, 1981 Center Township of Porter County v.
 City of Valparaiso, 420 N.E. 2d 1272
 (1981);
- 1975 Vernon Fire & Casualty Insurance Co.
 v. Graham, 336 N.E. 2d 829 (1975);
- 1971 Weaver v. American Oil Co., 276 N.E.
 2d 144 (1971);
- 1967 McClish v. Niagara Machine & Tool
 Works, 266 F. Supp. 987 (S.D. Ind. 1967);
- 1965 Loper v. Standard Oil Co., 211 N.E.
 2d 797 (1965).
- Iowa, 1978 Chicago & North Western Transp. Co.
 v. Hurst Excavating, Inc., 498
 F. Supp. 1 (N.D. Iowa 1978);
- 1967 Mayhew v. Iowa-Illinois Telephone
 Co., 279 F. Supp. 401 (Iowa 1967);

United States District
and
State Courts

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| | 1964 | <u>Epley v. S. Patti Construction Co.,</u>
<u>228 F. Supp. (N.D. Iowa, 1964),</u>
<u>rev'd on other grounds,</u>
<u>Carstens Plumbing and Heating Co. v.</u>
<u>Epley, 342 F.2d 830 (8th Cir. 1965);</u> |
| | 1955 | <u>Fire Assu. of Philadelphia v.</u>
<u>Allis Chalmers Mfg. Co., 129 F. Supp.</u>
<u>335 (N.D. Iowa 1955).</u> |
| Louisiana, | 1975 | <u>Vancouver Plywood Co. v. National</u>
<u>Automobile and Casualty Insurance Co.</u>
<u>387 F. Supp. 311 (Lo. 1975);</u> |
| | 1966 | <u>United States Fidelity and Guaranty</u>
<u>Co. v. James F. O'Neil Co., 254 F.</u>
<u>Supp. 140 (E.D. La. 1966), offd. 381</u>
<u>F.2d 783.</u> |
| Massachusetts, | 1981 | <u>Whittle v. Pagani Bros. Const. Co.</u>
<u>Inc., 422 N.E. 2d 779 (1981);</u> |
| | 1980 | <u>Shea v. Bay State Gas Co., 404 N.E.</u>
<u>2d 683 (1980).</u> |
| Michigan, | 1978 | <u>Trim v. Clark Equipment Co., 87 Mich.</u>
<u>App. 270, 274 N.W. 2d 33 (1978);</u> |
| | 1973 | <u>Klann v. Hews Cartage Co., 214 N.W.</u>
<u>2d 63 (1973).</u> |
| Minnesota | 1973 | <u>Christy v. Menasha Corp., 211 N.W.</u>
<u>2d 773 (1973);</u> |
| | 1939 | <u>N.P. Ry. Co. v. Thornton Bros. Co.,</u>
<u>288 N.W. 226 (1939).</u> |
| Missouri, | 1976 | <u>Southwestern Bell Tel. Co. v. J.A .</u>
<u>Tobin Const. Co., 536 S.W. 2d 881</u>
<u>(1976);</u> |
| | 1972 | <u>Monssanto Co. v. Port of St. Louis</u>
<u>Investments, Inc., 350 F. Supp. 502</u>
<u>(Mo. 1972);</u> |

