

# 5th Circuit Sets New Test to Determine If Certain Contracts on Navigable Waters Are Maritime

In an important new en banc opinion, the Fifth Circuit has abandoned its historic criteria for determining whether a contract relating to servicing oil or gas drilling on navigable waters is controlled by maritime law in favor of a “simpler, more straightforward test,” reports **Duane Morris LLP**.

**Jospeh J. Pangaro** writes that courts in the Fifth Circuit historically applied a six-factor test to determine whether a contract is governed by maritime law, as articulated in *Davis & Sons, Inc. v. Gulf Oil Corp.*.

“Taking the lead from the Supreme Court’s ruling in *Norfolk Southern Railway Co. v. Kirby*, 543 U.S. 14 (2004), the Fifth Circuit departed from the six-factor test used in cases like *Davis & Sons* in favor of a new, stream-lined two-pronged test to determine whether a contract like the one at issue was maritime in nature,” Pangaro writes.

In his article, the author discusses the new test.

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