

INTERMOOR, INC.	(IN THE
	(
Plaintiff,	(CIRCUIT COURT
	(
v.	(FOR
	(
U.S. WIND, INC.	(WORCHESTER COUNTY
	(
Defendant.	(C-23-CV-20-000097

**PLAINTIFF'S RESPONSE TO ORDER FOR
SUPPLEMENTAL LIEN AND JURISDICTION ANALYSIS**

COMES NOW Petitioner InterMoor, Inc. (hereinafter "InterMoor"), and by and through undersigned counsel and in response to the Court's July 29, 2020 Order therefor, submits the following supplemental information supporting the lien requested and this Court's jurisdiction over the dispute and lien requested. InterMoor's Complaint to Establish a Mechanic's Lien is incorporated herein by reference, as if fully restated.

THE LIEN AND LIEN AMOUNT

1. On or about July 29, 2019, InterMoor and U.S. Wind, Inc. (hereinafter "USW") entered into a Master Service Agreement (the "MSA") under which InterMoor agreed to act as the prime contractor in connection with the transportation and installation of a meteorological tower (the "MET Mast Tower") to be used to collect raw wind data for an offshore wind farm project (the "Project") located on leasehold interests held by USW on the Outer Continental Shelf ("OCS"), approximately 10 nautical miles from Ocean City, Maryland (the "Property"). The County closest to the Property is Worcester County, Maryland.

2. As part of the Project and pursuant to the MSA, InterMoor provided labor and materials from July 29, 2019 through October 6, 2019, which

included project management services related to the transportation and installation of the MET Mast Tower, project management services in Texas and work with various agents of USW in Texas. These project management services also included leasing equipment and/or chartering vessels.

3. USW sent correspondence to InterMoor on September 26, 2019, advising that it would be terminating the MSA, effective October 6, 2019. Therefore, the last date of work performed by InterMoor under the MSA was October 6, 2019.

4. The total bid for the Property paid by USW was \$8,701,980.00, and the value of the work that InterMoor performed and/or materials through October 6, 2019 (remaining unpaid) is \$4,817,993.00.

5. Unbeknownst to InterMoor, this was not the first time the USW contracted with a company to transport, install and construct this same MET Mast on USW's offshore wind lease and that it had also compensate for services rendered. In 2018, USW had contracted with WaveCrest, Inc. ("WaveCrest"), another Texas based offshore contractor, to manage the MET Mast transport and installation project. Similar to its conduct with InterMoor, USW failed to make payments for the work performed by WaveCrest and WaveCrest was forced to file suit against USW in the United States District Court for the District of Maryland, Northern Division in 2018.

6. On January 31, 2020, InterMoor sent, by certified mail return receipt requested and process server, "Notice to U.S. Wind Inc. and the Bureau of Ocean Energy Management of InterMoor Inc.'s Intention to Claim a Lien" in the amount of \$4,817,993. Copies of those Notices were attached as EXHIBIT 1 to InterMoor's Complaint to Establish and Enforce Mechanic's Lien.

7. On January 31, 2020, USW received InterMoor's Notice. A copy of that proof of service was attached as EXHIBIT 2 to InterMoor's Complaint to Establish

and Enforce Mechanic's Lien.

8. On February 3, 2020, the Bureau of Ocean Energy Management received InterMoor's Notice. A copy of that proof of service was attached as EXHIBIT 3 to InterMoor's Complaint to Establish and Enforce Mechanic's Lien.

9. InterMoor remains owed in excess of \$4,817,993 for the labor, services, and materials provided to the Property/Project.

WORCESTER COUNTY'S JURISDICTION

10. In 1953, Congress enacted the Outer Continental Shelf Lands Act ("OCSLA") (codified in 43 U.S.C.A. §§ 1333 et seq.), to define a body of law that would be applicable to the seabed, subsoil, and fixed structures, such as wind turbine monopiles and measurement towers, located on the Outer Continental Shelf.

11. In pertinent part, OCSLA states:

To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, ***the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf.***

43 U.S.C.A. § 1333(a)(2)(A) (emphasis added).

12. Courts, relying on Section 1333 of the OCSLA, have held that in the absence of some conflict between federal and state laws, state lien laws may be applicable as federal surrogate law under OCSLA. For adjacent state law to apply as surrogate federal law under OCSLA, three conditions are significant: (1) The controversy must arise on a situs covered by OCSLA (i.e. the subsoil, seabed, or artificial structures permanently or temporarily attached thereto); (2) federal maritime

law must not apply of its own force; and (3) the state law must not be inconsistent with Federal law. See *Union Texas Petroleum Corp. v. PLT Engineering, Inc.*, 895 F.2d 1043 (5th Cir. 1990).

13. Here, under OCSLA, the adjacent state lien law of Maryland should be applied because the State adjacent to the Property is Maryland, the controversy arose out of project management services related to the transportation and installation of the MET Mast Tower on a portion of the subsoil and seabed of the OCS,¹ no federal maritime law applies of its own force, and there is no conflict between State and Federal law.