United States District
and
State Courts

	1961	<u>Kansas City Power & Light Co. v. Federal Const. Corp.</u> , 351 S.W. 2d 741 (1961).
Montana,	1973	<u>Haynes v. County of Missoula</u> , 517 P.2d 370 (1973).
	1968	<u>Lesofski v. Ravalli County Electric Coop. Inc.</u> , 439 P.2d 370 (1968).
New Hampshire,	1980	<u>Commercial Union Assurance Co. v. Brown Co.</u> , 419 A.2d 1111 (1980).
New Jersey,	1979	<u>Berry v. V. Poute & Sons</u> , 166 N.J. Super. 513, 400 A.2d 114 (1979);
	1976	<u>Doloughy v. Blanchard Const. Co.</u> , 139 N.J. Super 110, 352 A.2d 613 (1976);
	1958	<u>Stern v. Tarocia</u> , 49 N.J. Super. 496, 140 A. 2d 403 (1958);
	1954	<u>George M. Brewster & Son v. Catalytic Const. Co.</u> , 17 N.J. 70, 109 A.2d 805 (1954).
New York,	1978	<u>Rovnak v. Union Carbide Corp., Linde Div.</u> , 407 N.Y.S. 2d 323 (1978);
	1975	<u>Simon v. Corbetta Construction Co., Inc.</u> , 391 F. Supp. 708 (N.Y. 1975);
	1973	<u>Margolin v. New York Life Ins. Co.</u> , 297 N.E. 2d 80 (1973).
North Carolina,	1979	<u>Cooper v. H.B. Owsley & Son, Inc.</u> , 43 N.C. App. 261, 258 S.E. 2d 842 (1979);
	1974	<u>New River Crisshed Stone, Inc. v. Austin Powder Co.</u> , 24 N.C. App. 285 210 S.E. 2d 285 (1974);
	1974	<u>Railway Co. v. Werner, Ind.</u> , 209 S.E. 2d 734 (1974);
	1965	<u>Gibbs v. Light Co.</u> , 265 N.C. 459, 144 S.E. 2d 393 (1965);

United States District
and
State Courts

	1955	<u>Hall v. Refining Co., 242 N.C. 707, 89 S.E. 2d 396 (1955).</u>
Ohio,	1967	<u>Republic Steel Corp. v. Glaros, 230 N.E. 2d 667 (1967).</u>
Oklahoma,	1975	<u>Kelly-Springfield Tire Co. v. Mobile Oil Corp., 551 P.2d 671(1975).</u>
Oregon,	1975	<u>Gordon H. Ball, Inc. v. Oregon Erecting Co., 539 P.2d 1059 (1975);</u>
	1974	<u>Waggoner v. Oregon Automobile Insurance Co., 526 P.2d 578 (1974).</u>
	1970	<u>Insurance Company of North America v. Brehm, 478 P.2d 387 (1970).</u>
Pennsylvania,	1969	<u>Fisher v. United States, 299 F. Supp.1 (E.D. Pa.1969), rev'd on other grounds, Fisher v. United States, 441 F.2d 1288 (3rd Cir. 1971);</u>
	1967	<u>Westinghouse Electric Co. v. Murphy, Inc., 228 A.2d 656 (1967).</u>
Rhode Island,	1975	<u>DiLonardo v. Gilbane Bldg. Co., 334 A.2d 422 (1975).</u>
South Dakota,	1980	<u>Chicago & N.W. Transp. Co. v. V & R. Sawmill, Inc., 501 F. Supp. 278 (S.D. 1980).</u>
Tennessee,	1975	<u>Hensley v. Rose, 429 F. Supp. 75 (Tenn. 1975);</u>
	1973	<u>Kellogg v. Sanitors, Inc., 496 S.W. 2d 472 (Tenn. 1973).</u>
	1966	<u>Brogdon v. Southern Railway Co., 253 F. Supp. 676 (E.D. Tenn. 1966).</u>
Texas,	1980	<u>Pate v. Tellepsen Const. Co., 596 S.W. 2d 548 (1980);</u>

