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DOMESTIC U.S. vs. INTERNATIONAL

- There are major comparative differences for oil field service companies between contracting in the prototypical domestic and international operating environments
- These differences lead to several key contracting pointers
- Especially as to indemnification clauses and insurance and their limits

DOMESTIC U.S. vs. INTERNATIONAL

DOMESTIC U.S.

- Service companies face a mixed environment of:
 - Private contracts
PLUS
 - Direct and Indirect Liability for Federal Laws and Regulations
 - Unpredictable of obligations under state and local laws and regulations – both substance and expansion

INTERNATIONAL

- Service companies face an environment dominated by:
 - International joint operating agreements, primarily the AIPN Model Form JOA
 - Increasing call for Operators to include in Service Contracts express obligations for service companies to adhere to operational, environmental protection and anti-bribery/corruption regulations and statutes

DOMESTIC U.S. OPERATIONS

- Service companies face a mixed environment:
 - Private contracts
 - PLUS*
 - Direct joint & several liability for federal OCS regs
 - Direct obligations to participate in operator's safety compliance – “Bridging Agreements” and S.E.M.S./S.E.M.S.2
 - Direct liability for environmental spills
 - Uneven and unpredictable expansion of state and local regulations – *50 states and innumerable local entities seeking to regulate oil and gas operations*
 - Exponentially expanding environmental activism
 - Indemnification for penalties for violating “deterrent” regulations and punitive damages ***prohibited as against public policy***

INTERNATIONAL OPERATIONS

- Service companies face an environment dominated by:
 - Private contract with operators, but
 - Operators often working under international joint operating agreements, primarily the AIPN Model Form JOA,
 - Increasing insistence on express contractual obligations on oilfield service companies to adhere to operational, environmental protection, HS&E and anti-bribery/corruption regulations and statutes
 - Indemnification under law made applicable to service contract

TAKE-AWAYS FOR DOMESTIC CONTRACTS

- **As to Federal Regulations:**
 - *You* continue to be directly responsible for violations of federal and state environmental, OSHA/worker safety and construction-standards laws and regulations
 - Now, *You* are directly subject to Federal Offshore Regulations of BSEE and BOEM, joint and several with the Lessee/Operator, when performing any regulated activity,
 - Incorporate provisions that clearly address mutual obligations to ensure compliance
 - Operational requirements from specific to general
 - Your own Safety Procedures Plan must now suffice
 - While also continuing to coordinate with the Operator's Safety Procedures Plan
 - You are also directly responsible to coordinate with multiple aspects of the Lessee/Operator's SEMS and SEMS II Plan, including "Bridging Agreements"
 - Review Contracts for currency of provisions with these new realities
 - Keeping in mind that you cannot be indemnified for violation of Federal Regulations
 - Keeping in mind the likely lack of Insurance for similar violations

TAKE-AWAYS FOR INTERNATIONAL CONTRACTS

- KEEP IN MIND THAT YOU ARE DEALING WITH AN OPERATOR WHO IS OBLIGATED UNDER THE A.I.P.N. MODEL FORM J.O.A. TO INCLUDE THE FOLLOWING CONTRACT CLAUSES
 - Article 4.2.B.18
 - Art 20.1.A
 - Art 20.1.B
 - Art 20.1.C
 - Art 20.1.D

TAKE-AWAYS FOR INTERNATIONAL CONTRACTS, continued

A.I.P.N. Model Form International Operating Agreement (JOA)

Article 4.2, *Rights and Duties of Operator*: “In the conduct of Joint Operations and Exclusive Operations when conducted by Operator, Operator shall”

Article 4.2.B.18:

- Include in its contracts with independent contractors
- and to the extent practical and lawful, provisions that:
 - Establish that such contractors can enforce their contracts only against Operator;
 - Permit Operator, on behalf of the Parties, to enforce contractual warranties and indemnities against such contractors and their sub-contractors, and to recover from such contractors and sub-contractors losses and damages suffered by the Parties that are recoverable under their contracts;
 - Require such contractors to obtain and maintain insurance required by Article 4.7.H;
 - Require such contractors to comply with applicable Laws, including registration to do business, immigration, import/export, local preference, national content, tax withholding and payment, and the HSE Plan; and
 - Require such contractors to establish and implement reasonable and proportionate anti-bribery and anti-corruption programs consistent with the undertakings contemplated by Article 20.1.