14. Courts routinely interpret OCSLA to support the application of adjacent state lien laws. For example, the Fifth Circuit in *Union Texas Petroleum Corp. v. PLT Engineering Inc.*, held that a Louisiana mineral contractor's lien in an OCS lease was properly perfected, and its priority established, by filing in the records of the adjacent parish. *Union Texas Petroleum Corp. v. PLT Engineering Inc.*, 895 F.2d 1043 (5th Cir. 1990). The court's reasoned:

If [the Louisiana contractors' lien statute] were to be read as [appellant] urges, to allow liens to be recorded only if the property is located on land in a parish, it would deny the subcontractors the protection of Louisiana law merely because their work was performed on the OCS rather than on shore. At the least, this would frustrate the Congressional intent behind OCSLA that state law operate as surrogate federal law on the OCS. ***It would be anomalous to deny the liens here when a principal reason for adopting state law to apply as federal law on the OCS was to protect all those who perform activities including providing services and materials on the OCS.*** (citations omitted).

Id. at 1051 (emphasis added).

¹ See Exhibit A, BOEM, *Finding of No Historic Properties Affected for the Approval of the US Wind Inc. Site Assessment Plan on the Outer Continental Shelf Offshore Maryland*, April 13, 2016, at 3, 5. ("The main caisson will be installed to a depth of approximately 177 ft (54 m) below the seafloor.").

15. In addition, the Fifth Circuit Court of Appeals recently concurred with this reasoning and interpreted OCSLA to permit the application of state lien laws to preserve the protections afforded to subcontractors as intended by Congress. See *USA, Inc. v. ENI U.S. Operating Co.*, 671 F.3d 512 (5th Cir. 2012)) (“Congress declared that to the extent that they are applicable and not inconsistent with [federal law], the laws of the adjacent states are the law[s] of the United States on the OCS...”)(internal quotations and citations omitted); see also *Gardes Directional Drilling v. United States Turnkey Exploration Co.*, 98 F.3d 860 (5th Cir. 1996) (applying Louisiana lien law “as surrogate federal law” under Section 1333(a)(2)(A) of the OCSLA).

16. Similarly, in *World Hospitality Ltd., Inc. v. Shell Offshore, Inc.*, a company which supplied food and other services to persons working on offshore drilling rigs filed liens for the amounts it was due from the companies drilling wells on the OCS. The court ultimately held that, under OCSLA, “Texas law applies to the perfection of a lien claim on the Outer Continental Shelf adjacent to Texas.” *World Hospitality Ltd., Inc. v. Shell Offshore, Inc.*, 699 F. Supp. 111 (S.D. Tex. 1988); see also *Genina Marine Services, Inc. v. ARCO Oil & Gas Co.*, 499 So. 2d 257 (La. Ct. App. 1986) (applying Louisiana contractors’ lien statute to OCS); *Sea Robin Pipeline Co. v. Red Sea Group, Ltd.*, 919 F. Supp. 991, 163 A.L.R. Fed. 647 (W.D. La. 1996) (same); *Cameron Offshore Boats, Inc. v. Alpine Ocean Seismic Surveys*, 862 F. Supp. 1578 (W.D. La. 1994) (same).

17. As evidenced by the relevant state and federal court interpretations of state lien laws applied over activity occurring on the OCS, state lien laws should be applied in order to protect subcontractors who perform activities, including providing services and materials, on the OCS when there is no conflict with federal law. While

this appears to be a case of first impression in Maryland, this Court, too, should apply lien laws of the State of Maryland as federal surrogate law under OCSLA, and this is the basis for jurisdiction over the property at issue. There is no conflict with federal law of which InterMoor is aware.

18. In accordance with OCSLA, the laws of the state "which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf" are those that should be applied when applying state law as a surrogate for non-competing federal law. 43 U.S.C.A. § 1333(a)(2)(A). Here, the property for which InterMoor provided labor and materials, as more specifically described in InterMoor's Complaint to Establish and Enforce Mechanic's Lien, is generally designated or briefly described as the structures on or to be constructed on, as well as the land on which it is located,² commercial wind leases at an offshore wind farm project located approximately 10 nautical miles from Ocean City, Maryland, in Worcester County. Accordingly, this Court should exercise jurisdiction over this property as permitted by OCSLA.

WHEREFORE, InterMoor respectfully requests that this Court exercise jurisdiction over this dispute pursuant to OCSLA and apply Maryland state lien laws to offshore leases on the OCS, because this controversy arises on a situs covered by OCSLA and federal maritime law does not apply of its own force, and because Maryland law is not inconsistent with Federal law.

² Md. Code Ann., Real Prop. §9-103(a)

August 10, 2020

Respectfully Submitted,

/s/ Cynthia L. Maskol

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