United States District
and
State Courts

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| | 1980 | <u>Gulf Offshore Co. v. Mobile Oil Corp.</u> , 594 S.W. 2d 496 (1980); |
| | 1969 | <u>Hardy v. Martin</u> , 439 S.W. 2d 389 (1969); Rev'd on other grounds 444 S.W. 2d 593; |
| | 1968 | <u>W.R. Grimshaw Co. v. Martin Wright Electric Co.</u> , 283 F. Supp. 628 (Tex. 1968); Rev'd on other grounds 419 F.2d 1381; |
| | 1967 | <u>Houston Belt & Terminal Ry. Co. v. J. Weingarten, Inc.</u> , 421 S.W. 2d 431 (1967); |
| | 1955 | <u>James Stewart & Co. v. Mobley</u> , 282 S.W. 2d 290 (1955). |
| Utah, | 1965 | <u>Union Pacific R. Co. v. El Paso Natural Gas Co.</u> , 17 Utah 2d 255, 408 P.2d 910 (1965). |
| Vermont, | 1976 | <u>Lamobile Gram Co. v. St. Johnsbury and Lamobile Cty. Railroad</u> , 369 A.2d 1389 (1976); |
| | 1905 | <u>Osgood v. Central Vermont Ry.</u> , 77 Vt. 334, 60 A. 137 (1905). |
| Virginia, | 1976 | <u>Sherwood Trucking, Inc. v. Carolina Casualty Ins. Co.</u> , 407 F. Supp. 632 (Va. 1976), rev'd on other grounds, 552 F.2d 568. |
| Washington, | 1970 | <u>Tucci & Sons, Inc. v. Carl T. Madsen, Inc.</u> , 467 P.2d 386 (1970); |
| | 1967 | <u>Cope v. J.K. Campbell & Assoc., Ltd.</u> , 429 P.2d 124 (1967). |
| West Virginia, | 1972 | <u>Sellers v. Owens-Illinois Glass Co.</u> , 191 S.E. 2d 166 (1972); |
| | 1920 | <u>Borderland Coal Co. v. Norfolk & Western Railway Co.</u> , 87 W. Va. 339, 104 S.E. 624 (1920). |

United States District
and
State Courts

Wisconsin,	1981	<u>Dykstra v. Arthur G. McKee & Co.,</u> 301 N.W. 2d 201 (1981);
	1977	<u>Spivey v. Great Atlantic and Pacific</u> <u>Tea Co.,</u> 79 Wis. 2d 58, 255 N.W. 2d 469 (1977);
	1971	<u>Baker v. McDel Corp.,</u> 53 Wis. 2d 71, 191 N.W. 2d 846 (1971);
	1968	<u>Blazic v. Ford Motor Co.,</u> 166 N.W. 2d 636 (1968);
	1967	<u>Herchelroth v. Mahar,</u> 153 N.W. 2d 6 (1967);
	1963	<u>Mustas v. Inland Construction, Inc.,</u> 19 Wis. 2d 194, 120 N.W. 2d 95 (1963)
	1941	<u>Hartford Accident & Indemnity Co. v.</u> <u>Worden-Allen Co.,</u> 238 Wis. 124, 297 N.W. 436 (1941).

APPENDIX II

Alaska	<u>Northwest Airlines, Inc. v. Alaska Airlines,</u> 343 F. Supp 826 (D. Alas. 1972)
Hawaii	<u>Kamali v. Hawaiian Electric Co., Inc.,</u> 504 P.2d 861 (Hawaii 1972)
Michigan	<u>Liberty Mutual Insurance Co. v. Vanderbush</u> <u>Sheet Metal Co.,</u> 512 F. Supp 1159 (E.D Mich 1981) (Applying Michigan law)
Minnesota	<u>Herman v. United States,</u> 382 F. Supp. 818 (E.D Wis. 1974) (Applying Minnesota law)
Montana	<u>DeSlaw v. Johnson,</u> 472 P.2d 298 (Mont. 1970)
Oregon	<u>Gordon H. Ball, Inc., v. Oregon Erecting Co.,</u> 539 P.2d 1059 (Ore. 1975) <u>United States Fidelity and Guaranty Co. v.</u> <u>Kaiser Gypsum Co., Inc.,</u> 539 P.2d 1065 (Ore. 1975)
Texas	<u>Ealand v. Gulf, Colorado & Santa Fe Railway Co.,</u> 411 S.W. 2d 591 (Tex. 1967)
Utah	<u>Titan Steel Corp. v. Walton,</u> 365 F.2d 542 (10th Cir. 1966) (Applying Utah law)
Virginia	<u>Burnette v. General Electric Co.,</u> 389 F. Supp. 131 (W.D. Va. 1975) (Applying Virginia law) <u>Bell v. Federal Reserve Bank,</u> 57 F.R.D. 632 (E.D. Va. 1972) (Applying Virginia law)
Vermont	<u>New England T&T Co., v. Central Vermont Public</u> <u>Service Corp.,</u> 391 F. Supp. 420 (Ut. 1975) (Applying Vermont law)
Washington	<u>Broxson v. Chicago, Milwaukee, St. Paul &</u> <u>Pacific R. Co.,</u> 446 F.2d 628 (9th Cir. 1971) (Applying Washington law)

