

Drilling Contracts and Master Service Agreements

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Overview

- Basic indemnity and insurance protections
- Recognizing the role of the MSA and drilling contract
- Effect of different reciprocal indemnity schemes
- Obtaining “pass-through” protection
- Understanding limitations on indemnity and insurance
- Drilling contract pitfalls
- Some examples

Survey: Top 7 Texas Country and Western Songs from Texas Risk Managers

7. How Can I Miss You If You Won't Go Away?
6. I Liked You Better Before I Got to Know You So Well
5. I'm So Miserable Without You, It's Like You're Still Here
4. My Wife Ran Off With My Best Friend And I Sure Do Miss Him
3. She Got The Ring And I Got The Finger
2. I Still Miss You Baby, But My Aim's Gettin' Better

And the # 1 song is . . .

1. If I Had Shot You When I First Wanted To, I'd Be Out Of Prison By Now

THINK
FORWARD
THINK
RISK



Basic Indemnity and Insurance Issues

Indemnity Basics

- MSA is a building block for most operations
- Must have valid “magic language” to obtain indemnity for one’s own negligence
- Indemnity (and “magic language”) must be broad enough to extend to all intended beneficiaries
- Anticipate and address possible restrictions on indemnity
- Be aware of any issues relating to the scope of the indemnity or the scope of the MSA
- *Deepwater Horizon* - indemnity for gross negligence (as opposed to release) is not against public policy under maritime law - indemnity for punitive damages is

Effect of Different “Reciprocal” Indemnity Provisions

- Narrow – each party responsible for its own employees and property (simple; doesn’t require reliance on what’s in other contracts)
- Broad reciprocal – includes contractors and subcontractors (creates extensive potential liability for Company; without a “pass-through” provision, there may be no back-up indemnity)
- Variations – modified reciprocal; fault-based reciprocal, hybrid

The Drilling Contract is the Key – Anticipating the Broad Reciprocal Indemnity

- Drilling contractor will want indemnity for Company's people and property and people and property of Company's other contractors
- With broad reciprocal indemnity, Company will owe indemnity to drilling contractor every time there is an accident involving anyone other than the drilling contractor

Insurance Basics

- Named as additional insured
- Waiver of subrogation
- Coverage must be primary (at least for risks assumed by naming party)
- Insurance not a limit on indemnity
- Dovetail insurance with indemnity – extend to same parties
- Insurance may provide more protection in some instances

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[Oil, Gas and Mineral Law 2012 Primer, Part 2: Operator Duties to Non-Operators; plus Drilling Contracts and Master Service Agreements](#)

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