TAKE-AWAYS FOR INTERNATIONAL CONTRACTS, continued

A.I.P.N. Model Form International Operating Agreement (JOA)

Art 20.1, *Conduct of the Parties:*

Art 20.1.A:

- Each Party with regard to operations and/or activities under this Agreement (i) warrants that such Party and its Affiliates and their respective directors, officers, employees and personnel have not made, offered, or authorized, and (ii) covenants that such Party and its Affiliates and their respective directors, officers, employees, and personnel will not make, offer, or authorize, any payment, gift, promise or other advantage, whether directly or through any other person or entity, to or for the use or benefit of any Public Official, any political party, political party official, or candidate for office,
- *OPTIONAL PROVISION, CHOOSE, IF DESIRED:* or any other individual or entity,
- where such payment, gift, promise or advantage would violate the Anti-Bribery Laws and Obligations applicable to such Party.
- *OPTIONAL PROVISION, CHOOSE, IF DESIRED:*
- In addition each Party with regard to operations and/or activities under this Agreement (i) warrants that such Party and its Affiliates and their respective directors, officers, employees and personnel have complied with, and (ii) covenants that such Party and its Affiliates and their respective directors, officers, employees, and personnel will comply with the Anti-Bribery Laws and Obligations applicable to such Party.

TAKE-AWAYS FOR INTERNATIONAL CONTRACTS, continued

A.I.P.N. Model Form International Operating Agreement (JOA)

Art 20.1, Conduct of the Parties:

Art 20.1.B:

Each Party shall as soon as possible notify the other Parties of any investigation or proceeding initiated by a governmental authority relating to an alleged violation of applicable Anti-Bribery Laws and Obligations by such Party, or its Affiliates, or any of their directors, officers, employees, personnel, or any service providers of such Party or its Affiliates, concerning operations and activities under this Agreement. Such Party shall use reasonable efforts to keep the other Parties informed as to the progress and disposition of such investigation or proceeding, except that such Party shall not be obligated to disclose to the other Parties any information that would be considered legally privileged.

TAKE-AWAYS FOR INTERNATIONAL CONTRACTS, continued

A.I.P.N. Model Form International Operating Agreement (JOA)

Art 20.1, Conduct of the Parties:

Art 20.1.C:

- Each Party shall indemnify the other Parties for any damages, losses, penalties, costs (including reasonable legal costs and attorneys' fees), and liabilities arising from, or related to the events underlying:
 - 20.1.C.1: such Party's admission of allegations made by a governmental authority concerning operations and/or activities under this Agreement that such Party or its Affiliates or their directors, officers, employees and personnel have violated Anti-Bribery Laws and Obligations applicable to such Party; or
 - 20.1.C.2: the final adjudication concerning operations and/or activities under this Agreement that such Party or its Affiliates or their directors, officers, employees and personnel have violated Anti-Bribery Laws and Obligations applicable to such Party.
- Such indemnity obligations shall survive termination or expiration of this Agreement.

TAKE-AWAYS FOR INTERNATIONAL CONTRACTS, continued

A.I.P.N. Model Form International Operating Agreement (JOA)

Art 20.1, Conduct of the Parties:

Art 20.1.D:

- Each Party shall concerning matters that are the subject of this Agreement:
- 20.1.D.1: Devise and maintain adequate internal controls concerning such Party's undertakings under Article 20.1.A;
- 20.1.D.2: Establish and prepare its books and records in accordance with generally accepted accounting practices applicable to such Party;
- 20.1.D.3: Properly record and report such Party's transactions in a manner that accurately and fairly reflects in reasonable detail such Party's assets and liabilities;
- 20.1.D.4: Retain such books and records for a period of at least ___ Calendar Years; and
- 20.1.D.5: Comply with the laws applicable to such Party.

TAKE-AWAYS FOR INTERNATIONAL CONTRACTS, Summary

Key differences with Domestic U.S. Contracts:

- Obligations under contract with Operator, not governmental regulation
- Emphasis on
 - Foreign Corrupt Practices
 - Health, Safety and Environment
- No express prohibition on indemnifications, but
- Service Company indemnifies Operator for violations of obligations.

THE END