Wisconsin Hintz v. Darling Freight, Inc., 17 Wis. 2d 376
117 N.W. 2d 271 (1962)

Huck v. Chicago, St. Paul, Minneapolis &
Omaha Ry. Co., 5 Wis. 2d 124, 92 N.W. 2d
349 (1958)

Wyoming Pittsburg-Des Moines Steel Co. v. American
Surety Company of New York, 365 F.2d 412
(10th Cir. 1966) (Applying Wyoming law)

CERTIFICATE OF MAILING

I hereby declare that I caused to be mailed two true and correct copies of the foregoing Appeal Brief in Case No. 18084, postage prepaid, this 28th day of December, 1981, to Robert F. Orton, Attorney for Respondent, at 68 South Main Street, Fifth Floor, Salt Lake City, Utah 84101.

Chris Wanggaard

IN THE SUPREME COURT
OF THE STATE OF UTAH

DEC 3 1 1981

* * * * *

Clark, Supreme Court

SHELL OIL COMPANY,
Appellant,
vs.
BRINKERHOFF-SIGNAL
DRILLING COMPANY,
Respondent.

[illegible]

BRIEF OF APPELLANT
Supplement to Appendix II

CASE NO. 18084

ON APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR DUCHESNE COUNTY, STATE OF UTAH
THE HONORABLE ALLEN B. SORESENSEN, PRESIDING

SUPPLEMENT

APPENDIX II

(The following cases were discovered after Appellant's Brief was filed and are additional authorities holding that express indemnification contracts are not prohibited by the exclusive remedy provisions of various state and federal workmen's compensation statutes.)

Maryland

Mason v. Callas Contractors Inc., 494 F. Supp.
782 (Md. 1980)

Michigan Nanasi v. General Motors Corp., 56 Mich. App. 652, 224 N.W.2d 914 (1974).

McLouth Steel Corp. v. A.E. Anderson Const. Corp., 48 Mich. App. 424, 210 N.W. 2d 448 (1973)

Ohio Williams v. Ashland Chemical Co., 52 Ohio App. 2d. 81, 368 N.E. 2d 304 (1976) (Dicta.)

Oklahoma Harter Concrete Products Inc., v. Harris, 592 P.2d 526 (Okla. 1979) (Dicta.)

Pennsylvania Gallagher v. Transport Pool Inc., 421 A.2d 1212 (Pa. 1980).

Dech v. Rouselle Corp., 512 F. Supp. 1024 (E.D. Pa. 1981) (Interpreting Pennsylvania statute.)

Rhode Island Roy v. Star Chopper Co., Inc., 442 F. Supp. 1010 (R.I. 1977).

Texas Petroleum Exploration and Operating Corp. v. J. W. McCutcher Drilling Co. 593 S.W. 2d 831 (Tex. 1980)

Washington Redford v. City of Seattle, 94 Wash 2d. 198, 615 P.2d 1285 (1980)

Calkins v. Lorain Division of Koehring Co. 26 Wash. App. 206, 613 P.2d 143 (1980)

Wyoming Pan American Petroleum v. Maddux Well Service 586 P.2d 1220 (Wyo. 1979)