

Indemnity and Risk Allocation: You Can't Always Get What You Want, But it's Good to Know How to Get What You Need

William W. Pugh

Fundamentals of Oil, Gas and Mineral Law

Houston, Texas

March 27, 2014

LISKOW&LEWIS

A Professional Law Corporation

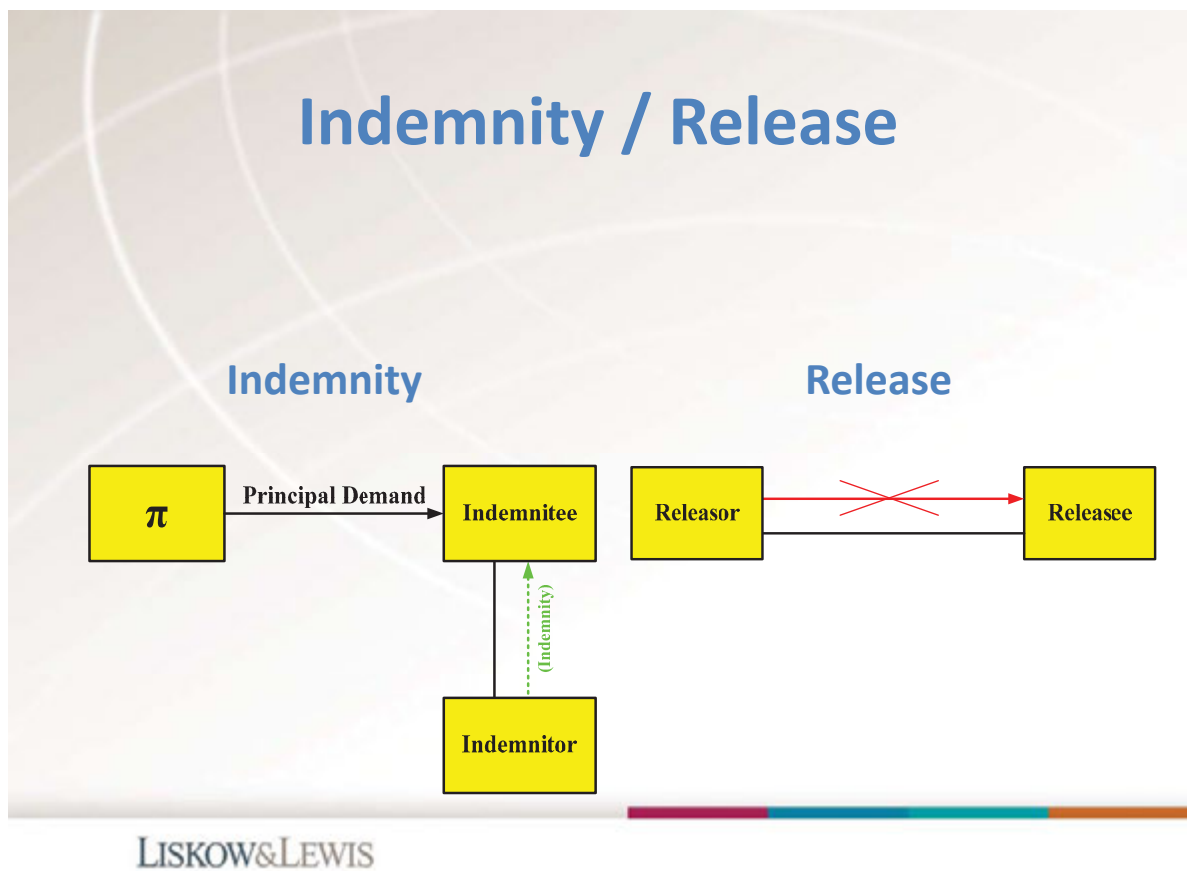
New Orleans | Lafayette | Houston

| 1

Overview

- General Principles
- Effect of indemnity structure
- Insurance protections
- Restrictions on indemnity and insurance
- What law applies?
- Construction Anti-Indemnity statutes
- Some examples
- Different contracts – may mean different issues

General Principles



Recovery of Fees/Costs

Defense Costs

- Maritime and Texas – Duty to indemnify includes duty to defend
- Louisiana – Only if expressly provided for by contract

Fees/Costs Incurred Pursuing indemnification

- Only if expressly provided for by contract

INDEMNITY “MUST HAVES”

- Must have valid “magic language” to obtain indemnity for one’s own negligence

Coverage for Your Own Negligence

- Maritime – “Clear and Unequivocal”
- Louisiana – “Unequivocal”
- Texas – “Express Negligence”
 - Fair notice and conspicuousness

Randall v. Chevron (5th Cir.) (maritime law)

Owner hereby agrees to defend, indemnify and hold harmless Company against all claims for damages, whether to person or property, and **howsoever arising in any way** directly or indirectly connected with the possession, navigation, management, and operation of the vessel.

HELD – Provision did not adequately express parties' intent to cover indemnitee's negligence.

Smith v. Shell (5th Cir.) (Louisiana law)

Contractor shall defend and indemnify Company, its employees, and agents, against all losses, claims, suits, liability, and expense **arising out of** injury or death of persons or damage to property resulting from or in connection with performance of this order **and not caused solely by Company's negligence.**

HELD – Sufficient to include concurrent negligence of indemnitee.

Singleton v. Crown Central (Tex. Sup. Ct) (Texas law)

indemnity for “**any and all claims, demands, ... of every kind and character whatsoever, ... excepting only claims arising out of accidents resulting from the sole negligence of Owner**”

HELD – Did not satisfy Texas express negligence test – only specified what was not included, and did not expressly say concurrent fault included.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Indemnity and Risk Allocation: You Can't Always Get What You Want, But it's Good to Know How to Get What You Need

Also available as part of the eCourse

[Drilling Contracts and Master Service Agreements](#)

First appeared as part of the conference materials for the
2014 Fundamentals of Oil, Gas and Mineral Law session
"Drilling Contracts and Master Service Agreements"